

Riley Fletcher
Basic Municipal Law Seminar

Texas Municipal Center
February 22, 2013

**Liability under the Texas
Tort Claims Act**



William M. McKamie

McKamie Krueger, LLP

www.mckamiekrueger.com

“The King can do no wrong”

Sovereign Immunity

Under common law, state and political subdivisions are not liable for torts or their agents or officers involved in a *governmental function*.

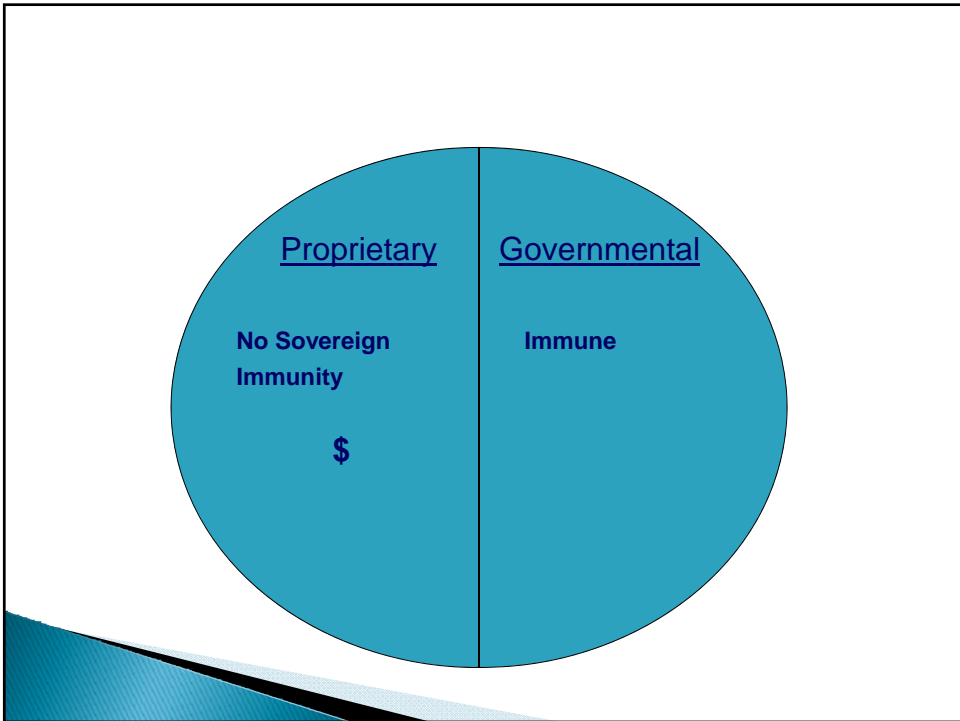
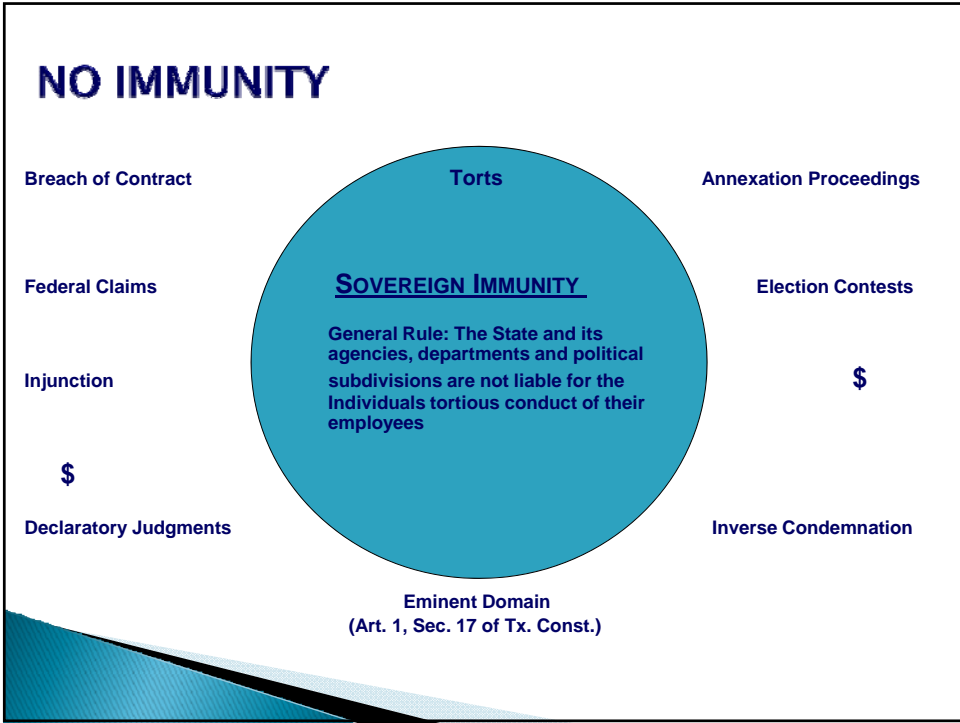
Official Immunity

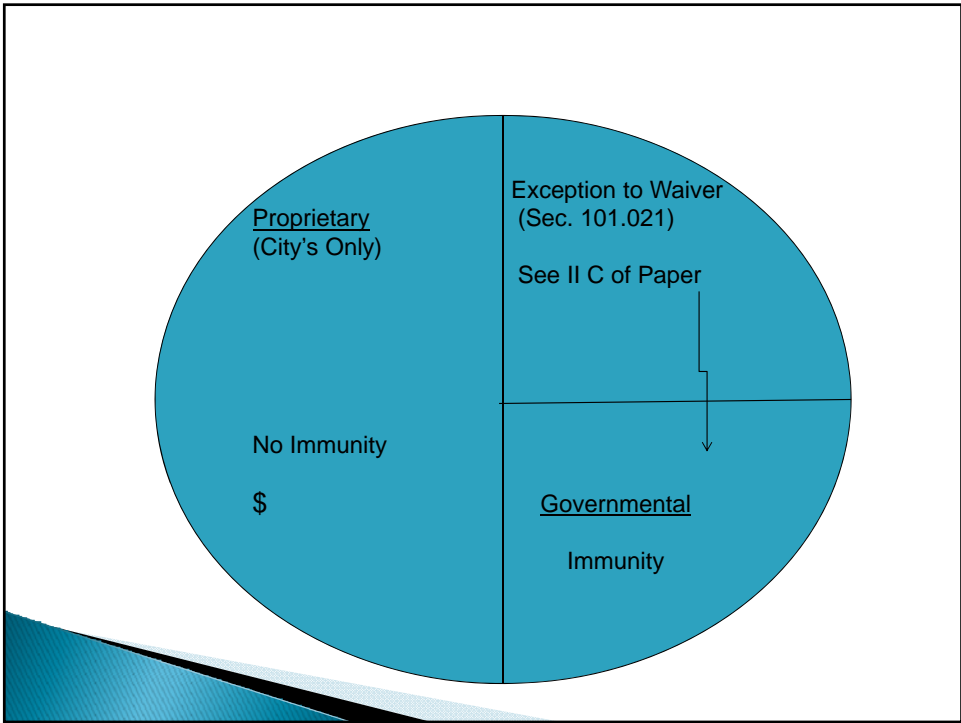
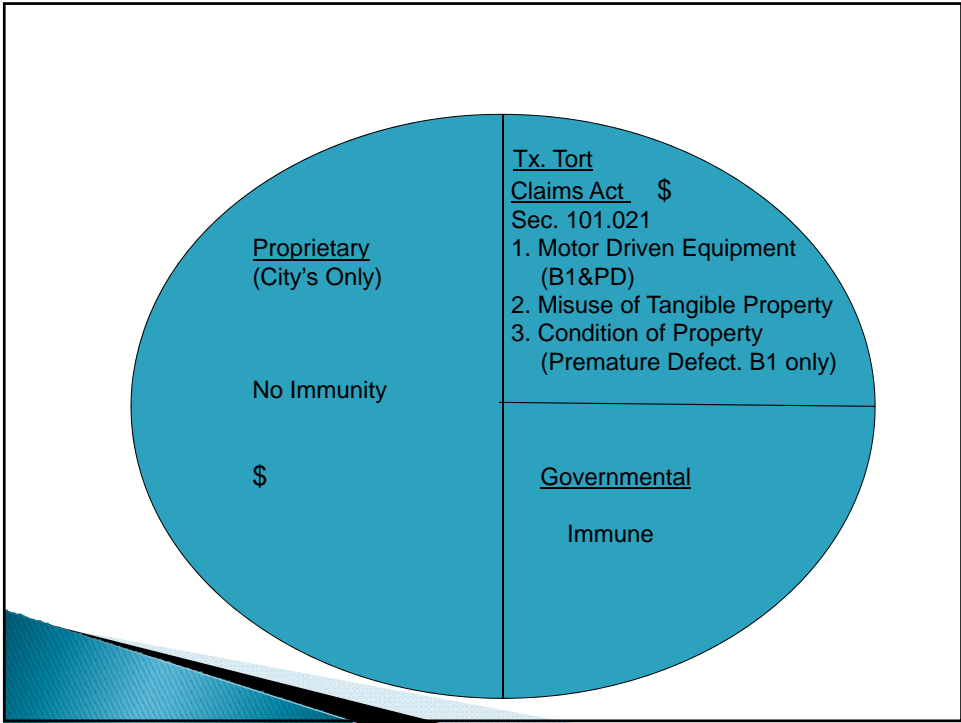
Under common law, public officials and public servants are immune from liability if:

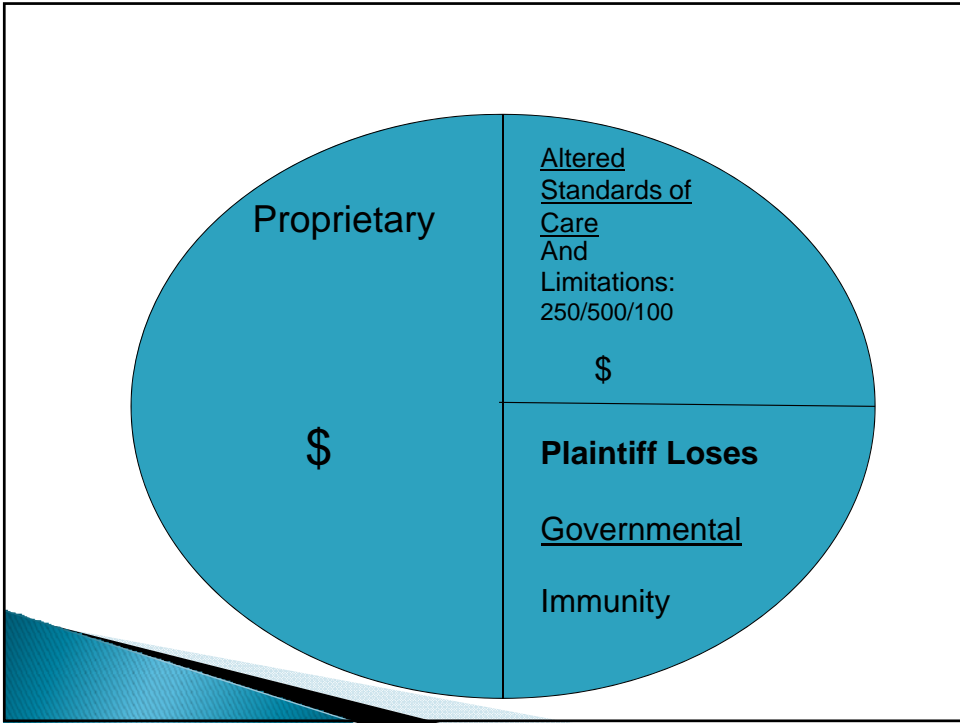
1. They are performing a duty within the scope of their duties;
2. They are performing a discretionary duty; and
3. They act in good faith.

Tort Claims Act

- * Passed in 1969 by the Texas Legislature.
- * Waives sovereign immunity for certain acts and conditions.
- * Limits the amount of damages that can be recovered where immunity is waived.







Governmental Functions

(Cont.)

▶ § 101.0215. Liability of a Municipality

- a. A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to:

(Cont.)

- 1) Policy and fire protection and control;
- 2) Health and sanitation services;
- 3) Street construction and design;
- 4) Bridge construction and maintenance and street maintenance;
- 5) Cemeteries and cemetery care;
- 6) Garbage and solid waste removal, collection, and disposal;
- 7) Establishment and maintenance of the jails;

(Cont.)

- 8) Hospitals;
- 9) Sanitary and storm sewers;
- 10) Airports;
- 11) Waterworks;
- 12) Repair garages;
- 13) Parks and zoos;
- 14) Museums;
- 15) Libraries and library maintenance;
- 16) Civil convention centers, or coliseums;

(Cont.)

- 17) Community, neighborhood, or senior citizen centers;
- 18) Operation of emergency ambulance service;
- 19) Dams and reservoirs;
- 20) Warning signals;
- 21) Regulation of traffic;
- 22) Transportation systems;
- 23) Recreational facilities, including but not limited to swimming pools, beaches, and marinas;

(Cont.)

- 24) **Vehicle and motor driven equipment maintenance;**
- 25) **Parking facilities;**
- 26) **Tax collections;**
- 27) **Firework displays;**
- 28) **Building, codes and inspection;**
- 29) **Zoning, planning, and plat approval;**
- 30) **Engineering functions;**
- 31) **Maintenance of traffic signals, signs, and hazards**
- 32) **Water and sewer service;**
- 33) **Animal control;**

(Cont.)

- 24) **Community development or urban renewal activities undertaken by municipalities and authorized under Chapters 373 and 374, Local Governmental Code;**
- 25) **Latchkey programs conducted exclusively on a school campus under an interlocal agreement with the school district in which the school campus is located; and**
- 26) **Enforcement of land use restrictions under Subchapter A, Chapter 230, Local Government Code.**

PROPRIETARY FUNCTIONS

(Cities Only)

(Cont.)

- b. This chapter does not apply to the liability of a municipality for damages arising from its proprietary functions, which are those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality, including but not limited to:
 - 1. The operation and maintenance of a public utility; Amusements owned and operated by the municipality; and
 - 2. Any activity that is abnormally dangerous or ultra hazardous.
- c. The proprietary functions of municipality do not include those governmental; activities listed under Subsection (a).

THE WAIVER OF IMMUNITY

(Cont.)

§ 101.021 Governmental Liability

A governmental unit in the state is liable for:

- 1) Property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:**
 - A.** The property damage, personal injury, or death arises from the operation or use of motor-driven vehicle or motor-driven equipment; and
 - B.** The employee would be personally liable to the claimant according to Texas Law; and
 - C.** Personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

EXCEPTIONS TO THE WAIVER OF IMMUNITY

(Cont.)

§ 101.052. Legislative

§ 101.053. Judicial

§ 101.055. Certain Governmental Functions

§ 101.056. Discretionary Powers

§ 101.057. Civil Disobedience and Certain Intentional
Torts

§ 101.059. Attractive Nuisances

§ 101.060. Traffic and Road Control Devices

§ 101.062. 9-1-1 Emergency Service

§ 101.066. Computer Data Failure

ALTERED STANDARDS AND OTHER LIMITATIONS

(Cont.)

§ 101.101. Notice

- a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred. The notice must reasonably describe:**
 - 1) The damage or inquiry claimed;**
 - 2) The time and place of the incident; and**
 - 3) The incident.**

(Cont.)

§ 101.022. Duty Owed: Premise and Special Defects

- a) If a claim arises from a premise defect, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property, unless the claimant pays for the use of the premises.

(Cont.)

- b) The limitation of duty in this section does not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads, or streets or to the duty to warn of the absence, condition, or malfunction of traffic signs, signals, or warning devices as is required by Section 101.060.

(Cont.)

Invitee: The landowner has a duty to keep the premises in reasonably safe condition and to inspect the premises to discover any latent (hidden) defects and to make safe any defects or give adequate warning.

Licensee: The Landowner owes a duty not to injure him/her willfully, wantonly, or through gross negligence; or to warn of or to make safe dangerous latent (hidden) conditions of which the landowner has actual knowledge.

(Cont.)

Trespasser: A trespasser takes the property as he finds it, and the owner's duty is only to refrain from injuring the visitor through willful, wanton, or grossly negligent conduct.

(Cont.)

§ 101.058. Landowner's Liability

To the extent that Chapter 75 limits the liability of a governmental unit under circumstances in which the governmental unit would be liable under this chapter, Chapter 75 controls.

(Cont.)

§ 101.023. Limitation on Amount of Liability

- a) Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destructions of property.
- b) Except as provided by Subsection (c), liability of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction or property.

(Cont.)

- c) Liability of a municipality under this chapter is limited to money damages in a maximum amount of \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.
- d) Except as provided by Section 78.001, liability of an emergency service organization under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

(Cont.)

§ 101.024. Exemplary Damages

This chapter does not authorize exemplary damages.

(Cont.)

§ 101.106. Election of Remedies

Filing of suit against the governmental unit constitutes an irrevocable election by the plaintiff that immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter.



William M. McKamie

**McKamie Krueger,
LLP**

**San Antonio * Dallas * Austin *
Laredo**

www.mckamiekrueger.com