

NEW MEXICO TORT CLAIMS ACT & IMMUNITIES

I.

INTRODUCTION

The sovereign immunity enjoyed by the State of New Mexico and its governmental subdivisions was abolished by the New Mexico Supreme Court in 1975. The legislature responded by enacting the Tort Claims Act, NMSA 1978 sections 41-4-1 through 41-4-29. While the Tort Claims Act re-established sovereign immunity, it also created specific waivers of immunity which permit suit against the government.

The purposes of the Tort Claims Act is to protect the public treasuries and to enable government to function unhampered by the threat of time- and energy-consuming legal actions. Garcia v. Albuquerque Public Schools Board of Education, (1980) 95 NM 391, 622 P.2d 699.

A public employee, when committing a tort fully within a waiver, must be acting within the scope of his governmental duty. Wittkowski v. New Mexico Corrections Department, (1985) 103 NM 526, 710 P.2d 93. The Tort Claims Act does not address the duties or responsibilities of a governmental agency or governmental employee. Rather, the existence of a duty must be found in either common law or statute. Rutherford v. Chaves County, (2002) 132 NM 289, 47 P.3d 448.

II.

PROCEDURAL REQUIREMENTS AND STATUTE OF LIMITATIONS

Claims for damages from the state or a local public body under the Tort Claims Act must be presented within 90 days after an occurrence which gives rise to a claim for which immunity has been waived. The written notice must state the time, place and circumstances of the loss or

injury. NMSA 1978 §41-4-16. The mere knowledge of an incident will not necessarily put the governmental entity on notice that it may become a defendant in a lawsuit relating to that incident. Marujo v. New Mexico State Transportation Department, (1994) 118 NM 753, 887 P.2d 747. Litigation against a governmental entity or public employee for torts must be filed within two years after the date of occurrence. NMSA 1978 §41-4-15.

III.

IMMUNITIES

The New Mexico Tort Claims Act, NMSA 1978, §§41-4-1 to 41-4-27 attempts to balance two important but conflicting public policies. After the judicial rejection of common law sovereign immunity in Hicks v. State, (1975) 88 N.M. 588, 544 P.2d 1153, the Legislature sought to limit governmental liability so that “government should not have the duty to do everything that might be done.” NMSA 1978, §41-4-2(A) (1976). On the other hand, the Legislature also desired to compensate those injured by the negligence of public employees and to impose duties of reasonable care. The Legislature's solution was to grant governmental entities and employees a general immunity from tort liability, but to waive that immunity in certain defined circumstances. In each of these waivers the Legislature identified a specific existing duty on the part of public employees, NMSA 1978, §§41-4-5 to 41-4-11 (1989), which, if breached, could result in liability “based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.” NMSA 1978, §41-4-2(B) (1976); NMSA 1978, § 41-4-4 (1996). It is not enough for the public employees to have a duty--that duty must fit within the legislative intent of the Tort Claims Act waiver in order to state a meritorious claim for relief. Saiz v. Belen Sch. Dist., (1992) 113 N.M. 387, 827 P.2d 102.

A. Exceptions to Immunity

A cause of action against a governmental entity and employees must fit within one of the exceptions to the statutory immunity specifically granted by the Tort Claims Act. Begay v. State, (1985) 104 NM 483 , 723 P.2d 252. These immunities include:

- (1) Operating or maintaining any motor vehicle, aircraft or watercraft. §41-4-5.
- (2) Operating or maintaining buildings, public parks, machinery, equipment or furnishings, except for the operating or maintaining works used for the diversion or storage of water. §41-4-6.
- (3) Operating airports. §41-4-7.
- (4) Operating certain public utilities and services such as gas, electric, water, waste collection or disposal, heating, and ground transportation. §41-4-8.
- (5) Operating any hospital, infirmary, mental institution, clinic, dispensary, medical care home, or like facilities. §41-4-9.
- (6) Providing health care services. §41-4-10.
- (7) Constructing and maintaining any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area. §41-4-11.
- (8) Injuries or damages caused by law enforcement officers acting within the scope of their duties. Community ditches. §41-4-13.

IV.

LIMITATION OF LIABILITY

Where a cause of action falls with an exception to the statutory immunity granted by the Tort Claims Act, the Act caps the liability of a governmental entity or public employee while acting within the scope of its or his duties as follows:

- (1) \$100,000 for damage to or destruction of property arising out of a single occurrence;
- (2) \$300,000 for all past and future medical and medically-related expenses arising out of a single occurrence;
- (3) \$400,000 to any person for any number of claims arising out of a single occurrence for all damages other than property damage and medical and medically-related expenses;
- (4) \$750,000 for all claims other than medical or medically-related expenses arising out of a single occurrence;
- (5) Judgments may not include an award of exemplary or punitive damages, or interest prior to judgment; See §41-4-19.
- (6) Post-judgment interest has not been allowed. Yardman v. San Juan Downs, Inc., (1995) 120 NM 751, 906 P.2d 742.