

Immunity from Liability

**Missouri Municipal Attorneys
2016 Summer Seminar**

**Presented by:
Christine T. Bushyhead – Bushyhead, LLC**

Types of Liability

Criminal

Civil





Criminal Liability

Chapter 576 RSMo.

Offenses Affecting Government

- Bribery of a Public Servant (576.010)
- Public Servant Acceding to Corruption (576.020)
- Obstructing Government Operations (576.030)
- Official Misconduct (576.040)
- Misuse of Official Information (576.050)
- Failure to give a tax list (576.060)
- Treason (576.070)
- Supporting terrorism (576.080)



Civil Actions

City Official May be Sued In

- Official Capacity As a Municipal Officer
- Private and Individual Capacity
 - Defense May Be Provided by Public Entity if Public Entity Has Adopted a Policy to Defend All or Specified Actions Brought or Maintained Against Its Employees Arising Out of the Performance of Their Duties

Civil Liability For Negligent Acts

- ❑ When ***exercising discretion***, one is generally not liable for acts Involving the Negligent Exercise of that Discretion
- ❑ When acting administratively, one can be liable for ***Tortious Ministerial Acts***
- ❑ When a body is acting ***outside the scope of its authority***, one can be liable for Ultra Vires Acts



Immunity From Liability (Defenses in Litigation)

Immunity is the Freedom from Legal Action due to Reasons of Public Policy

Sovereign Immunity (City)

Official Immunity (Discretionary Act)

Public Duty Doctrine (Employees)

Immunity From Liability

Sovereign Immunity



- Sovereign or Governmental Tort Immunity Protects Against Most Suits Filed Against Government Itself
- Statutory Exceptions (537.600)
 - Operation of Motor Vehicle by Public Employee
 - Damages Caused by Dangerous Conditions
 - Common law: Government vs. Proprietary Functions

Immunity From Liability

Mitigation of Risk for Dangerous Conditions Exception

Dangerous Condition

- Exceptions:
 - Inherent Risks
 - Obvious Dangers

Facilities Survey

- Identify Hazards
- Warning System
- Work Order System



Immunity From Liability

Official Immunity



- ❑ Official Immunity Applies to when a Public Official Has Discretion in Performing Governmental Acts and Acts in Good Faith
- ❑ Official Immunity Does **Not** Apply When Official is Performing Ministerial Duties

Elements Usually Found in Personal Liability Cases

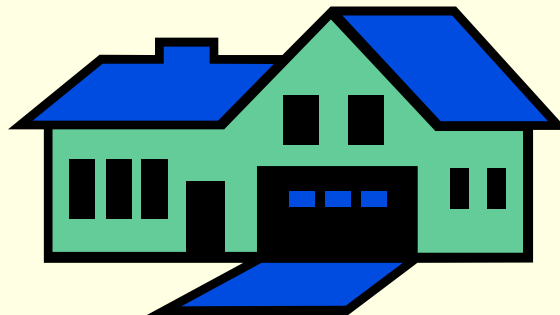
- Maliciousness,
- Conspiracy,
- Intentional Misrepresentation,
- Willful Disregard,
- False Representations,
- Confidential Relationship, or
- Bad Faith



Immunity From Liability

Public Duty Doctrine

- ❑ Ordinances Exist for the Benefit of the Entire Public and Do Not Exist for the Benefit of the Individual Served by It on a Specific Occasion
- ❑ Example - Building Inspector Is Not Liable to Individual Homeowner



???



A new greeting card store was working day and night to open its doors for business in a strip mall before Valentine's Day. On their final inspection, the City inspector instructed the owner to move boxes away from the hot water heater and issued a temporary permit which would allow them to open the store February 12th. The inspector did not actually see the boxes moved, but the property owner verbally committed to remedy the violation.

On February 13th the water heater ignited the boxes and the building caught fire.. By the time the fire department arrived the card shop was fully engulfed in flames and the firemen determined not to try to save the business but to protect neighboring businesses from further damage.

The business owner sued the city and the firemen for failure to try to put out the flames on the card shop. **What should be the result?**

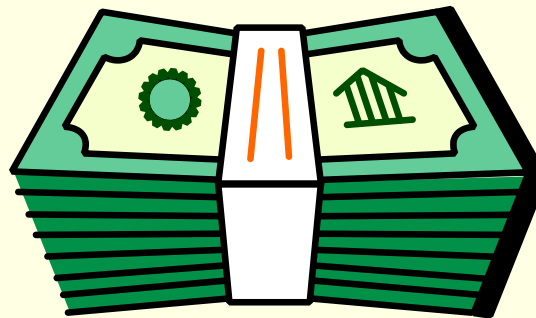
A customer of the business who received injuries in the fire also sued the city for issuing a temporary occupancy permit when the inspector knew of a code violation. **What should be the result?**

Area of Risk

Money Management

Misuse of Public Funds

- Ensure Adequate Accounting Checks and Balances to Avoid
- Personal Liability



Area of Risk

Employee Management

- At-Will Doctrine
- Personnel Policies
 - Discrimination / Harassment
- Fair Labor Standards Act (FLSA)
 - Overtime for Hours Worked in Excess of 40 in Work Week
 - Exceptions:
 - Exempt Employees
 - Police & Fire
 - Collective Bargaining
 - Immigration Law



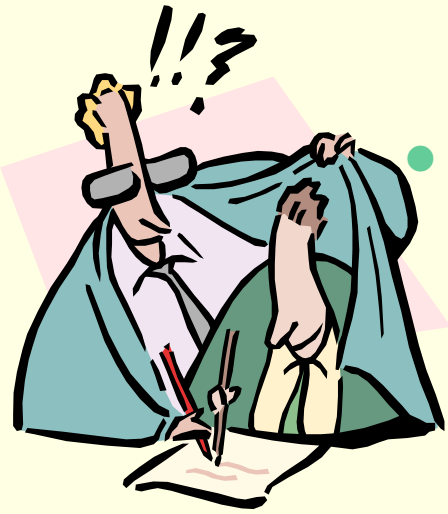


Mitigation of Risk for Employers Employee Training

- Establish Policies
- Establish a Regular and On-Going Program to Train Employees on Policies
- Use a Thorough and Comprehensive Interview Process
- Screen Employees Placed in a Supervisory Position Over Children
- Encourage Employees to Report Areas of Concern and TAKE ACTION

Areas of Risk Contracts

- No Individual Contractual Liability Arises Unless it is Clear That the Officer Intended to Bind Himself Personally
- However, Individual May Have Liability if Officer Exceeds the Contractual Authority Given
- Ensure that Contracts, when applicable, are competitively bid, and construction Contracts contain Requirements for Bonding and Liability Insurance





“I never lose. I either win or learn.”

Nelson Mandela