

Section 3: Operations

Chapter 15: Municipal Liability

Knowledge Can Beat the Fear of Liability

Municipalities operations always seem to be at the cutting edge of trends in litigation. Whether it's huge verdicts—such as the \$14 million jail death verdict against an MML Liability Pool member a few years ago—or new areas of exposure, such as prisoner exoneration claims or class action basement flooding lawsuits—local government always seems to get hit early, and often.

We hear so often that our society has become more litigious that it almost has become a cliché. Municipalities often seem to be a primary target for litigation because of the so-called “deep pockets” of their tax base.

To add some perspective, there are more than 500 cities and villages that are members of the Michigan Municipal League. Many of them, especially our villages, go years without an insurance claim. If you add the number of villages that rarely encounter an insurance claim beyond a minor traffic collision or the payment of medical bills for a slip and fall claim, the number of members who have had “big hits” is truly small indeed.

Most claims for bodily injury, property damage or “wrongful acts” that are made against a municipality never result in a lawsuit. The Liability and Property Pool handles about 1,500 claims filed against our municipal members each year. Only about 150 of those develop into lawsuits.

Two points should be clear. First, you should be generally aware of liability issues that affect municipalities and elected officials. But, secondly, elected officials should avoid becoming inflicted with “litigation paralysis”—the belief that making no decision and avoiding possible lawsuits is preferable to acting in the best interest of your community.

Generally, city and village councils and their individual elected officials have personal immunity from liability for their decisions. Local government would truly come to a standstill if elected officials could be successfully sued by the “losers” of every motion on which they vote.

Listing all the possible sources of municipal claims and how to reduce your claims exposure is beyond the scope of this limited space. Certainly, you did not make a commitment to service in local government with the intent of becoming an expert on municipal liability.

But as an elected official, there are three things you should know.

First, know who your municipal attorney is, and utilize this person's expertise. We recommend that your attorney be present at all council meetings, and he or she should be given time to review the agenda in advance of the meeting. Your own good judgment will often tell you which action items on the agenda require diligent deliberation and possible legal advice.

Question your attorney on the legal ramifications of your decisions. If one or more legal issues require further study, it is preferable to table a motion than to act with incomplete information.

Second, your municipality should have an acceptable insurance program. Know who is responsible for placing the insurance. You should have a coverage proposal you can review, and other sources of information readily available. It is very important that your municipality's liability insurance has adequate limits, and that coverage is available for activities that may result in claims against the municipality.

For example, if you are a growing community with new development, you probably have one or more zoning variance requests each year. Make sure you are aware of how your insurance program responds to

zoning and land use litigation before you make a decision on a zoning issue.

Last, use the services of your Michigan Municipal League. Through a variety of media, we offer numerous opportunities to educate and familiarize municipal officials and staff on liability issues.

- educational workshops are held annually throughout our state dealing with various liability issues;
- an email (info@mml.org) or phone call to the League's inquiry service can direct you to sources of information or individuals that can provide assistance;
- the League's Risk Management Services Division has a staff of professionals who can assist you with most liability issues;
- a wealth of insurance information is available online at mml.org—this is the

website of the Michigan Municipal Liability and Property Pool, the League-sponsored and administered insurance program; and

- the League's Annual Convention has a variety of concurrent sessions and networking opportunities at which information can be obtained

If your municipality is already a member of the Liability and Property Pool, you are taking advantage of comprehensive liability insurance designed for Michigan municipalities, and enjoying immediate access to the information resources mentioned above.