

# Municipal Liability – Understanding the Texas Tort Claims Act

2022 Riley Fletcher Seminar  
February 10-11, 2022

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# Very Good Resources

- *Texas Tort Claims Act Basics*, TCAA Website
- *Basics of Section 101.106 of the TTCA*, 2019
- *Recent State Cases of Interest*, 2021
- *Political Subdivision Liability Under TTCA*, 2012
- *Sovereign Immunity, TTCA*, 2017
- *Understanding Sovereign Immunity and The TTCA or “The Chamber of Secrets”*, 2017
- *Basics of Section 101.106 of The TTCA*, 2019

# Texas Tort Claims Act - Basics

- Has nothing to do with federal claims
- Governmental entities are generally immune from liability
- Texas Tort Claims Act (TTCA) waives governmental and sovereign immunity
  - State is considered to have “sovereign immunity”
  - Political subdivisions have “governmental immunity”
  - Terms are often used interchangeably in scholarly articles and court opinions

# Texas Tort Claims Act - Basics

- Prior to TTCA, municipality could not be held liable for personal injury or property damage arising from “governmental function”
- Prior to TTCA, municipality was liable for personal injury or property damage arising from “proprietary functions”
- Governmental immunity protects time and resources from private litigation and protects municipalities from fraudulent or frivolous lawsuits

# Texas Tort Claims Act - Basics

- Defense of governmental immunity must be affirmatively pled and proved
- Defense is waived if not pled
- Cannot be raised for the first time on appeal
  - Not Jurisdictional

# Notice of Claim

- Municipality entitled to receive notice of claim within six months of incident -- only applies to TTCA claims
- Charter provisions of 60 or 90 days notice have been found to violate “open court’s” provision of Texas Constitution
- Notice must reasonably describe:
  - Damage or injury claimed
  - Time and place of incident
  - Incident itself
- Purpose is to give municipality sufficient time to gather information, settle claims and prepare for trial

# Notice of Claim

- Historically had to be pled as a defense
  - Tex. Gov't Code §311.304 has made notice a jurisdictional prerequisite
- **When municipality has actual notice of the incident, notice of claim is not required**
- Actual notice must consist of substantially the same information as written notice:
  - 1) Knowledge of death, injury or property damage
  - 2) Knowledge of government's fault in producing or contributing to the death, injury or property damage
  - 3) The identity of the persons involved

# Notice of Claim

- Focus is on subjective awareness of fault and contribution to the claimed injury
  - Not enough that municipality should have investigated an incident
- Six month notice not tolled for minors
- **Discovery rule does not apply to notice requirements of TTCA**
- Application of notice requirement for the mentally incapacitated does not violate the “open courts” provision of Texas Constitution



# Governmental vs. Propriety

- In 1987, Texas Legislature sought to define these terms
  - Some “proprietary” functions were reclassified to “governmental functions”
  - Tex. CPRC 101.0215(a) listed 36 categories for which a municipality is liable for damages (non-exclusive list)
  - Functions that are enjoined on a municipality by law ... in the interests of the ***general public***
- Subsection (a) is not an independent waiver of governmental immunity
  - Plaintiff must still establish that TTCA applies before relying on subsection (a)

# Governmental vs. Propriety

- Tex. CPRC 101.0215(b) defines proprietary functions as:
  - 1) Operation and maintenance of a public utility
  - 2) Amusements owned and operated by the municipality
  - 3) Any activity that is abnormally dangerous or ultra-hazardous
- Because TTCA does not apply to propriety functions, municipalities are liable on the same basis and under the same conditions as private entities
- If activity is a mix of governmental and proprietary activities, a city will be found to have engaged in a proprietary function.

# Municipal Liability

- Municipality 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 a motor-driven vehicle or motor-driven equipment;

*and*

a) The employee would be personally liable to the claimant according to Texas law; and

# Municipal Liability

- 2) ***Personal injury and death*** 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
- **Property damage can only be recovered where act involves operation or use of a motor-driven vehicle or motor-driven equipment**
- Personal injury and death damages can be recovered where act (1) involves the operation or use of a motor-driven vehicle or motor-driven equipment or (2) involves a condition on use of tangible personal or real property

# Motor Driven Vehicle or Equipment

- Must be a nexus between injury and operation or use of motor driven vehicle or equipment.
- Employee must have been actively operating the vehicle or equipment at the time of the incident.
- Operation has been defined as “a doing or performing of practical work”
- Use has been defined as “to put or bring into action or service”

# Operation of a Motor-Driven Vehicle

- High beam spotlight caused oncoming traffic to run into parked vehicles
- Driver told student to take attendance and then slammed on the brakes
- Bus driver honking horn to signal it was safe to cross street
- Attached rope to picnic table to move it

# Not Operation of a Motor-Driven Vehicle

- Students using parked bus as a place to meet and talk
- Injured while sitting in a parked vehicle
- Failure to supervise children at a bus stop
- Police punching a person inside their vehicle
- Striking head on door of bus not in use
- Where the vehicle “is only the setting” for the wrongful conduct

# Condition/Use of Real Property

- Condition or use of real property involves what are referred to as premises defects
- **Property must be owned, occupied or controlled by the municipality**
- 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
- 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 §101.060



# Standard of Care – Licensee

- i. Duty to not injure licensee by a willful/wanton act or through gross negligence
  
- ii. If licensor has actual knowledge of defect and licensee does not, there is a duty to warn or make condition safe
  - Actual knowledge includes anything that a reasonably diligent search would have disclosed

# Standard of Care – Invitee

- i. The duty to maintain the premises in a reasonably safe condition
  - ii. The duty to discover any hidden defects
  - iii. The duty to make safe any defects or to give adequate warning
- The duty owed is to exercise reasonable care to protect against danger from a condition on the land that creates an unreasonable risk of harm of which the owner or occupier knew or by the exercise of reasonable care would discover

# Standard of Care - Trespasser

- Duty to refrain from injuring trespasser willfully, wantonly or through gross negligence
- Trespasser takes premises as she finds them
- No duty to warn or make dangerous condition known

# Condition/Use of Tangible Personal Property

- Injury or death must be caused by some condition or use of the tangible personal property
- Injury or death must be proximately caused by the negligence of employee in the use of tangible property
- or
- Under circumstances where an employee furnished tangible property which use caused personal injury or death

# Condition/Use of Tangible Personal Property

- Examples of “use”:
  - Medical instruments
  - Hospital beds
  - **Tools and equipment**
  - Football helmets
  - Props in plays

# Condition/Use of Tangible Personal Property

- Examples of non-use include:
  - Failure to review medical records
  - Failure to use an available ambulance
  - **Failure to use available medical equipment**
  - Failure to use a building to confine mentally ill person
  - Failure to provide medication

# Condition/Use of Tangible Personal Property

- There are cases out there that hold a failure to furnish an item of property may suffice to waive immunity
  - Failure to provide football equipment
  - Failure to provide life preserver
- Focus is on protective equipment related to safety
- Merely providing someone with personal property that is not inherently unsafe is not a “use” of property

# Limits of Damages

	Per person	Single Occurrence for Bodily Injury or Death	Each Occurrence for Damages to Property
State Government	\$250,000	\$500,000	\$100,000
Local Government (not municipalities)	\$100,000	\$300,000	\$100,000
Municipalities	\$250,000	\$500,000	\$100,000

- TTCA\_ does not authorize exemplary damages
- **Damage Caps not tied to consumer price index**



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