

A Nuts and Bolts Look at The Illinois Local  
Governmental and Governmental Employees Tort  
Immunity Act  
745 ILCS 10/1-101 *et seq.*

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# Illinois Local Governmental Tort Immunities and Defenses

## Introduction

- Historical Perspective
- Duty v. Immunity
- Public Duty Rule
- Special Duty Exception

# Illinois Local Governmental Tort Immunities and Defenses

Illinois Local Governmental and Governmental  
Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

- The purpose of the Act is to protect local public entities and public employees from liability from the operation of government.

745 ILCS 10/1-101.1

# Illinois Local Governmental Tort Immunities and Defenses

What is a “local public entity” under the Act?

- county, township, municipality, municipal corporation, school district, park district, fire protection district, etc.
- Intergovernmental agency or similar entity
- Not-for-profit corporation organized for the purpose of conducting public business.
- But not State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State.

745 ILCS 10/1-206

# Illinois Local Governmental Tort Immunities and Defenses

Who a “public employee” under the Act?

- “Public Employee” means an employee of a local public entity.
- “Employee” means a present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated.
- But does not include an independent contractor.

745 ILCS 10/1-202 and 1-207

# Illinois Local Governmental Tort Immunities and Defenses

Tort Immunity Act does not apply to liability based on “relief other than damages” and does not apply to liability based on:

- Contract
- Operation of a common carrier
- Workers’ compensation claims
- Wrongful demolition claims

745 ILCS 10/2-101

# Illinois Local Governmental Tort Immunities and Defenses

## Statute of Limitations

- 1 year – general tort claims
- 2 years – patient care claims

# Illinois Local Governmental Tort Immunities and Defenses

## Acts or Omissions of Employees:

- “A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.”

745 ILCS 10/2-109



# Illinois Local Governmental Tort Immunities and Defenses

## Absolute v. Conditional Immunities

- Where language of a tort immunity provision clearly and unambiguously provides absolute immunity, court may not read any exceptions, i.e., “willful and wanton,” into the provision.

*Ries v. City of Chicago*, 242 Ill.2d 245 (Ill. 2011)

# Illinois Local Governmental Tort Immunities and Defenses

## Discretionary Immunity

- “Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.”
- Immunity is absolute – no exception for willful and wanton conduct.

745 ILCS 10/2-201

# Illinois Local Governmental Tort Immunities and Defenses

Analyzing discretionary immunity:

Policy decisions: when the employee is required to balance competing public interests and make a judgment call as to what solution will best serve each of those interests after considering time and resources, planning, efficiency, safety and budgetary considerations.

- To trigger immunity, employee must have made conscious policy determination prior to the subject incident. *Pronto v. Levan*, 2012 IL App (2<sup>nd</sup> Dist. 2012) 110355.

# Illinois Local Governmental Tort Immunities and Defenses

Analyzing discretionary immunity:

Discretionary decisions: which are unique to the particular public office, whereas ministerial acts are performed on a given state of facts in a prescribed manner in obedience to a legal mandate without reference to discretion.

- Employee exercises discretion when he selects and adopts a plan in the making of public improvements, but as soon as he begins to carry out that plan, he acts ministerially and is bound to carry out the work in reasonably safe and skillful manner. *Ponto v. Levan*, 2012 IL App (2d) 110355.

# Illinois Local Governmental Tort Immunities and Defenses

Case law examples analyzing discretionary immunity:

- If actual pothole repair is performed under a set procedure, the repair is ministerial and not immunized. *Hanley v. City of Chicago*, 343 Ill. App.3d 49 (1<sup>st</sup> Dist. 2003)
- But, if there is no uniform approach to filling pothole and decision is left to work crew, then immunity applies. *Wrobel v. City of Chicago*, 318 Ill. App.3d 390 (1<sup>st</sup> Dist. 2000)
- Immunity for decision how and when to repair sidewalk. *Richter v. College of DuPage*, 3 N.E.2d 902 (2<sup>nd</sup> Dist. 2013)

# Illinois Local Governmental Tort Immunities and Defenses

Case law examples analyzing discretionary immunity:

- City immune for decisions as to when and how to inspect and maintain the city's storm sewers, after considering allocation of manpower and resources. *Herrington, Inc. v. City of Geneva*, 2012 IL App (2d) 120131-U.
- City no immune for ministerial act of placement of traffic signs, markings, etc. in compliance with Illinois State Manual. Snyder v. Curran Township, 167 Ill.2d 466, 657 N.E.2d 988 (Ill. 1995).

# Illinois Local Governmental Tort Immunities and Defenses

Case law analyzing discretionary immunity:

- Park District no immune for retaliatory discharge and whistleblower actions. *Smith v. Waukegan Park Dist.*, 231 Ill.2d 11 (Ill. 2008).
- City not immune for police use of deadly force. *Robles v. City of Chicago*, 10 N.E.3d 236 (1<sup>st</sup> Dist. 2014).

# Illinois Local Governmental Tort Immunities and Defenses

## Premises Liability

- A local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for use by people whom the entity intended and permitted to use the property.
- But, there is no liability unless it is proven that the public entity has actual or constructive notice of an unsafe condition in adequate time to make repair.

745 ILCS 10/3-102



# Illinois Local Governmental Tort Immunities and Defenses

Premises Liability (cont'd):

Intended and permitted user

- Look to ordinances, codes, and physical manifestations such as markings, signs and historical use. *Boub v. Village of Wayne*, 183 Ill.2d 520 (1998).

# Illinois Local Governmental Tort Immunities and Defenses

Premises Liability (cont'd):

Actual notice:

- City must have timely notice of the specific defect that caused the injury and not merely the condition of the area. *Zameer v. City of Chicago*, 994 N.E.2d 657 (1<sup>st</sup> Dist. 2013) (general complaints about condition of sidewalk on 6000 block of the street was not sufficient to put city on notice of the specific defect that caused injury).

# Illinois Local Governmental Tort Immunities and Defenses

## Premises Liability (cont'd):

Constructive notice: condition existed for such a length of time, or was so conspicuous, that city exercising due care might have known about it.

- Was condition plainly visible or conspicuous?
- Did plaintiff see it before injury?
- How long did condition exist? Prior photos or complaints?
- Was condition in residential or commercial area?
- Did city have adequate inspection program and did not discover defect?

# Illinois Local Governmental Tort Immunities and Defenses

Premises Liability (cont'd):

Sidewalks

- Generally, residential sidewalk defect 2” or less in depth are *de minimus* and not actionable as a matter of law. *Harms v. Village of Romeoville*, 2011 IL App (3d) 100858.
- But 1 ¼ to 2” defect on busy commercial sidewalk may be actionable. *Baker v. City of Granite City*, 75 Ill. App.3d 157 (5<sup>th</sup> Dist. 1979).

# Illinois Local Governmental Tort Immunities and Defenses

## Parkways

- Pedestrians are intended and permitted users of parkways, i.e. to enter parked car, to retrieve mail from mailbox, to board a bus, to mow the lawn, etc.
- But, duty of care is less than with sidewalks. Pedestrians who step onto parkways should not expect them to be free of defects or undulations. *Marshall v. City of Centralia*, 143 Ill.2d 1 (1991).
- Pedestrian who uses parkway to cross street, rather than accessible marked crosswalk, is not an intended or permitted user. *Harden v. City of Chicago*, 1 N.E.2d 1175 (1<sup>st</sup> Dist. 2013).

# Illinois Local Governmental Tort Immunities and Defenses

## Streets, crosswalks and alleys

- Crossing street midblock outside protected crosswalk is not an intended and permitted use. Vaughn v. City of West Frankfort, 166 Ill. 2d 155, 651 N.E.2d 1115 (1995).
- However, pedestrian entering or exiting a legally parked vehicle was intended user, (Curatola v. Village of Niles, 154 Ill. 2d 201, 608 N.E.2d 882 (1993)), or stepping into street to see if bus is coming. Evans v. City of Chicago, 268 Ill. App. 3d 924, 645 N.E.2d 242 (1st Dist. 1994).

# Illinois Local Governmental Tort Immunities and Defenses

Streets, crosswalks and alleys (cont'd):

- But, no duty of care owed to pedestrian who stepped out of taxicab into traffic lane. Scarse v. City of Chicago, 272 Ill. App. 3d 903, 651 N.E.2d 690 (1st Dist. 1995), or who crossed center lanes of traffic after exiting parked car. Wojdlya v. City of Park Ridge, 148 Ill. 2d 417 (1992).
- A pedestrian walking in an alley is a permitted but not an intended user of the alley, because alleys are designed for vehicular traffic. Thomas v. Town of Cicero, 719 N.E.2d 187 (1st Dist. 1999).

# Illinois Local Governmental Tort Immunities and Defenses

Streets, crosswalks and alleys (cont'd):

- Truck driver who was illegally parked in alley was not an intended user of alley when he twisted his foot on uneven pavement. Montano v. City of Chicago, 1999 WL 973637 (1st Dist. 10/26/99).
- Pedestrian who, while crossing an alley from one sidewalk to another, tripped on uneven pavement in the alley, was an intended user of area where sidewalk intersected alley. Kavales v. City of Berwyn, 305 Ill. App. 3d 536, 712 N.E.2d 842 (1st Dist. 1999).
- Bicyclists are not intended users of road and bridge because there were no special pavement markings or signs indicating that bicyclists were intended to ride on road or bridge. Boub v. Township of Wayne, 183 Ill. 2d 520, 702 N.E.2d 535 (1998).



# Illinois Local Governmental Tort Immunities and Defenses

Adoption of plan or design of improvement to property

- No liability for injury caused by adopting a faulty plan or design of construction or an improvement to public property. But, liability exists if after execution of such plan or design it appears from its use that an unreasonably safe condition has been created.

745 ILCS 10/3-103

- The decision to improve public property is a discretionary act entitled to discretionary immunity under 3-103 and 2-201. *Morrissey v. City of Chicago*, 777 N.E. 2d 390 (1st Dist. 2002).

# Illinois Local Governmental Tort Immunities and Defenses

Traffic signs, signals, etc.

- Absolute immunity for failing to initially install traffic control devices, traffic signs, distinctive road markings, or other traffic regulatory signs.

745 ILCS 10/3-104;

- No liability for a failure to warn of hazardous road conditions. *West v. Kirkham*, 147 Ill. 2d 1(1992).

# Illinois Local Governmental Tort Immunities and Defenses

## Snow and Ice

- Absolute immunity for injury caused by the natural accumulation of snow and ice.

## 745 ILCS 10/3-105(a)

- But, not for unnatural accumulation of ice and snow. *Ziencina v. County of Cook*, 188 Ill.2d 1 (Ill. 1999).
- Public entity who negligently performs snow and ice removal may be liable for any resulting injury. *Kiel v. City of Girard*, 274 Ill. App.3d 821 (4<sup>th</sup> Dist. 1995).

# Illinois Local Governmental Tort Immunities and Defenses

## Recreational Property

- Immunity for injury caused by existence of condition of any public property intended and permitted to be used for recreational purposes, unless condition is a result of willful and wanton conduct.

## 745 ILCS 10/3-106

- Unnatural accumulation of ice and snow is a “condition” of public property triggering 3-106 immunity. *Moore v. Chicago Pk. Dist.*, 978 N.E.2d 1050 (Ill. 2012).

# Illinois Local Governmental Tort Immunities and Defenses

## Bicycle Trails and Other Recreational Paths and Roads

- Absolute immunity for injury caused by the condition of road which provides access to fishing, hunting or primitive camping, recreational or scenic areas. But, the road cannot be a city, town or village street or county, state or federal highway, or township road.

745 ILCS 10/3-107

# Illinois Local Governmental Tort Immunities and Defenses

## Failure to Supervise Activity On or Use of Property

- Immunity for supervision of an activity on or the use of public property unless willful and wanton conduct.

745 ILCS 10/3-108

# Illinois Local Governmental Tort Immunities and Defenses

## Hazardous Recreational Activities

- Immunity for injury to any person who participates in a hazardous recreational activity, except for:
  - Failure to guard or warn of a dangerous condition; and,
  - Willful and wanton conduct.

745 ILCS 10/3-109.

# Illinois Local Governmental Tort Immunities and Defenses

## Police Immunities

- Absolute immunity for failure to establish a police department or otherwise for providing inadequate police protection or service.
- Absolute immunity for failing to make an arrest or by releasing someone in custody.

745 ILCS 10/4-102 and 4-107



# Illinois Local Governmental Tort Immunities and Defenses

## Police Immunities (cont'd)

- Examples:
  - Failure to provide school crossing guards
  - Failure to operate metal detectors at school
  - Search for missing person
  - Negligent crowd control
  - Negligent police aid, assistance and rescue
  - Failure to provide security at public housing development

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: enforcement/execution of laws

- No liability for negligent execution or enforcement of any law, unless conduct is willful and wanton. 745 ILCS 10/2-202.
- Enforcement or execution of law: whether the officer was engaged in a course of conduct designed to carry out or put into effect any law.

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: enforcement/execution of laws

- Examples of enforcing/executing laws:
  - Making an arrest
  - Use of force
  - High speed pursuits
  - Investigating traffic accident
  - Responding to emergency calls for service
  - Escorting witness to show-up identification

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: enforcement/execution of laws

- Immunity not available for routine activities:
  - Cruising or routine patrol
  - Transporting prisoner
  - Investigating missing person report
  - Following high speed police pursuit to provide assistance but not actually engaged in the pursuit

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- “course of action which shows actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.” 745 ILCS 10/1-210
- Typically a fact question for a jury to decide but sometimes if evidence is overwhelmingly in favor of defendant, summary judgment is warranted.

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Intentional conduct – in police arrest/use of force setting, plaintiff has the burden of proving that the officer’s conduct was not legally justified. *Davis v. City of Chicago*, 8 N.E.2d 120 (1<sup>st</sup> Dist. 2014)
- If conduct is reasonable under the 4<sup>th</sup> Amendment “reasonableness” standard, it is not willful and wanton. *Muhammed v. City of Chicago*, 316 F.3d 680 (7<sup>th</sup> Cir. 2002)

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Utter indifference to or conscious disregard” means more than mere negligence but less than intentional conduct. *Ziarko v. Soo Line RR*, 161 Ill.2d 267 (2013)
- Under the Illinois Vehicle Code, the police are exempted from certain traffic laws (red lights, stop lights, etc.) when responding to an emergency call or in pursuit of an actual or suspected violator of the law. 625 ILCS 5/11-205.

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Factors to consider:
  - Did police know identity of offender?
  - What was the reason for the pursuit (minor v. serious)?
  - Lights/siren activated?
  - What were road, weather and traffic conditions?
  - What was the time of day?
  - Did officer keep a safe distance?



# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Factors to consider (cont'd):
  - Did officer terminate the pursuit prior to the injury?
  - What speeds were involved?
  - Did officer comply with SOP's, i.e. did he have supervisor approval for pursuit: did he keep constant communication with dispatcher and supervisor, etc.?
  - Did officer show due caution by slowing down at intersections and using siren to warn bystanders?

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Domestic violence situations
  - Under Domestic Violence Act, police have duty to protect victim, i.e., conduct adequate investigation, prepare report, arrest, seize weapons, etc.
  - But, no civilly liable unless conduct is willful and wanton.

750 ILCS 60/305

# Illinois Local Governmental Tort Immunities and Defenses

Police Immunities: willful and wanton conduct

- Domestic violence situations (cont'd)
  - Failure to act on order of protection is willful and wanton. *Calloway v. Kinkelaar*, 168 Ill.2d 312 (Ill. 1995)
  - Failure to arrest suspect following response to two 911 calls. *Fenton v. City of Chicago*, 2013 IL App (1<sup>st</sup>) 111596.
  - Failure to arrest husband who killed wife less than 24 hours after officers reported to house 3 times. *Beyer v. City of Joliet*, 2014 IL App (3d) 120710-U.

# Illinois Local Governmental Tort Immunities and Defenses

## Fire Protection, Rescue and Emergency Services:

### Absolute immunity:

- Failure to establish fire department
- Providing inadequate fire protection service
- Failing to suppress or contain fire
- Failing to maintain sufficient personnel and equipment
- Condition of equipment or facilities, except motor vehicles while traveling on public ways

745 ILCS 10/5-101, 5-102, 5-103(a)

# Illinois Local Governmental Tort Immunities and Defenses

## Fire Protection and Rescue Services Immunities (cont'd):

- Negligent act/ omission while engaged in fighting fire
- Negligent operation of motor vehicle or firefighting or rescue equipment when responding to emergency call
- Except, if the injury is caused by the willful and wanton conduct of the employee.

745 ILCS 10/5-103(b), 5-106

# Illinois Local Governmental Tort Immunities and Defenses

## Correctional Immunities

- Absolute immunity for failure to provide a jail, detention or correctional facility
- Absolute immunity for failing to provide sufficient equipment, personnel, supervision or facilities
- Absolute immunity for paroling or releasing prisoner, or for injury caused by escaped or escaping prisoner

745 ILCS 10/4-103, 4-106

# Illinois Local Governmental Tort Immunities and Defenses

## Correctional Immunities

Immunity for negligent failure to provide medical care  
“unless the jailer knows from his observation of  
conditions that the prisoner needs immediate medical care  
and, through willful and wanton conduct, fails to take  
reasonable action to summon medical care.”

745 ILCS 10/4-105

# Illinois Local Governmental Tort Immunities and Defenses

## Medical, Hospital and Public Health Activities

- Absolute immunity for failure to evaluate, diagnose or prescribe treatment of a mental or physical illness or addiction.

745 ILCS 10/6-105 and 6-106(a)

- County jail medical staff immune for failure to perform necessary tests or make referrals to determine presence of a disease and failure to diagnose the disease. *Michigan Ave. Nat'l Bk. v. County of Cook*, 191 Ill.2d 493 (2000); *Major v. County of Cook*, 2014 IL App (1<sup>st</sup>) 123632-U.



# Illinois Local Governmental Tort Immunities and Defenses

No immunity for administering treatment prescribed for mental or physical illness.

745 ILCS 10/6-106(d)

Once diagnosis of a medical condition is made, and treatment is prescribed and undertaken, any subsequent prescription or examination required to be made under medical standard of care, defendant must act with due care. *Amer. Nat'l Bk. & Trust v. County of Cook*, 327 Ill. App.3d 212 (1<sup>st</sup> Dist. 2001).

# Illinois Local Governmental Tort Immunities and Defenses

However, Emergency Medical System Act applied to emergency responder's failure to assess, examine or transport unresponsive patient, rather than Tort Immunity Act. *Abruzzo v. City of Park Ridge*, 231 Ill.2d 324 (2008).

- EMS Act immunized paramedics from negligence but not willful and wanton conduct. 210 ILCS 50/3.150(a)

# Illinois Local Governmental Tort Immunities and Defenses

## Enforcement of Ordinances; Code Inspections

- Absolute immunity for adopting a law, failing to adopt an enactment, or failing to enforce any law. 745 ILCS 10/2-103, 2-205.
- Absolute immunity for failing to inspect or negligently inspecting property other than municipally owned property. 745 ILCS 10/2-105, 2-207.

# Illinois Local Governmental Tort Immunities and Defenses

## Enforcement of Ordinances; Code Inspections (cont'd):

- Village not liable for code inspector's failure to direct homeowner to trim bushes in compliance with intersection visibility ordinance. *Pouk v. Village of Romeoville*, 405 Ill. App.3d 194 (3<sup>rd</sup> Dist. 2010)
- No liability for building code inspections, *Rascher v. City of Chicago*, 262 Ill. App.3d 592 (4<sup>th</sup> Dist. 1994), or health code inspections. *Ferentchak v. Village of Frankfort*, 105 Ill.2d 474 (Ill. 1985).

# Illinois Local Governmental Tort Immunities and Defenses

## Permits and Licenses

- Absolute immunity for issuing, denying, suspending or revoking permits and licenses or similar authorizations where the public entity or employee is authorized by enactment to make decision.

745 ILCS 10/2-104, 2-206

# Illinois Local Governmental Tort Immunities and Defenses

## Misrepresentations; Libel and Slander

- Local public entity is not liable for injury caused by oral promise or misrepresentation of its employee whether negligent or intentional. 745 ILCS 10/2-106.
- Employee not liable for negligent misrepresentation or provision of information. 745 ILCS 10/2-210.
- Local public entity not liable for libel or slander committed by its employees. 745 ILCS 10/2-107.

# Illinois Local Governmental Tort Immunities and Defenses

## Misrepresentations; Libel and Slander

- Local public entity is not liable for injury caused by oral promise or misrepresentation of its employee whether negligent or intentional. 745 ILCS 10/2-106.
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- Local public entity not liable for libel or slander committed by its employees. 745 ILCS 10/2-107.

# Illinois Local Governmental Tort Immunities and Defenses

## Punitive Damages

- Punitive damages are not recoverable against local public entities, or against public officials who serve in official executive, legislative, quasi-legislative, or quasi-judicial capacities, i.e., judges, hearing officers, etc. 745 ILCS 10/2-102, 2-213.
- Local public entity may not indemnify employees for punitive damages. 745 ILCS 10-2-302.



# Illinois Local Governmental Tort Immunities and Defenses

## Indemnification

A local public entity is empowered and directed to pay any tort judgment or settlement for compensatory damages and *may* pay any associated attorney's fees and costs for which it or an employee while acting within the scope of his employment is liable.

745 ILCS 10/9-102.