

UTAH TORT CLAIMS ACT & IMMUNITIES

I.

INTRODUCTION

Sovereign immunity, rooted in the medieval British notion that the King could do no wrong, precludes lawsuits against governmental entities without the government's consent. Brittain v. State, (1994) 882 P.2d 666, 668-69. In 1965, the Utah Legislature passed the Governmental Immunity Act, codifying the sovereign immunity doctrine in Utah. DeBry v. Noble, (1995) 889 P.2d 428, 432. The Act first grants general immunity from suit to governmental entities, then narrows that general grant by waiving immunity for certain claims, and finally broadens immunity again with exceptions to the waivers that result in retaining immunity under certain circumstances. Hansen v. Salt Lake County, (1990) 794 P.2d 838, 842.

The Utah Governmental Immunity Act is codified in Utah Code Annotated sections 63-30d-101 through 63-30d-904. This 2004 version repealed the prior statute which can be found in sections 63-30-1 through 63-30-38.

II.

PROCEDURAL NOTICE REQUIREMENTS AND STATUTE OF LIMITATIONS

A claim against a governmental entity is barred unless a notice of claim is filed. The claim must be filed within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental. Utah Code Ann. §63-30d-402. The statute of limitation does not begin to run until the claimant knew or had reason to know of the claim against the government entity or employee.

The notice of claim should set forth: (i) a brief statement of the facts; (ii) the nature of the claim asserted; (iii) the damages incurred by the claimant so far as they are known; and (iv) if the claim is being pursued against a governmental employee individually the name of the employee. Utah Code Ann. §63-30d-401.

The government entity has 60 days to inform the claimant whether the claim has been approved or denied. Utah Code Ann. §63-30d-403(1)(a). A claim is considered to be denied if, at the end of the 60-day period, the governmental entity has failed to approve or deny the claim. Utah Code Ann. §63-30d-403(1)(a). Once the notice of the claim to the government entity is either denied by the government entity or not responded to after 60 days, suit can be brought. The claimant has one year after the denial of the claim by the government entity or after the 60 day period ends to bring the action. Utah Code Ann. §§63-30d-401, 402, 403.

III.

IMMUNITIES

Section 63-30-3(1) of the Act confers the general grant of immunity: “Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function[.]” Utah Code Ann. §63-30-3(1) (1997). “Governmental function” is broadly defined as “any act, failure to act, operation, function, or undertaking of a governmental entity.” Utah Code Ann. §63-30-2(4)(a) (1997).

Scattered sections of the Act waive immunity under particular circumstances. Thus, the Act permits claims against governmental entities that involve contract obligations, property, defective public buildings and improvements, and negligent acts and omissions of public employees. The Act specifically waives immunity for injuries caused by dangerous or defective

highways. When immunity is waived, the liability of the governmental entity is determined as if the entity were a private person. For certain kinds of claims, however, such waivers of immunity are restricted by a number of exceptions. See Utah Code Ann. §63-30-10. Thus, although the Act waives immunity for liability from injuries caused by defective conditions of public buildings and highways, and by the negligence of public employees, immunity is retained if the injury arose out of, in connection with, or resulted from one of nineteen enumerated circumstances. See Utah Code Ann. §63-30-10. For example, immunity is retained if an injury resulted from a failure to revoke a permit, Utah Code Ann. §63-30-10(3), or make an inspection. Utah Code Ann. §63-30-10(4). Immunity is also retained with respect to injuries caused by natural conditions on public land. Utah Code Ann. §63-30-10(11). Additionally, immunity is retained for injuries that arise out of “the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused.” Utah Code Ann. §63-30-10(1).

A. Immunity of Government Entity: Three Step Test

When considering whether or not a government entity is immune from suit, it is helpful to ask the following questions:

- (1) Was the act the entity performed a “governmental function”, and therefore immunized from suit?
- (2) If the act was a governmental function, has immunity been waived?
- (3) If immunity has been waived, is there an exception to waiving immunity that applies?

B. Governmental Function Immunity

A government entity and its employees are immune from suit for any injury that results from the exercise of a governmental function. Utah Code Ann. §63-30d-201(1). A governmental function is defined broadly as “each activity, undertaking, or operation of a government entity.” Utah Code Ann. §63-30d-101(4)(a).

C. Waivers of Immunity

1. Negligence

Immunity is waived if the injury was proximately caused by the negligent act or omission by a government employee. Utah Code Ann. §63-30d-301(4).

2. Defective/Unsafe Conditions

Immunity is waived if the injury was caused by defective/unsafe conditions on roads, sidewalks, or other public structures. However, immunity is not waived if the condition is a latent (hidden) defect. Utah Code Ann. §63-30d-301(3).

3. Important Waiver Exceptions

a) Discretionary Function

Immunity is not waived if the injury resulted from an exercise of a discretionary function. Utah Code Ann. §63-30d-301(5)(a). Discretionary functions are acts and decisions occurring at “the basic policy-making level.” This does not include acts and decisions at “the operational level.” Cases often turn on this issue, as when a government entity is sued for its negligent acts but alleges that the negligent act was a discretionary function. Utah precedent interpreting and applying the discretionary function exception has articulated two policies served by the

exception. First, the discretionary function exception “shield[s] those governmental acts and decisions impacting on large numbers of people in a myriad of unforeseen ways from individual and class legal actions, the continual threat of which would make public administration all but impossible.” Keegan v. State, (1995) 896 P.2d 618, 623 (citations omitted). Second, the exception preserves the autonomy of coordinate branches of government. To that end, “[w]here the responsibility for basic policy decisions has been committed to one of the branches of our tripartite system of government, the courts have refrained from sitting in judgment of the propriety of those decisions.” Id.

b) Intentional Torts and Violations of Civil Rights

Immunity is not waived if the injury resulted from numerous intentional torts, including assault, battery, or false imprisonment. Utah Code Ann. §63-30d-301(5)(b). This includes injuries due to civil rights violations.

c) Emergency Situations – Floods, Fires, Earthquakes, or other Natural Disasters

Immunity is not waived if the injury resulted from acts in certain emergency situations. This includes floods, earthquakes, fires, and other natural disasters. Utah Code Ann. §63-30d-301(5)(m),(q). However, it is important to still research the facts of each case. Simply because a flood or fire exists does not always mean immunity is provided. See e.g. Branam v. Provo School Dist., (1989) 780 P.2d 810, 812-13 (noting that “the management of flood waters” exception was not intended to apply to “anything [the government agency] might do in any capacity which could be termed “flood waters”).

d) Specific Agencies or Organizations Mentioned

The Act provides specific immunities and waivers for certain agencies or organizations. These include the School and Institutional Trust Lands Administration, the Division of Forestry Fire and State Lands, the Bear River Development Act, and the Division of Water Resources.

D. Employee as Private Person

Generally, an employee is immune from personal liability for his or her actions within the scope of employment. Utah Code Ann. §63-30d-202(4). Exceptions include willful misconduct or situations where driving and alcohol are involved. As a result of these limited exceptions, most causes of action, if any, are against the government entity and not the employee.

If suit is brought and a judgment is obtained against a government entity, then suit cannot be brought against the employee as a private individual. Utah Code Ann. §63-30d-202.

E. Important Case Law on Application of Government Immunity Act

The Utah Supreme Court has decided a number of cases on the Governmental Immunity Act which are helpful in understanding the general application of the statute. See Ledfors v. Emery County Sch. Dist., (1993) 849 P.2d 1162 (establishing the three steps to a government immunity analysis); Keegan v. State, (1995) 896 P.2d 618 (applying the “discretionary function” waiver exception to the Utah Department of Transportation’s decision to not raise its concrete median highway barrier); Lyon v. Burton, (2000) 5 P.3d 616 (applying the “operation of emergency vehicle” waiver exception to a fire chief’s negligent running of a red light on the way to a fire scene, and upholding the damages limitation provision in the act); Lovendahl v. Jordan Sch. Dist., (2002) 63 P.3d 705 (applying the “handling hazardous materials” waiver exception to school district pumping sewer line onto neighbor’s property); Laney v. Fairview

City, (2002) 57 P.3d 1007 (applying the “discretionary function” waiver exception to city’s decisions regarding the height, insulation, and warning signs on its power lines).

F. Immunities Outside the Government Immunity Act

1. 911 Emergency

Utah provides the 911 agency and its employees with immunity from suit for any incorrect dispatch or response to a 911 call. Immunity is also provided for any delay in the time it takes to respond to a 911 call. Utah Code Ann. §69-2-6.

2. Volunteers

Volunteers of public entities are immune from liability for acts during volunteer services unless such acts were grossly negligent, malicious, or not made in good faith. Utah Code Ann. §63-30b-2; See also Utah’s Good Samaritan Act, §78-11-22, providing the same immunity as §63-30b-2, and also provides immunity to a person whom gratuitously renders emergency care. This immunity does not prevent suit against the government entity for which the volunteer was providing services. Utah Code Ann. §63-30b-3.

3. Hazardous Materials

A government entity is not liable for damages or injury associated with the release of hazardous material unless it was the result of intentional misconduct or gross negligence. Utah Code Ann. §19-6-321; See also Lovendahl v. Jordan Sch. Dist., (2002) 63 P.3d 705 (holding the

acts of a school district in pumping its sewer line onto neighboring land was misconduct sufficient to preclude immunity).

IV.

LIMITATIONS OF LIABILITY

Under the Act, a judgment for personal injury is limited to five hundred and fifty-three thousand and five hundred dollars (\$553,500) for one person in a single occurrence, and one million one hundred and seven thousand dollars (\$1,107,000) for two or more persons in a single occurrence. Utah Code Ann. §63-30d-604(1)(a). A judgment for property damages is limited to two hundred and twenty thousand and four hundred dollars (\$221,400) for a single occurrence. Utah Code Ann. §63-30d-604(1)(c). Additionally, punitive damages are not permissible against a government entity. Utah Code Ann. §63-30d-603.

V.

CONCLUSION

Under the Utah Governmental Immunity Act a government entity is immune from liability from acts constituting a government function. Nonetheless, immunity can be waived, for example, if the conduct was negligent. However, there are numerous exceptions to waiving immunity, particularly for acts that fall within the government entity's discretion. Moreover, it is even more difficult to bring suit against an employee because willful conduct is often required. Finally, notice must be given to the government agency within one year after the claim arises. Immunities in addition to the Governmental Immunity Act include 911 responses, volunteers, and certain situations involving hazardous materials.