Tort Immunity

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Tort Immunity for Public Service
Not-For-Profit Corporations

The Illinois Local Governmental Tort Immunity Act (“Act”), has long and widely been understood to provide immunities to certain enumerated public entities such as school and park districts, fire departments, and other units of local government. A little-recognized 1986 amendment to the Act expanded its coverage, however, to include “any not-for-profit corporation organized for the purpose of conducting public business.” The amendment to the statute, made as a part of the 1986 Illinois Tort Reform Act, received little notice at the time, and has been applied in relatively few cases. Defense counsel should consider this section more closely, however, because the defining case law has given it a broad construction. Determination of the amendment’s applicable scope focuses on the language “organized for the purpose of conducting public business.” While the plaintiff may argue that this language is intended to restrict the application of tort immunity to public entities, the Act has been applied to public transportation corporations, and more broadly read to include mental health service organizations. Certainly a good faith argument can and should be made for an even wider application.

Two cases have provided guidance regarding this section. In McQueen v. Shelby County, the plaintiff, as estate administrator, brought suit against several defendants including the Shelby County Sheriff’s Department, for the suicide of Dennis McQueen, a prisoner. The Shelby County defendants filed a third party action against the Coles County Mental Health Center, (“CCMHC”) for contribution due to negligence. CCMHC filed a motion to dismiss or for summary judgment based on, inter alia, the tort immunity act. Applying Illinois law, the court noted that no Illinois court had as yet interpreted the not-for-profit language of §1-206 and held that CCMHC fell within the plain language of the definition of “local public entity” and therefore was entitled to immunity.

The court based its decision to cast CCMHC as a local public entity on a number of factors. First, CCMHC’s articles of incorporation provided that it was a not-for-profit corporation with a public purpose to promote and conserve the mental health of the people of the county. Second, the court relied on the fact that the director of CCMHC had submitted an affidavit which stated that over ninety percent of CCMHC’s financing came from local and state governmental sources. Based on those facts, the court declared CCMHC immune from liability for negligence.

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Smith v. Northeast Illinois Regional Commuter Railroad Corp., also provides guidance on this issue. In that case, the plaintiff, as estate administrator, filed suit against Northeast Illinois Regional Commuter Railroad Corp. ("METRA"), and other defendants, for the death of Robert Smith. METRA moved to strike the punitive damages clause of the plaintiff’s complaint based on its status under the Act. The court held that METRA was free from punitive liability because it fell under the definition of “local public entity.” The court based its decision, like McQueen, on a number of factors. First, METRA was a not-for-profit corporation with no shareholders. Further, it was funded with public funds and operated a commuter rail system in the public interest.

The potential importance of this analysis to a not-for-profit corporate defendant is obvious. If a not-for-profit corporation can successfully argue that it falls within the purview of the Local Governmental Tort Immunity Act, that entity will be immune from certain negligence actions, for both negligent and willful and wanton conduct in some instances as well as immunity from punitive
damages. In addition, and perhaps most importantly, a not-for-profit corporation which successfully places itself within the purview of the Local Governmental Tort Immunity Act may also benefit from its one year statute of limitations.12

Accordingly, the practitioner should take note. If representing a not-for-profit corporation, it would be wise to carefully review whether the activities of the not-for-profit corporation may be such that a claim of tort immunity would be justified. In this regard, the touchstones for analysis are set forth nicely in the McQueen and Smith cases:

1. The statement of purpose as contained in the charter of the not-for-profit corporation.
2. The corporation’s sources of funding and its percentage from governmental entities.
3. Whether the corporation has any shareholders.

The not-for-profit provision of the Local Governmental Tort Immunity Act is potentially fertile but largely unplowed ground. Defense counsel who represent not-for-profit corporations which provide any form of public service would serve their client well by seeking the protection afforded under the Act.

Endnotes

1 745 ILCS 10/1 et seq.
2 See Towner by Towner v. Board of Ed. of City of Chicago, 212 Ill.Dec. 333, 275 Ill.App.3d 1024, 657 N.E.2d 28 (Ill.App. 1st Dist. 1995) (applying the Act’s protections to the school district, administrators, and employees); Landsstrom v. Ill. Dept. of Children and Family Services, 699 F.Supp. 1270 (N.D.Ill. 1988) (holding that school district was a “local public entity” and therefore covered by the Act); see also Winfrey v. Chicago Park Dist., 211 Ill.Dec. 46, 274 Ill.App.3d 939, 654 N.E.2d 508 (Ill.App. 1st Dist. 1995) (holding that the definition of “local public entity” included park districts); Jahn v. Troy Fire Protection Dist., 206 Ill.Dec. 106, 163 Ill.2d 275, 644 N.E.2d 1159 (Ill. 1994) (ruling that the Fire Fighter Liability Act was repealed by implication through the Tort Immunity Act)
3 In its entirety, §1-206, reads “Local public entity” includes a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, community college district, community college board, forest preserve district, emergency telephone system board, and all other local governmental bodies. “Local public entity” also includes library systems and any intergovernmental agency or similar entity formed pursuant to the Constitution of the State of Illinois or the Intergovernmental Cooperation Act [citation omitted] as well as any not-for-profit corporation organized for the purpose of conducting public business. It does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State.” 745 ILCS 10/1-206 (1997)
4 730 F. Supp. 1449 (C.D.Ill. 1990)
5 McQueen, 730 F. Supp. at 1450-51
6 Id. at 1454
7 Id. at 1453
9 Smith, 155 Ill.Dec. at 41
10 Id. at 43
11 See the recent Illinois Supreme Court case Barnett v. Zion Park District, 171 Ill.2d 378, 216 Ill.Dec. 550 (Ill. 1996) (holding that the “supervision provision” of the tort immunity statute is not subject to an exception from immunity for willful and wanton conduct)
12 745 ILCS 10/8-101

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