



# Ready for the Defense

## Immunity: Protecting the “Goose That Lays the Golden Eggs” — Local Government

**L**AST MONTH, we discussed the recent Supreme Court decision in the *Murray* case clarifying the definition of “wilful and wanton conduct” in the Tort Immunity Act. (*Murray v. Chicago Youth Center*, No. 99457 (S.Ct., filed 2/16/07) (2007 WL 495281 (Ill.)). Plaintiff Ryan Murray, age 13, doing a forward flip off a mini-trampoline, landed on his neck and was paralyzed from the neck down and sued the Chicago Board of Education, Chicago Youth Center and instructor James Collins, who provided the extra curricular tumbling class during lunch period at Bryn Mawr School, charging wilful and wanton conduct.

In discussing the *Murray* decision recently with local government officials, one of the questions raised was, “Why does local government get the benefit of the Tort Immunity Act?” And, a follow-up question, “Does local government’s reliance on the Tort Immunity Act show a lack of compassion for the citizens local government serves?”

The answers to these questions involve the following three propositions:

- (1) The tort system, civil suits to recover damages for wrongful conduct, may not be the best remedy for severe, permanent injury cases.
- (2) Local government provides many services and facilities not provided by private persons or private companies and to continue to do so needs some protection from liability in doing so.
- (3) Local government provides many social services for its citizens, but these are done without fanfare and go virtually unnoticed by the public — such as a number of social services listed herein as provided by the City of Park Ridge (our office is in Park Ridge).

### The Tort System and Severe, Permanent Injury Cases

It would seem that injuries such as those suffered by Ryan Murray (quadriplegia) in the *Murray* case, might better be addressed with certainty of full care by government and not the tort system, where recovery is uncertain. For example, a check of the jury verdicts for plaintiffs and defendants in the Cook County

Jury Verdict Reporter over the last five years reveals that plaintiffs win trials about 50 % of the time and defendants win trials about 50 % of the time.

There may be a better way to care for persons severely and permanently injured — to not just provide medical care, but also to provide a quality of life above and beyond what is available. Perhaps, a special fund purchasing annuities for such? We read about hundreds of millions of dollars available for political campaigns, the billionaires in *Forbes* magazine (March 26, 2007), the millions available to corporate executives and athletes and movie stars. Perhaps the tort system is not the best way for society to deal with these types of cases?

### Local Government Provides Services and Facilities Private Enterprise Cannot

Local government provides a multitude of services and facilities — usually without charge — that private persons and private companies do not provide — for example, roads and signs and traffic controls and police and fire departments.

The reason for immunity protection — in some areas, but not all areas — for local government was well expressed years ago by California when it was enacting its Tort Immunity Act (upon which Illinois’ Tort Immunity Act is patterned) in the following words:

Private persons do not make laws. Private persons do not issue and revoke licenses to engage in various professions and occupations. Private persons do not quarantine sick persons and do not commit mentally disturbed persons to involuntary confinement. Private persons do not prosecute and incarcerate violators of the law or administer prison systems. Only public entities are required to build and maintain thousands of miles of streets, sidewalks and highways. Unlike many private persons, a public entity often cannot reduce its risk of potential liability by refusing to engage in a particular activity, for government must continue to govern and is

required to furnish services that cannot be adequately provided by any other agency. Moreover, in our system of government, decision making has been allocated among three branches of government — legislative, executive and judicial — and in many cases, decisions made by the legislative and executive branches should not be subject to review in tort suits for damages. ... (4 Cal. Law Revision Comm'n., Reports, Recommendations & Studies 801-1611 (1963) at 810; Baum, *Tort Liability of Local Governments & Their Employees: An Introduction to the Illinois Immunity Act*, 1966 Ill. Law Forum 981, 987).

The liability exposure of local government for providing and maintaining all of its multitude of facilities and services is far greater than that of private persons and private companies.

Local government provides a multitude of facilities and services, including, but not limited to, streets and traffic controls, police, fire and paramedic services, parks, playgrounds and school facilities and personnel, water and sewer facilities, and on and on. In effect, government is similar to the proverbial “goose that lays the golden eggs.” The Tort Immunity Act provides a trade-off for such extensive array of governmental services, not capable of being provided by private persons and private companies. In effect, the Tort Immunity Act affords local government some immunities and defenses, which assures that the providing of government services and facilities does not result in liability exposure so substantial that it “kills the goose that lays the golden eggs.”

Thus, there is sound reasoning behind protecting local government by the immunities and defenses provided in the Tort Immunity Act. And, it should be kept in mind that local government does not receive immunity where it acts just as private persons and private companies act — *e.g.*, driving an auto or truck.

### Local Government Is Compassionate and Provides Social Services

We all are pretty much aware of the usual and pretty visible services provided by local government and sometimes take them for granted. But, looking at just some of the social services performed by the City of Park Ridge (where our office is located and whom we represent in litigation), the fact that local government is indeed compassionate is seen in little actions touching people’s lives — conduct

usually not known by anyone other than those helped. For example, the following social services or assistance is provided:

- (1) Checking on the well-being of seniors and installing smoke detectors in their homes.
- (2) Providing CPR and First Aid Classes and teaching parents how to install child safety seats.
- (3) Sponsoring police and fire explorer programs for youths and “peer jury” alternative resolutions for juvenile offenders.
- (4) Providing social worker counseling in family drug crisis situations and food for the local food pantry for those in need.
- (5) Delivering library books to shut-ins and equipment for vision impaired and special computers for the blind and physically impaired.
- (6) Providing equipment and personnel for neighborhood weekend block parties, Saturday Farmers Market, Senior Olympics, Lutheran General Hospital’s Children’s Fair and distributing gifts in Lutheran General’s Children’s Ward.
- (7) Bringing all private school and public school children to Fire Station 36 each year to tour the station and learn about fire safety at home.
- (8) Training all public school and private school employees in First Aid and CPR and how to operate fire extinguishers.
- (9) Developing and coordinating the Maine South and Maine East High School Prom Night activities — to avoid drunk driving.

In short, this is but the “tip of the iceberg.” But, in a small way, it shows some of the compassion that local government demonstrates, but goes unnoticed. As the old saying goes, “there is more than meets the eye,” when looking at local government.

NOTE: It has been suggested that we compile a list of some of the many social services local government performs, but often go unnoticed. Any suggestions which you would put on the list would be greatly appreciated.

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