



**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iv

INTRODUCTION OF INTEREST OF AMICI CURIAE..... 1

STATEMENT OF FACTS ..... 2

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW ..... 3

Proposition of Law No. I: Under former R.C. 2744.02(B)(4), a political subdivision may be liable for injuries, death, or loss to persons caused by negligence occurring on the grounds of a building used in connection with a government function, when the injury, death, or loss occurs outside the political subdivision ..... 3

Authorities cited in support of Proposition of Law I

*Bennett v. Stanley* (2001) 92 Ohio St.3d 35, 748 N.E.2d 41 ..... 3

*Elston v. Howland Local Schools* (2007) 113 Ohio St.3d 314, 2007-Ohio-2070 ..... 4

*In re Cunningham* (1979) 59 Ohio St.2d 100, 391 N.E.2d 1034..... 3

*Hubbard v. Canton City School Board of Education* (2002) 97 Ohio St.3d 451, 780 N.E. 543 ..... 3, 4, 5

*Sherwin-Williams Company v. Dayton Freight Lines, Inc.* (2006) 112 Ohio St.3d 52, 858 N.E.2d 324 ..... 3, 4

*Yates v. Mansfield Board of Education* (2004) 102 Ohio St.3d 205, 808 N.E.2d 861 .. ..... 3

R.C. 2744.02(B)(3) ..... 3, 4

R.C. 2744.02(B)(4) ..... 3, 4, 5

R.C. 1.51 ..... 4

Proposition of Law No. II: An elective, after school activity either approved or not approved by a political subdivision/board of education is not a governmental function under R.C. 2744.01(G)(1)(a). Therefore, R.C. 2744.02(B)(2) and not R.C. 2744.02(B)(4) applies and determines whether the immunity granted under R.C. 2744.02(A)(1) is removed. .... 6

Authorities cited in support of Proposition of Law II

*Greene Cty. Agricultural Society v. Liming* (2000) 89 Ohio St.3d 551, 2000-Ohio-486 ..... 6

R.C. 2744.02(B)(2)..... 6

R.C. 2744.01(G)(1)(a)..... 6

Proposition of Law No. III: If the R.C. 2744.02(B)(2) or (B)(4) exceptions to immunity apply, the trial court erred in concluding that Appellees’ conduct did not constitute wanton or reckless conduct as a matter of law on the record before it. .... 7

Authorities cited in support of Proposition of Law III

*Tighe v. Diamond* (1948) 149 Ohio St.520 ..... 7

R.C. 2744.03(A)(5)..... 7

CONCLUSION ..... 9

CERTIFICATE OF SERVICE ..... 10

APPENDIX

**TABLE OF AUTHORITIES**

**CASES**

*Bennett v. Stanley* (2001) 92 Ohio St.3d 35, 748 N.E.2d 41 ..... 3

*Elston v. Howland Local Schools* (2007) 113 Ohio St.3d 314, 2007-Ohio-2070 ..... 4

*Greene Cty. Agricultural Society v. Liming* (2000) 89 Ohio St.3d 551, 2000-Ohio-486..... 6

*Hubbard v. Canton City School Board of Education* (2002) 97 Ohio St.3d 451, 780 N.E. 543 .....  
..... 3, 4, 5

*In re Cunningham* (1979) 59 Ohio St.2d 100, 391 N.E.2d 1034..... 3

*Sherwin-Williams Company v. Dayton Freight Lines, Inc.* (2006) 112 Ohio St.3d 52, 858 N.E.2d  
324 ..... 3, 4

*Tighe v. Diamond* (1948) 149 Ohio St.520..... 7

*Yates v. Mansfield Board of Education* (2004) 102 Ohio St.3d 205, 808 N.E.2d 861..... 3

**STATUTES, RULES, OR OTHER**

R.C. 2744.01(G)(1)(a) ..... 6

R.C. 2744.02(B)(2)..... 6

R.C. 2744.02(B)(3)..... 3, 4

R.C. 2744.02(B)(4)..... 3, 4, 5

R.C. 2744.03(A)(5)..... 7

R.C. 1.51 ..... 4

## INTRODUCTION AND INTEREST OF AMICI CURIAE

The Children's Defense Fund, Equal Justice Foundation and Ohio Association for Justice respectfully come before this Court as an Amici Curiae.

The Children's Defense Fund is a national, private, non-profit organization created to provide strong and effective voices for all children of America who themselves, cannot vote, lobby or express their concerns.

The Equal Justice Foundation is a non-profit organization that represents the poor and disadvantaged who may not otherwise have access to the legal system. It undertakes class action and other impact litigation on behalf of individuals with disabilities, minorities, immigrants, children, the aging, victims of predatory lending and consumer fraud, tenants denied their rights, and institutionalized persons.

The Ohio Association for Justice is a non-profit organization, comprised of trial lawyers who are dedicated to representing the rights of injured plaintiffs and insuring that the rights of persons provided by Ohio law are available to all Ohio citizens.

Every child has the right to be protected from child abusers and molesters who pose as school officials or school volunteers, regardless of where the molestations or abuse occur. For these reasons, and the reasons set forth herein, The Children's Defense Fund, The Equal Justice Foundation and the Ohio Association for Justice respectfully urge this Honorable Court to reverse the decision of the Fifth District Court of Appeals, as this decision has provided blanket immunity for the most heinous of acts as long as these acts occur away from school property.

## **STATEMENT OF FACTS**

The Amici Curiae concur and adopt the statement of facts as presented in Merit Brief of Appellants Jane Doe and Jenny Doe.

## ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. I: Under former R.C. 2744.02(B)(4), a political subdivision may be liable for injuries, death, or loss to persons caused by negligence occurring on the grounds of a building used in connection with a government function, when the injury, death, or loss occurs outside the political subdivision.**

In Sherwin-Williams Company v. Dayton Freight Lines, Inc. (2006) 112 Ohio St. 52, 858 N.E.2d 324, this Court held that under the former statute providing an exception to general immunity from civil liability, a political subdivision may be liable for injury, death, or loss resulting from a nuisance that exists on public grounds within the political subdivision **when the injury, death, or loss caused by the nuisance occurs outside the political subdivision.** In Hubbard v. Canton City School Board of Education (2002) 97 Ohio St.3d 451, 780 N.E. 543, this Court held that under the former statute providing an exception to the general immunity from civil liability, a political subdivision may be held liable for negligence occurring within or on grounds of buildings that are used in connection with performance of a government function.

Beyond immunity, this Court has also consistently held that the “best interests” of a child are primary considerations in cases not only involving custody matters, but also in cases involving injuries and when determining the amount of care and duty owed to a child, and cases involving mandatory child abuse reporting laws. See, e.g., In re Cunningham (1979) 59 Ohio St.2d 100, 391 N.E.2d 1034; Bennett v. Stanley (2001) 92 Ohio St.3d 35, 748 N.E.2d 41; Yates v. Mansfield Board of Education (2004) 102 Ohio St.3d 205, 808 N.E.2d 861. In doing so, this Court recognized the importance of an active government in overseeing this special relationship and duty on behalf of children, and has stated: “In many instances, only the state and its political subdivisions can protect children from abuse.” See Yates at 208-209.

In this case, the Fifth District Court of Appeals has interpreted the former R.C. 2744.02(B)(4) to require not only the negligence occur on the property of a political subdivision, but also the injury or loss occur on the property of a political subdivision before an exception to immunity will apply. The Fifth District's decision directly contradicts this Court's holding in Hubbard, supra, Sherwin-Williams, supra, and moreover, this Court's general belief that the state and political subdivisions must protect children from abuse. Certainly it was not the intent of the legislature to carve an exception to immunity for those who have been harmed by a nuisance even when the injury does not occur on the grounds or within a building of a political subdivision, but not for children who have been sexually abused by a pedophile because the pedophile walked across the street to perform his molestations.

Truly, there is no better fact pattern than the one at issue before this Court to demonstrate the fallacy of the lower Court's interpretation of R.C. 2744.02(B)(4). John Smith was a convicted child molester, previously sentenced to two years in prison before seeking his position as a "Chess Coach" with the Franklin Elementary School. Absolutely no background check was performed by the school and as a result, John Smith was given clearance to groom and bond with his young victims at the school, and then later to molest these children off of school property.<sup>1</sup>

It is well-settled that a statute should not be interpreted to produce an absurd result. Elston v. Howland Local Schools (2007) 113 Ohio St.3d 314, 320, 2007-Ohio-2070. Similarly, Ohio Revised Code, Section 1.51 provides that if a general provision conflicts with a specific or local provision, they will be construed, if possible, so that effect is given to both. In this particular case, the former R.C. 2744.02(B)(3), (the nuisance exception) and R.C. 2744.02(B)(4), (the negligence exception) demonstrate a conflict within the entire immunity statute, in that the nuisance exception does not require the injury occur on the property of a political subdivision and yet, the negligence

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<sup>1</sup> The facts and statements are drawn from the record created by Appellant and filed with this Court.

exception, as interpreted by the Fifth District Court of Appeals, does require the injury occur on the premises of a political subdivision. In applying the principals of statutory construction, the former R.C. 2744.02(B)(4) must be interpreted to give the proper effect to both immunity exceptions and moreover, to facilitate just results.

In addition, this Court previously provided significant guidance with regard to R.C. 2744.02(B)(4) in Hubbard, *supra*. Specifically, the issue in Hubbard was whether the R.C. 2744.02(B)(4) exception to liability “should be limited to **negligence in connection with physical defects** within or on the grounds of government buildings.” Id at 452. In answering this question in the negative, this Court clearly held that the exception to immunity was not restricted to instances where the injuries resulted from physical defects of the property but, instead, applied to cases where injuries or losses resulted from negligence that occurred on the property of a political subdivision. As this Court stated:

**Since the injuries claimed by the plaintiffs were caused by the negligence occurring on the grounds of a building used in connection with a government function, R.C. 2744.02(B)(4) applies and the board is not immune from liability.** Id at 455.

Hubbard is clear in that where injuries resulted from **negligence** occurring on the property of a political subdivision, an exception to immunity would apply. In this case, the Fifth District has essentially added a second requirement that the injuries also occur on the property of the political subdivision. The Fifth District’s decision is contrary to the principles and established law as set forth in Hubbard and, moreover, provides an interpretation of a statute in such a way to produce absurd and dangerous results.

**Proposition of Law No. II: An elective, after school activity either approved or not approved by a political subdivision/board of education is not a governmental function under R.C. 2744.01(G)(1)(a). Therefore, R.C. 2744.02(B)(2) and not R.C. 2744.02(B)(4) applies and determines whether the immunity granted under R.C. 2744.02(A)(1) is removed.**

In Greene Cty. Agricultural Society v. Liming (2000) 89 Ohio St.3d 551, 2000-Ohio-486, this Ohio Supreme Court held that “some activities of a political subdivision may be government functions, while other activities are not.” In this particular case, Appellees have completely separated themselves and the Board of Education from the chess club formed by John Smith. In fact, Appellees were adamant that Smith was simply a “user of school space”, Smith was never hired or appointed to conduct the chess club, and that the chess club was never formally approved, sponsored or financially backed by the Board of Education. Moreover, the school newsletters, permission slips and yearbooks relating to the chess club were never approved by Appellees. It is clear, then, that this chess club, an after school activity, was not a function, according to Appellees, that was customarily engaged in by the school itself. Instead, according to Appellees, the function was one customarily engaged in by nongovernmental persons, such as John Smith.

The circumstances surrounding this case are very similar to Greene Cty. Agricultural Society, supra, in that conducting a livestock competition, as were the facts in Greene Cty. Agricultural Society, was determined to be an activity customarily engaged in by nongovernmental persons. In this case, forming a chess club and essentially utilizing school space, is apparently an activity customarily engaged in by nongovernmental persons. Therefore, the chess club activity is not a governmental function under R.C. 2744.01(G)(1)(a).

**Proposition of Law No. III: If the R.C. 2744.02(B)(2) or (B)(4) exceptions to immunity apply, the trial court erred in concluding that Appellees' conduct did not constitute wanton or reckless conduct as a matter of law on the record before it.**

The former R.C. 2744.03(A)(5) provides:

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death or loss to persons or property allegedly caused by any act or omission in connection with a government or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

\*\*\*

- (5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources, unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

Appellant Jane Doe and Jenny Doe have devoted substantial time to reiterating the record before the lower Courts. Likewise, Appellants have adequately provided the proper authority to this Court in terms of defining recklessness. Therefore, the Amici Curiae adopts and incorporates the facts as set forth by Appellants and will simply emphasize the outrageous conduct that occurred in this case to these young children.

As stated by Appellants, wanton misconduct essentially means an entire absence of care for the safety of others and indifference to the consequences. See Tighe v. Diamond (1948) 149 Ohio St.520. Certainly, these facts exist in this case.

When John Smith inquired with the Principal, Judith Kenny, about starting the chess club at an elementary school, Ms. Kenny failed to question Smith about his experience with children, his background, or a list of references and in fact, never even obtained Smith's phone number, date of birth, his address or driver's license. Moreover, the school received complaints and concerns from

Wyanbu Zutali, a man who knew Smith and was concerned about Smith's involvement with children. Despite this failure to obtain any background information and receipt of concerns from Mr. Zutali, the school permitted Smith to take the children on an overnight field trip!

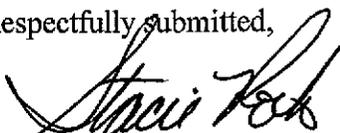
As further evidence of Appellees' reckless nature and actions, the Guidance Counselor, Sue Rohr, physically removed the chess team file from the school and burned the file after she learned that Smith had been charged with molesting the children she was hired to protect!

Based upon these facts, the lower Courts erred in finding an exception to immunity.

## CONCLUSION

For the reasons set forth above, Amici Curiae, The Children's Defense Fund, The Equal Justice Foundation and the Ohio Association for Justice respectfully urge this Honorable Court to reverse the judgment entered by the Fifth District Court of Appeals, and to remand the matter to the trial court for further proceedings.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This certifies that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction was served, via ordinary U.S. mail, postage pre-paid, upon the following parties on this 11<sup>th</sup> day of January, 2008:

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## **APPENDIX**

1. R.C. 2744.01(G)(1)(a)
2. R.C. 2744.02
3. R.C. 2744.03(A)(5)
4. R.C. 1.51

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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2744.01 DEFINITIONS (1996 H 350 AND SUBSEQUENT AMENDMENTS)

<Note: See also preceding versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

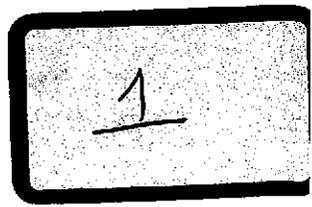
(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C) (1) "Governmental function" means a function of a political subdivision that is specified in division (C) (2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G) (2) of this section as a proprietary function.



(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a human services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons

who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any park, playground, playfield, indoor recreational facility, zoo, zoological park, bath, swimming pool, pond, water park, wading pool, wave pool, water slide, and other type of aquatic facility, or golf course;

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, and community school established under Chapter 3314. of the Revised Code.

(G) (1) "Proprietary function" means a function of a political subdivision that is specified in division (G) (2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C) (1) (a) or (b) of this section and is not one specified in division (C) (2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

CREDIT(S)

(2000 S 179, § 3, eff. 1-1-02; 1999 H 205, eff. 9-24-99; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97; 1995 H 192, eff. 11-21-95; 1994 H 384, eff. 11-11-94; 1993 H 152, eff. 7-1-93; 1992 H 723, H 210; 1990 H 656; 1988 S 367, H 815; 1987 H 295; 1986 H 205, § 1, 3; 1985 H 176)

<Note: See also preceding versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

UNCODIFIED LAW

1999 H 205, § 3, eff. 9-24-99, reads:

It is the intent of the General Assembly in amending division (C)(2)(u) of section 2744.01 of the Revised Code in this act, in part, to supersede the effect of the holding of Garrett v. Sandusky, (1994) 68 Ohio St. 3d 139, that a wave pool is not a "swimming pool" within governmental functions for which a city enjoys tort immunity.

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2000 S 179, § 3, eff. 1-1-02, substituted "2152.19 or 2152.20" for "2151.355" in division (B).

Amendment Note: 1999 H 205 deleted "and the operation and control of any" after "pond," and inserted "water park, wading pool, wave pool, water slide, and other type of aquatic facility, or" in division (C)(2)(u); and made other nonsubstantive changes.

Amendment Note: 1997 H 215 inserted ", and a community school established under Chapter 3314. of the Revised Code" in division (F).

Amendment Note: 1996 H 350 added division (H); redesignated former division (H) as division (I); and made changes to reflect gender neutral language.

Amendment Note: 1995 H 192 inserted "a fire and ambulance district created pursuant to section 505.375 of the Revised Code," in division (F).

BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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2744.02 POLITICAL SUBDIVISION NOT LIABLE FOR INJURY, DEATH, OR LOSS; EXCEPTIONS  
(PRE 1996 H 350 VERSION)

<Note: See also following versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

(A) (1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent operation of any motor vehicle by their employees upon the public roads, highways, or streets when the employees are engaged within the scope of their employment and authority. The following are full defenses to such liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political



subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to persons or property caused by their failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, and free from nuisance, except that it is a full defense to such liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to persons or property that is caused by the negligence of their employees and that occurs within or on the grounds of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to persons or property when liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued.

CREDIT(S)

(1994 S 221, eff. 9-28-94; 1989 H 381, eff. 7-1-89; 1985 H 176)

<Note: See also following versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

R.C. § 2744.02

OH ST § 2744.02

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BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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2744.03 DEFENSES AND IMMUNITIES (1996 H 350 AND SUBSEQUENT AMENDMENTS)

<Note: See also preceding and following versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2151.355 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community

work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in division (A) (7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Liability is expressly imposed upon the employee by a section of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A) (6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

CREDIT(S)

(1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97; 1994 S 221, eff. 9-28-94; 1986 S 297, eff. 4-30-86; 1985 H 176)

<Note: See also preceding and following versions, note under Notes of Decisions, and casenote for Ohio Academy of Trial Lawyers v Sheward.>

R.C. § 2744.03

OH ST § 2744.03

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R.C. § 1.51

**C**

BALDWIN'S OHIO REVISED CODE ANNOTATED  
GENERAL PROVISIONS  
CHAPTER 1. DEFINITIONS; RULES OF CONSTRUCTION  
STATUTORY PROVISIONS

**→ 1.51 Special or local provision prevails over general; exception**

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Current through 2007 File 45 of the 127th GA (2007-2008),  
apv. by 1/8/08, and filed with the Secretary of State by 1/8/08.

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