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Tennessee Governmental Tort Liability Act

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Tennessee Governmental Tort Liability Act

Reference Number: CTAS-766

Prior to 1973, Tennessee counties were subject to the state's sovereign immunity for governmental acts, but were liable for damages resulting from proprietary activities. Governmental acts were those activities that were peculiar to governments, or activities only governments could provide, such as police protection, fire protection, education or tax collection. Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-101 et seq.), which provides that counties are immune under state law from all suits arising out of their activities, either governmental or proprietary, unless immunity is specifically removed by the law. It is important to remember that this immunity does not extend to liability under federal law.

In cases where the county is immune, county officials and employees may be individually liable, but only up to the liability limits established in the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c). When the case is one where the county can be liable, the official or employee is immune. T.C.A. § 29-20-310(b). Willful, malicious or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (nor do medical malpractice actions brought against a health care provider).

Members of all county boards, commissions, agencies, authorities and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit under state law arising from the conduct of the entity's affairs. This immunity is removed when the conduct is willful, wanton or grossly negligent. T.C.A. § 29-20-201.

Areas in which the Tennessee Governmental Tort Liability Act removes governmental immunity (i.e., kinds of actions for which the county can be sued) are:

1. Claims arising from the negligent operation of motor vehicles;
2. Claims arising from negligently constructing or maintaining streets, alleys or sidewalks;
3. Claims arising from the negligent construction or maintenance of public improvements; and
4. Claims arising from the negligence of county employees. T.C.A. §§ 29-20-202 through 29-20-205).

In 2022, the Tennessee Supreme Court held that the waiver of immunity in T.C.A. § 29-20-205 for "negligent" acts includes only ordinary negligence, not gross negligence or recklessness. *Lawson v. Hawkins County*, --- S.W.3d ---- 2023 WL 2033336 (Tenn. May 25, 2022).

There are exceptions to these areas where immunity is removed. These activities, for which the county is immune under state law, but for which an officer or employee may be liable, include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy or civil rights;
3. Issuing, denying, suspending, or revoking, or the failure to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;
4. Failing to inspect or negligently inspecting any property;
5. Instituting or prosecuting any judicial or administrative proceeding;
6. Negligent or intentional misrepresentation;
7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or
8. Assessing, levying or collecting taxes. T.C.A. § 29-20-205.

Persons other than elected or appointed officials and members of boards, agencies and commissions are not considered county employees for purposes of the Governmental Tort Liability Act unless the court specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;
2. The county is liable for the compensation for the performance of such services and the

- person receives all compensation directly from the county's payroll department;
3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;
 4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and
 5. The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as other county employees. T.C.A. § 29-20-107.

A regular member of the county voluntary or auxiliary fire fighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above. 29-20-107(d). The county cannot extend immunity to independent contractors or other persons or entities by contract. T.C.A. § 29-20-107(c).

The county may now insure, either by self-insurance or purchasing insurance, or indemnify (up to the new limits set in the Tennessee Governmental Tort Liability Act) its employees and officials for their liability exposure under the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c).

The following liability limits under the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-403) are for occurrences or accidents occurring on or after July 1, 2007 and are as follows:

| Type of Claim | Limit |
|---|-----------|
| Bodily injury or death of any one person in any one accident, occurrence or act | \$300,000 |
| Bodily injury or death of all persons in any one accident, occurrence or act | \$700,000 |
| Injury to or destruction of property of others in any one accident | \$100,000 |

It is very important to know that these limits do not apply to federal civil rights actions in state or federal courts.

Actions under the Governmental Tort Liability Act must be commenced within 12 months after the cause of action arises (T.C.A. § 29-20-305), like other tort claims. This one-year statute of limitations can be extended when claims involve persons under legal disabilities (incompetents, minors, etc.) or when the injured party has reasonably failed to discover the existence of his or her cause of action against the county, county officials or employees

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