

Municipal Immunities

WHAT THEY ARE, HOW THEY WORK, AND WHY THEY ARE IMPORTANT

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A Brief Background

THE ORIGINATION OF IMMUNITIES

Origination of Municipal Immunities



- ▶ Municipalities are subdivisions of the state.
 - ▶ The default position is to treat municipalities as having the same privileges and immunities as the state.
- ▶ The state derives its immunity from the concept of ‘sovereign’ immunity.
 - ▶ ‘Sovereign’ immunity comes from England and is based on the classical concept of the sovereign as the ultimate authority.
- ▶ The ‘law’ derives from the sovereign.
 - ▶ A sovereign – whether King or Republic – is the origination of the laws of the land and, therefore, and cannot be subjected to the jurisdiction of another.
- ▶ “The King can do no wrong” – Blackstone, Commentaries.

Waivers of Immunities

- ▶ When the original thirteen colonies declared their independence in 1776, they effectively created thirteen sovereign nations, that were then bonded into a single nation through the constitution – but without giving up their individual sovereignties – thus creating a dual-sovereign system. (See Federalist No. 51 (Madison)).
- ▶ Even then, there was recognition that the sovereign could waive sovereign immunity through his/her/its own prerogative. (See *Blackstone's Commentaries*.)

U.S. States Evolve Past Blackstone



Strict application of Blackstone's conception of sovereign immunity can create harsh results – such application prevents remedies for actions by the state and its actors that are widely seen as undesirable.



There has been a gradual, purposeful erosion of the concept of sovereign immunity across U.S. jurisdictions, largely over the past century.



In New Hampshire, we have seen the legislature enact certain immunities and the judiciary abolish, limit, and create immunities when the legislature has declined or been perceived as slow to act.



Current Immunities

JUDICIALLY & LEGISLATIVELY CREATED

N.H.'s Municipal Immunities: Brief Summary



N.H.'s municipal liability landscape is now primarily defined by both four judicially and ten legislatively created municipal immunities.



Immunity from Money Damages Claims

Judicially Created Municipal Immunities

Two seminal cases: *Merrill v. Manchester*, 114 N.H. 722 (1974) and *Everitt v. Gen. Elec. Co.*, 156 N.H. 202 (2007).

In total, the N.H. Supreme Court established four immunities, and deferred to the Legislature for the creation of any additional immunities.

Merrill Case Summary

- ▶ In *Merrill*, the N.H. Supreme Court abolished sovereign immunity, and determines that three forms of limited governmental immunity exist:
 - ▶ (1) judicial/quasi-judicial function;
 - ▶ (2) legislative function; and
 - ▶ (3) discretionary function immunity.
- ▶ However, the N.H. Supreme Court also deferred to the Legislature to determine scope/extent of government liability outside of these three particular types of immunity.

Everitt Case Summary

NH Supreme Court established an additional immunity to the three already created in *Merrill*: official immunity.



This immunity serves, essentially, as a form of state law qualified immunity.



Legislatively Created Municipal Immunity: RSA 507-B

- Premises and Autos Limitation
- Damages Caps; Waiver of Caps to Limit of Commercial Policies
- Snow, Ice, Weather Hazards – Premises
- Skateboards, Rollerblades, Stunt Bikes – Premises

Other Legislatively Created Municipal Immunities

Recreational
Use Immunity
(RSA 508:14;
RSA 212:34)

Highways and
Sidewalks (RSA
231:90-92-a)

Volunteer
Immunity (RSA
508:17)

Fire/EMS
Immunity (RSA
154:1-d; RSA
508:12-b)

Good Faith
Immunity (RSA
31:104)

Emergency
Management
(RSA 21-P:41)



Application & Importance of Immunities

HOW THEY WORK & AFFECT YOUR COMMUNITY



Standard Rules for Application of Immunities

- Immunities have requisite elements that must be satisfied
- In all cases:
 - Intentional or reckless (bad) acts don't qualify.
 - Immunity can be waived.
- In any application, the court will decide whether the immunity applies.
 - Typically, this is bundled with a decision on whether to grant or deny a motion to end case.
 - Timing varies, and a decision can sometimes be deferred to a jury.

Importance of Municipal Immunities

Allow	Allow local government entities to perform functions they otherwise would avoid due to liability risks and impacts of adverse rulings
Provide	Provide local government protection from suit for performing compulsory functions they cannot decline
Prevent	Prevent exponential liabilities seen in other jurisdictions, keeping insured and uninsured claim expenses reasonable for communities
Extricate	Extricate municipal defendants from litigation, minimizing undue interference with public service caused by claims, discovery and trials
Preserve	Preserve separation of powers by controlling judicial impacts on local government executive and governance functions

Questions?



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