

IN THE SUPREME COURT OF OHIO

DANIELLE MOORE, et al.)	CASE NOS. 2007-2106
)	2008-0030
Appellees,)	
)	
-v-)	On Appeal from the Lorain
)	County Court of Appeals,
LORAIN METROPOLITAN HOUSING)	Ninth Judicial District,
AUTHORITY, et al.,)	Case No. 06CA008995
)	
Appellants.)	

**MERIT BRIEF OF APPELLEES,
DANIELLE MOORE, et al.**

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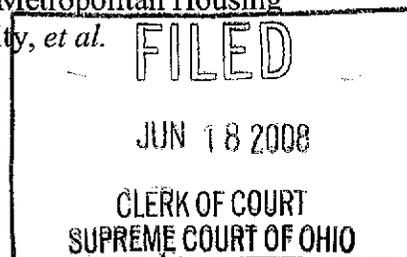


TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF FACTS1

ARGUMENT10

Certified Conflict Question10

 Whether operation of a public housing authority is a proprietary or governmental function?

Proposition of Law No. I10

 Ownership and operation of a public housing facility is a proprietary function under Chapter 2744 of the Ohio Revised Code.

Proposition of Law No. II22

 The exception to political subdivision immunity under R.C. 2744.02(B)(5) applies, where a metropolitan housing authority is created and chooses to function as the landlord.

Proposition of Law No. III:27

 If the ownership and operation of a residential public housing facility by a political subdivision is determined to be a governmental function, then exception to political subdivision immunity under R.C. 2744.02(B)(4) for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of that governmental function is applicable to such an occurrence at residential public housing units.

CONCLUSION31

CERTIFICATE OF SERVICE32

APPENDIX

(A) Statutes and Administrative Code Sections cited herein

R.C. §2743.02	A1
R.C. §2744.01	A4
R.C. §2744.02	A9
R.C. §2744.03	A11
R.C. §2921.01	A13
R.C. §3735.27	A15
R.C. §3735.31	A19
R.C. §3735.39	A21
R.C. §3735.40	A22
R.C. §3735.50	A24
R.C. §3749.02	A25
R.C. §5321.01	A26
R.C. §5321.04	A29
R.C. §5591.37	A31
O.A.C. §4101:2-89-04	A32

TABLE OF AUTHORITIES

CASES

<u>Callahan v. Arnett</u> (Sept. 29, 1980), 2 nd Dist. No. 6621, 1980 Ohio App. LEXIS 9919	16
<u>Cater v. Cleveland</u> (1998), 843 Ohio St.3d 24, 1998 Ohio 421, 697 N.E.2d 610	11, 12
<u>Chupek v. Akron</u> , (9 th Dist. 1951), 89 Ohio App. 266, 101 N.E.2d 245	16
<u>Cobos v. Dona Ana County Hous. Auth.</u> (1998), 126 N.M. 418, 970 P.2d 1143	30
<u>Colbert v. Cleveland</u> (2003), 99 Ohio St. 3d 215, 2003 Ohio 3319, 790 N.E.2d 781	11
<u>Country Club Hills Homeowners Assn. v. Jefferson Metro Housing Auth.</u> (7 th Dist. 1981), 5 Ohio App. 3d 77, 449 N.E.2d 460.....	17, 19
<u>Cuyahoga Metropolitan Housing Authority v. City of Cleveland</u> (N.D. Ohio, 1972) 342 F.Supp. 250, 65 Ohio Ops. 2d 227.....	19
<u>Duvall v. Akron</u> , (Nov. 6, 1991), 9th Dist. No. 15110, 1991 Ohio App. LEXIS 5381	13
<u>Greene Cty. Agricultural Soc. v. Liming</u> (2000), 89 Ohio St.3d 551, 2000 Ohio 486, 733 N.E.2d 1141	11-15
<u>Hedrick v. City of Columbus</u> (Mar. 30, 1993), 10th Dist. Nos. 92AP-1030 and 92AP-1031, 1993 Ohio App. LEXIS 1874	13
<u>Hill v. Urbana</u> (1997), 79 Ohio St. 3d 130, 1997 Ohio 400, 679 N.E.2d 1109	12-13
<u>Hubbard v. Canton City Sch. Bd. of Educ.</u> (2002), 97 Ohio St. 3d 451, 2002 Ohio 6718, 780 N.E.2d 543	27, 28
<u>Jones v. Lucas Metro. Hous. Auth.</u> (Aug. 29, 1997), 6 th Dist. No. L-96-212, 1997 Ohio App. LEXIS 3807.....	19, 29, 30
<u>Keytack v. Warren</u> , 11 th Dist No. 2005-T-0152, 2006 Ohio 5179	13
<u>LRL Properties v. Portage Metro. Hous. Auth.</u> (Dec. 17, 1999), 11 th Dist. No. 98-P-0070, 1999 Ohio App. LEXIS 6130.....	16
<u>Malone v. Chillicothe</u> , 4 th Dist. No. 05CA2869, 2006 Ohio 3268	13
<u>McCloud v. Nimmer</u> (8 th Dist. 1991), 72 Ohio App.3d 533, 595 N.E.2d 492	18
<u>Miller v. Ritchie</u> (1989), 45 Ohio St. 3d 222, 543 N.E.2d 1265.....	24

CASES

Miller v. State of New York (1984),
62 N.Y.2d 506, 467 N.E.2d 493, 478 N.Y.S. 2d 829 21

Moore v. Lorain Metro. Hous. Auth.,
9th Dist. No. 06CA008995, 2007 Ohio 511110, 16, 23, 24, 28

Parker v. Dayton Metro. Hous. Auth. (May 31, 1996),
2nd Dist. No. 15556, 1996 Ohio App. LEXIS 255610, 17, 20

Portage Metropolitan Housing Authority v. Brown (11th Dist. 1990),
66 Ohio App.3d 737, 586 N.E.2d 16823

Price v. New York City Hous. Auth.(1998),
92 N.Y.2d 553, 706 N.E.2d 1167, 684 N.Y.S. 2d 14321

Rhoades v. Cuyahoga Metro. Hous. Auth., 8th Dist. No. 84439, 2005 Ohio 505.....17, 18

Robinson v. Akron Metro. Hous. Auth. (Aug. 1, 2001)
9th Dist. No. 20405, 2001 Ohio App. LEXIS 3374.....23, 24

Ryll v. Columbus Fireworks Display Co., Inc. (2002),
95 Ohio St. 3d 467, 2002 Ohio 2584, 769 N.E.2d 372 12

Spencer v. Lakeview School District , 11th Dist. No. 2002-T-0175, 2004 Ohio 530329

State v. Muncie (2001), 91 Ohio St.3d 440, 2001 Ohio 93, 746 N.E.2d 109225, 29

State ex rel. White v. Cleveland (1932), 125 Ohio St. 230, 181 N.E. 2416

Straughter v. Stark Metro. Housing Authority (June 1, 1992),
5th Dist. No. CA-8696, 1992 Ohio App. LEXIS 299523

Thompson v. Bagley, 3rd Dist. No. 11-04-12, 2005 Ohio 1921.....24

Wayne Metro. Hous. Auth. (Oct. 18, 1988),
9th Dist. Nos. 2369, 2403, 1988 Ohio App. LEXIS 405223

Weiner v. Metropolitan Transp. Auth. (1982),
55 N.Y.2d 175, 433 N.E.2d 124, 448 N.Y.S.2d 14121

Wooster v. Arbenz (1927), 116 Ohio St. 281, 156 N.E. 210 13-14

In re World Trade Ctr. Bombing Litig. (2004), 3 Misc.3d 440, 776 N.Y.S.2d 71320, 21

STATUTES

R.C. §2743.0225, 26

R.C. §2744 10-13, 18, 19

R.C. §2744.01 12-17, 20-21, 31

R.C. §2744.02 *passim*

R.C. §2744.0310, 11

R.C. §2921.0129

R.C. §3735.2711, 15, 21

R.C. §3735.3111, 15

R.C. §3735.3915

R.C. §3735.4022

R.C. §3735.5011, 15, 21

R.C. §3749.0225

R.C. §532122

R.C. §5321.0122, 23

R.C. §5321.0423, 24, 26

R.C. §5591.3725

OTHER AUTHORITIES

O.A.C. §4101:2-89-0423

STATEMENT OF FACTS

I. PROCEDURAL HISTORY

On October 19, 2003, 15 month-old Dezirae Macarthy and 4 year-old D'Angelo Macarthy died in a house fire as a result of the Appellants' removal and non-replacement of the smoke detector from the apartment of the children's mother, Appellee Danielle Moore, which took place earlier days earlier.

On September 30, 2004, the Lorain County Probate Court appointed Appellee Danielle Moore as the Administratrix of the Estates of her two deceased children.

On October 12, 2004, a Complaint alleging wrongful death of her two children was filed in Lorain County Court of Common Pleas Case No. 04 CV 139881 by Danielle Moore—acting individually, in her capacity as the Administratrix of the Estates of both Dezirae Macarthy and D'Angelo Macarthy, and in her capacity as the parent and next friend the deceased children's siblings Jamar Moore and Deilani Macarthy (hereinafter referred to collectively as “Ms. Moore”)—against (1) the Lorain Metropolitan Housing Authority, (2) Homer Verdin, who is the executive director of the Lorain Metropolitan Housing Authority, and (3) other then-unknown agents/employees of the Lorain Metropolitan Housing Authority (hereinafter referred to collectively as “LMHA”).

Two days later, on October 14, 2004, Ms. Moore filed a First Amended Complaint. On December 22, 2004, pursuant to leave of the trial court, LMHA filed an Answer to the First Amended Complaint.

On May 26, 2006, LMHA filed a motion for summary judgment. Four days later, on May 30, 2006, Ms. Moore also filed a motion for summary judgment. Thereafter, the opposing parties each filed briefs in opposition to the other party's motion for summary judgment. In July

of 2006, the opposing parties each filed proposed findings of fact and conclusions of law for the trial court's consideration.

On August 8, 2006, the trial court filed a Judgment Entry granting the motion for summary judgment filed by LMHA and denying the motion for summary judgment filed by Ms. Moore. The trial court also filed Finding of Fact and Conclusions of Law, which were attached to its Judgment Entry.

On August 17, 2006, Ms. Moore filed a timely notice of appeal to the Ohio Court of Appeals for the Ninth Judicial District in C.A. No. 06CA008995.

On September 28, 2007, the Ninth District Court of Appeals reversed the judgment of the trial court, which had granted summary judgment in favor of LMHA, and remanded the case for further proceedings before the trial court. In its decision and journal entry, the Ninth District Court determined that: (1) ownership and operation of a public housing facility is a "proprietary function" as opposed to a "governmental function;" (2) the exception to political subdivision immunity under R.C. 2744.02(B)(5) is applicable where a housing authority, which operates as the landlord, is subject to the requirements of R.C. 5321.04 of the Landlord/Tenant Act and to R.C. 3735.40, which sets forth definitions regarding housing projects; and (3) Ms. Moore met her reciprocal burden by offering specific evidence to demonstrate that a genuine issue of material fact existed as to whether LMHA complied with the statutory requirement that it provide a working smoke detector to Ms. Moore's unit. Moore v. Lorain Metro. Hous. Auth., 9th Dist. No. 06CA008995, 2007 Ohio 5111.

On October 4, 2007, LMHA filed a motion to certify a conflict between the instant decision of the Ninth District Court, which relied on the decision of the Second District Court in Parker v. Dayton Metro. Hous. Auth. (May 31, 1996), 2nd Dist. No. 15556, 1996 Ohio App.

LEXIS 2556 to determine that ownership and operation of a public housing facility is a “proprietary function,” and decisions by the Sixth, Seventh and Eighth District Courts allegedly determining that ownership and operation of a public housing facility is a “governmental function.” On December 12, 2007, the Ninth District Court determined that a conflict existed and granted LMHA’s motion to certify a conflict on the following issue:

Whether operation of a public housing authority is a proprietary or a governmental function.

On November 13, 2007, LMHA timely filed a discretionary appeal to the Supreme Court of Ohio in Case No. 2007-2106. On January 4, 2008, LMHA filed a Notice of Certified Conflict with the Supreme Court of Ohio in Case No. 2008-0030. On February 20, 2008, this Honorable Court, *sua sponte*, consolidated the two cases for purposes of briefing.

II. FACTS OF RECORD

A. Apartment Fire Kills Two Children Without Any Alarm Going Off

On October 19, 2003, Danielle Moore resided in a single family dwelling unit located at 106 South Park Street in the City of Oberlin, Lorain County, Ohio, along with her four minor children. The housing units (which units were known as “Pagodas”) were owned, operated, and leased to low income tenants by Appellant Lorain Metropolitan Housing Authority, a political subdivision.

That evening, Danielle Moore’s unit was consumed by fire and two of her children, 15 month-old Dezirae Macarthy and 4 year-old D’Angelo Macarthy, died in that fire. Fortunately, with the assistance of Derek Macarthy--Danielle Moore’s former significant other who happened to be babysitting for her that night—her 6 year-old son, Jamar Moore, and her toddler, Deilani Macarthy, escaped the fire.

All of the firefighters who testified in this case indicated that they responded very quickly to the scene, yet they heard no smoke alarm going off at any time during their fire suppression efforts. (Kirin Depo., pp. 31, ln. 13; Streater Depo., pp. 19, ln. 22; Ryba Depo., pp. 17, ln. 23; Chapman Depo., pp. 15, ln. 24).

After the fire was extinguished, the State Fire Marshal's Office, the Lorain County Fire Investigative Unit, and Oberlin Fire Department conducted a thorough investigation of the fire scene. No smoke detector, or any part of a smoke detector mechanism, was ever recovered from the Danielle Moore's unit at 106 South Park Street. (Kirin Depo., pp. 70, ln. 10; Ryba Depo., pp. 28, ln. 18). Despite multiple interviews and a thorough investigation by the police and fire agencies involved, no neighbors or other witnesses to the fire have come forward with information suggesting that they heard a smoke alarm going off inside Danielle Moore's unit on the night of the fire. (Kirin Depo., pp. 32, ln. 22).

LMHA has not come forward with any documents to affirmatively establish that the smoke detector originally installed at 106 South Park Street on October 22, 1998, was still present on the October 19, 2003 date of the fire. (Verdin Depo., pp. 74, ln. 25). There is no information contained in any LMHA file, from any source whatsoever, indicating that any smoke detector allegedly located inside Danielle Moore's unit was working on the night of the fire. (Verdin Depo., pp. 87, ln. 23).

The obligation of the Lorain Metropolitan Housing Authority to comply with all applicable building, housing, and federal (HUD) regulations was acknowledged under oath by LMHA executive director, Homer Verdin (Verdin Depo., pp. 20, ln. 16). The Lorain Metropolitan Housing Authority had a responsibility, required by Ohio and Federal law, to provide an operable smoke detector and to ensure that it was in the unit occupied by the Danielle

Moore and her four children (Verdin Depo., pp. 20, ln. 22-25).

Pursuant to the lease agreement between Danielle Moore and the Lorain Metropolitan Housing Authority, as well as the requirements of the Ohio Landlord/Tenant Act, Appellant Lorain Metropolitan Housing Authority was required to provide a safe, habitable residence to Appellee Danielle Moore and her children. HUD regulations mandate that each apartment unit have an existing and operational smoke detector (Verdin Depo, pp. 14, ln. 7). The Department of Housing and Urban Development (HUD) has protocols requiring annual inspections which include the inspection and testing of smoke detectors (Verdin Depo., pp. 13, ln. 5; pp. 14, lns. 19-22). In addition to the HUD regulations, the Lorain Metropolitan Housing Authority had an inspection protocol to determine the operational status of each smoke detector. (Verdin Depo., pp. 14, ln. 19).

During the time of Homer Verdin's tenure as executive director of the Lorain Metropolitan Housing Authority, the smoke detectors in the Pagoda units were converted to hardwired smoke detectors (Verdin deposition, pp. 16, ln. 5). According to Mike Burnley, maintenance technician for the Lorain Metropolitan Housing Authority, it takes less than five (5) minutes to changing those smoke detectors when they are defective. (Burnley Depo., pp. 37, ln. 10). The smoke detectors utilized by the Lorain Metropolitan Housing Authority cost only \$6.98 each (Verdin Depo., pp. 74, ln. 9).

B. LMHA Protocols

The Lorain Metropolitan Housing Authority protocol for work orders in their Pagoda housing units required residents, or maintenance personnel, to call into the work order center to make up written work orders for any maintenance to be performed on the units. (Verdin Depo., pp. 50, 51). Based upon the protocol which Director Verdin permitted to remain in place, there

were situations in which maintenance personnel may have performed work at a particular unit and failed to create a work order designating additional follow-up work required to be performed at that same unit. (Verdin Depo., pp. 52). Typically, the maintenance person would advise the tenant to call the work order center directly to report a problem, even if the maintenance person was already in the unit for purposes of preparing a second work order for the new work that was to be performed. Occasionally, maintenance personnel might forget to request a separate work order for additional work, and that situation had been known to occur. (Verdin Depo., pp. 85, ln. 20-24). If the tenant relies on the worker, but the worker forgets regarding any separate work done at the site, there is no procedure in place to provide a work order or paper trail relating to the maintenance that was allegedly requested or performed at a particular housing unit (Verdin Depo., pp. 80). As a result of the institutional ambiguity contained in the policies and protocols permitted by Director Verdin, the work orders and the statements of maintenance staff were the only means by which the Lorain Metropolitan Housing Authority management could have become aware of the condition of the smoke detector in Danielle Moore's unit.

Danielle Moore received a document giving her notice that the Lorain Metropolitan Housing Authority intended to conduct HUD safety inspections between October 6 and October 8, 2003. (Moore Depo., pp. 98, ln. 3). According to Danielle Moore, in early October of 2003, the smoke detector in her unit began beeping for no apparent reason. (Moore Depo., pp. 100, ln. 3). Danielle Moore did not call anyone at the Lorain Metropolitan Housing Authority, because she knew the inspection was coming and figured she would tell the inspectors at that time. When the TIG inspector appeared, Danielle Moore informed him of the problem with the smoke detector and stated that it just kept beeping for no apparent reason. The inspector apparently pushed the button on the smoke detector and it stopped beeping. The inspector told

her that the smoke detector was okay, however, it started beeping again sometime thereafter. (Moore Depo., pp. 96, ln. 1-7).

On October 17, 2003, maintenance person Michael Burnley and another Lorain Metropolitan Housing Authority employee came to check the screens at Danielle Moore's unit at 106 South Park Street. (Moore Depo., pp. 101, ln. 15-18). Because the smoke detector had continued to beep, Danielle Moore informed Mr. Burnley that the smoke detector had a problem. In Danielle Moore's presence, the other Lorain Metropolitan Housing Authority employee asked Michael Burnley if he had a spare smoke detector on his truck. **Mr. Burnley took down the existing smoke detector, then checked his truck and told Danielle Moore that he did not have a spare smoke detector on his truck at that time. Lorain Metropolitan Housing Authority personnel assured Danielle Moore that Mr. Burnley would be back later that same day to install a new smoke detector.** (Moore Depo., pp. 103, ln. 1-12).

Unfortunately, the smoke detector removed by Michael Burnley, a Lorain Metropolitan Housing Authority employee, was **not** replaced prior to the fire a few days later that took the lives of two of Danielle Moore's four minor children.. Although Lorain Metropolitan Housing Authority records indicate that a smoke detector was installed at 106 South Park Street on October 22, 1998, no witness has come forward and no documents have been produced to affirmatively establish that the alleged smoke detector was functional and present on the October 19, 2003 date of the fire. (Verdin Depo., pp. 74, ln. 25).

C. The Evening of the Fire

On October 19, 2003, Danielle Moore prepared an evening meal and then watched a video with her four minor children—Dezirae Macarthy, D'Angelo Macarthy, Deilani Macarthy, and Jamar Moore (Moore Depo., pp. 118, ln. 5). Derek Macarthy—who is the biological father

of Deilani, Dezirae and D'Angelo—was visiting the family and shared the evening meal with them. (Macarthy Depo., pp. 71, ln. 3). After the children were put to bed, Danielle Moore left her unit to run an errand. Derek Macarthy stayed to baby sit the children while Danielle Moore was away. (Macarthy Depo. deposition, pp. 71, ln. 3-4). When Danielle Moore left her rental unit, Dezirae Macarthy was in the back living room of the unit, asleep in her crib, and the other children were in bed as well. (Macarthy Depo., pp. 74, ln. 12-13). Derek Macarthy was located on a couch in the living room (Macarthy Depo., pp. 75, ln. 25).

With Ms. Moore out running an errand and the children asleep, Derek Macarthy dozed off on the couch. (Macarthy Depo., pp. 72, ln. 17). At some point after he dozed off, intense heat, the smell of smoke, and the crackling of fire awaked Derek Macarthy. (Macarthy Depo., pp. 78, lns. 2-6). When he awoke, Derek Macarthy observed that Jamar Moore and Deilani Macarthy were standing right by the couch. (Macarthy Depo., pp. 78, ln 8-10). He immediately took those two children next door, where a neighbor called 911 (Macarthy Depo., pp. 78, ln 8-10).

Seconds later, when Derek Macarthy returned to Danielle Moore's unit, he could not get back inside because the whole pagoda unit was on fire. (Macarthy Depo., pp. 85, ln. 15). When Derek Macarthy tried to get back into the rental unit, he found that the flames were already in the living room where he had just been laying on the couch. (Macarthy Depo., pp. 85, ln. 24).

Derek Macarthy never heard a smoke alarm go off at Danielle Moore's unit at 106 South Park Street (Macarthy Depo., pp. 87, ln. 16). Because Derek Macarthy was awakened by the fire itself, and due to the lack of forewarning by a smoke alarm, he was unable to save his children D'Angelo and Dezirae Macarthy from the fire. (Macarthy Depo., pp. 81, ln. 23).

At the time of the fire, Danielle Moore was visiting a friend, Cinquay Thomas, at her home in the same neighborhood. (Moore Depo., pp. 120, ln. 16). While at Ms. Thomas' residence, Danielle Moore was informed by another neighbor that her home was on fire and that her children were trapped inside. (Moore Depo., pp. 120, ln. 16).

Fire investigators later determined that 4 year-old D'Angelo Macarthy started the fire and that the fire quickly spread throughout the rental unit. Firefighters who responded to the scene were unable to rescue Dezirae and D'Angelo Macarthy before they were killed by the fire.

ARGUMENT

Certified Conflict Question:

Whether operation of a public housing authority is a proprietary or governmental function?

Proposition of Law No. I:

Ownership and operation of a public housing facility is a proprietary function under Chapter 2744 of the Ohio Revised Code.

The ownership and operation of a residential public housing facility by LMHA is a “proprietary function” under the Political Subdivision Tort Liability Act, R.C. Chapter 2744, where LMHA voluntarily owns and operates the Pagoda units, and leases one such unit to Ms. Moore, which activities are customarily engaged in by nongovernmental private landlords. Moore v. Lorain Metro. Hous. Auth., 9th Dist. No. 06CA008995, 2007 Ohio 5111 at ¶¶ 10-21; see also Parker v. Dayton Metro. Hous. Auth. (May 31, 1996), 2nd Dist. No. 15556, 1996 Ohio App. LEXIS 2556; and

The legal conclusion that LMHA is engaged in a “propriety function,” as opposed to a “governmental function,” is not, in and of itself, dispositive of the question of LMHA’s liability in this case but merely allows the civil lawsuit filed by Ms. Moore for the wrongful death of her two minor children to proceed, pursuant to the statutory exception to immunity for political subdivisions set forth in R.C. 2744.02(B)(2).

R.C. 2744.02(B)(2) provides that:

Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to **proprietary functions** of the political subdivisions.

(Emphasis added). LMHA has **not** asserted in this case that any of the defenses set forth in R.C. 2744.03 are applicable.

A. Law concerning tort liability of political subdivisions in Ohio

Pursuant to R.C. 3735.50, a metropolitan housing authority such as LMHA created under R.C. 3735.27, *et seq.*, is a political subdivision of the State of Ohio. In accordance with R.C. 3735.31(A), a metropolitan housing authority is an entity which can “sue and be sued.”

The determination of whether such a political subdivision is immune from tort liability pursuant to the Political Subdivision Tort Liability Act, R.C. Chapter 2744, involves a three-tiered analysis. Colbert v. Cleveland (2003), 99 Ohio St. 3d 215, 2003 Ohio 3319, 790 N.E.2d 781 at ¶ 7, citing Greene Cty. Agricultural Soc. v. Liming, 89 Ohio St.3d 551, 556-557, 2000 Ohio 486, 733 N.E.2d 1141.

The first tier of the analysis is the general rule under R.C. 2744.02(A)(1) that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function. R.C. 2744.02(A)(1) provides that:

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 person 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.

However, by its express statutory terms, such immunity is not absolute. Cater v. Cleveland (1998), 843 Ohio St.3d 24, 28, 1998 Ohio 421, 697 N.E.2d 610.

The second tier of the analysis requires a determination of whether any of the five listed exceptions to immunity under R.C. 2744.02(B) apply. Cater v. Cleveland, *supra.* at 28.

If any of the exceptions to immunity set forth in R.C. 2744.02(B) are applicable and none of the defenses in that section protects the political subdivision from liability, then the third tier of the analysis requires determination of whether any of the defenses set forth in R.C. 2744.03 apply to provide the political subdivision a defense against liability. Colbert v. Cleveland, *supra.* at ¶ 9;

and Cater v. Cleveland, *supra.* at 28.

B. Law concerning “proprietary function” vs. “governmental function”

For purposes of R.C. Chapter 2744, “proprietary function” is defined under R.C.

2744.01(G) as follows:

(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.

Ohio appellate courts have held that various activities performed by political subdivisions,

whether specifically listed or not under R.C. 2744.01(G)(2), constitute proprietary functions.¹

¹ *See, e.g., Ryll v. Columbus Fireworks Display Co., Inc.* (2002), 95 Ohio St. 3d 467, 2002 Ohio 2584, 769 N.E.2d 372 (sponsorship by political subdivisions of a fireworks display is a proprietary function); *Greene Cty. Agricultural Soc. v. Liming* (2000), 89 Ohio St.3d 551, 556-557, 2000 Ohio 486, 733 N.E.2d 1141 (the conducting of a livestock competition at a county fair by a county agricultural society, which is a political subdivision, is a proprietary function); Hill

For purposes of R.C. Chapter 2744, “governmental function” is defined under R.C.

2744.01(C)(1) as follows:

“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.

R.C. 2744.01(C)(2) sets forth a list of governmental functions. R.C. 2744.01(C)(2)(x) expressly provides that a “governmental function” includes “a function that the general assembly mandates a political subdivision to perform.” (Emphasis added).

In conducting its statutory analysis under R.C. 2744.01(C)(1) and (G)(1) in Green County Agric. Soc’y v. Liming, *supra*, this Court referred to earlier cases to illustrate the rationale behind the General Assembly’s governmental/proprietary distinction with respect to tort immunity for political subdivisions:

For example, in *Wooster v. Arbenz* (1927), 116 Ohio St. 281, 284-285, 156 N.E. 210, 211-212, a case considering the immunity of a municipality, this court stated:

v. Urbana (1997), 79 Ohio St. 3d 130; 1997 Ohio 400; 679 N.E.2d 1109, syllabus at paragraph two (the installation of water lines, equipment, and other materials which are a necessary part of a municipal corporation water supply system is a proprietary function of a political subdivision); Keytack v. Warren, 11th Dist No. 2005-T-0152, 2006 Ohio 5179, Malone v. Chillicothe, 4th Dist. No. 05CA2869, 2006 Ohio 3268, and Hedrick v. City of Columbus (Mar. 30, 1993), 10th Dist. Nos. 92AP-1030 and 92AP-1031, 1993 Ohio App. LEXIS 1874, at *12, and Duvall v. Akron, (Nov. 6, 1991), 9th Dist. No. 15110, 1991 Ohio App. LEXIS 5381 (negligent repair or upkeep of a sewer is an actionable proprietary function).

“In performing those duties which are imposed upon the state as **obligations of sovereignty**, such as protection from crime, or fires, or contagion, or preserving the peace and health of citizens and protecting their property, * * * the function is governmental, and if the municipality undertakes the performance of those functions, whether voluntarily or by legislative imposition, the municipality becomes an arm of sovereignty and a governmental agency and is entitled to * * * immunity * * *. If, on the other hand, there is no obligation on the part of the municipality to perform them, but it does in fact do so for the comfort and convenience of its citizens * * * and the city has an election whether to do or omit to do those acts, the function is private and proprietary.

Another familiar test is whether the act is for the common good of all the people of the state, or whether it relates to special corporate benefit or profit.”

The *Wooster* court expounded that "if the function being exercised is proprietary and in pursuit of private and corporate duties, for the particular benefit of the [municipal] corporation and its inhabitants, as distinguished from those things in which the whole state has an interest, the city is liable." 116 Ohio St. at 284, 156 N.E. at 211.

When a political subdivision's acts go beyond governmental functions (and when it acts in a proprietary nature) there is little justification for affording immunity to that political subdivision. "Having entered into activities ordinarily reserved to the field of private enterprise, a [political subdivision] should be held to the same responsibilities and liabilities as are private citizens." *Schenkolewski v. Cleveland Metroparks Sys.* (1981), 67 Ohio St. 2d 31, 37, 21 Ohio Op. 3d 19, 24, 426 N.E.2d 784, 788.

Green County Agric. Soc’y v. Liming, *supra.* at 557-59. (Emphasis added).

C. LMHA’s ownership and operation of a public housing facility is a “proprietary function” and not a “governmental function” under R.C. Chapter 2744

Applying the statutory analysis under R.C 2744.01(C)(1) and (G)(1), the ownership and operation of a public housing facility by a metropolitan housing authority is clearly a proprietary function and ***not*** a governmental function.

The ownership and operation of a public housing facility, or any other real property for lease to private tenants, by LMHA is ***not*** specified as a governmental function under R.C. 2744.01(C)(2). *See* R.C. 2744.01(G)(1)(a). Nor is the ownership and operation of a public

housing facility, or any other real property for lease to private tenants, by LMHA an “obligation of sovereignty.” See Green County Agric. Soc’y v. Liming, supra at 557-59 (listing several examples of obligations of sovereignty). Such ownership and operation by LMHA is not mandated by the General Assembly pursuant to R.C. 3735.27 through R.C. 3735.50, which statutes govern the creation, dissolution, powers, and obligations of metropolitan housing authorities in Ohio. Indeed, the express language of both R.C. 3735.27 and 3735.39 indicates that the creation of a metropolitan housing authority is itself discretionary with the director of development and that, upon application by metropolitan housing authority for authority to dissolve, the director of development may grant said application and take possession and dispose of all property belonging to the authority. R.C. 3735.31 provides only that a metropolitan housing authority may acquire, lease, and manage a public housing facility. Thus, LMHA’s ownership and operation of a public housing facility is not an “obligation of sovereignty” under R.C. 2744.01(C)(1)(a), but rather a voluntary obligation which LMHA has elected to take on. See R.C. 2744.01(G)(1)(a).

The ownership and operation of a public housing facility, or any other real property for lease to private tenants, by LMHA is also not “a function that is for the common good of all citizens of the state” under R.C. 2744.01(C)(1)(b). See R.C. 2744.01(G)(1)(a). Rather, the Pagoda units owned and operated by LMHA benefit only that very limited portion of the state population that resides in the City of Oberlin, Ohio and qualifies to live there on the basis of income. See Green County Agric. Soc’y v. Liming, supra. at 557-59.

Finally, the ownership and operation of a public housing facility, or any other real property for lease to private tenants, by LMHA is clearly a function that “promotes or preserves the public peace, health, safety, or welfare and that involves activities that are engaged in or

customarily engaged in by nongovernmental persons,” i.e. private landlords. *See* R.C. 2744.01(C)(1)(c) and (G)(1)(b). Indeed, as the Ninth District Court noted in its decision and journal entry below:

Like tenants in a private rental relationship with a private landlord, Appellant signed a lease agreement with LMHA. The agreement contained the same types of terms as those contained in private lease agreements including a lease term, Appellant's obligations with regard to utilities, occupancy terms, and LMHA's obligations with regard to the apartment.

Moore v. Lorain Metro. Hous. Auth., *supra* at ¶ 20. The facts of LRL Properties v. Portage Metro. Hous. Auth. (Dec. 17, 1999), 11th Dist. No. 98-P-0070, 1999 Ohio App. LEXIS 6130, in which plaintiff-appellant was the private owner of a large-scale low income housing project whose tenants participated in rent subsidy programs administered by the Portage Metropolitan Housing Authority, further demonstrate that the ownership and operation of housing for lease to low-income persons is indeed engaged in by nongovernmental landlords.

“A municipal corporation which, while performing a proprietary function within its corporate powers, leases its property to an individual for a consideration, creates the legal relation of landlord and tenant, and the city is possessed of the right, immunities and liabilities of a landlord.” Chupek v. Akron, (9th Dist. 1951), 89 Ohio App. 266, 269-70, 101 N.E.2d 245; *see also* Callahan v. Arnett (Sept 29, 1980), 2nd Dist. No. 6621, 1980 Ohio App. LEXIS 9919 at *8-9.(stating that a municipal corporation’s ownership of an airport, and leasing of space to tenants at that airport, were proprietary, rather than governmental functions). “A municipality, insofar as it acts in a proprietary capacity, possesses the same rights and powers and is subject to the same restrictions and regulations as other like proprietors.” State ex rel. White v. Cleveland (1932), 125 Ohio St. 230, 181 N.E. 24, paragraph one of the syllabus (concerning the leasing of a public hall to private parties).

In correctly concluding that “ownership and operation of a public housing facility is a proprietary function,” the Ninth District Court was persuaded by the well-reasoned decision of the Second District Court in Parker v. Dayton Metro. Hous. Auth. (May 31, 1996), 2d Dist. No. 15556, 1996 Ohio App. LEXIS 2556. In Parker, supra. at *7, the Second District Court engaged in an almost identical analysis as that set forth above to reach the legal conclusion that “on the basis of the criteria set out in R.C. 2744.01(C)(1) and (G)(1), ownership and operation of a residential public housing facility is *not* a ‘governmental function’ but a ‘proprietary function’”

D. The cases relied upon by LMHA are inapposite to the statutory analysis determination of whether ownership and operation of a public housing facility is a proprietary or governmental function.

In the allegedly conflicting decisions of Country Club Hills Homeowners Assn. v. Jefferson Metro Housing Auth. (7th Dist. 1981), 5 Ohio App. 3d 77, 449 N.E.2d 460, and Rhoades v. Cuyahoga Metro. Hous. Auth. (Feb. 10, 2005), 8th Dist. No. 84439, 2005 Ohio 505, which are relied upon by LMHA in this case, neither the Seventh District Court nor the Eighth District Court relied on the definitional provisions of R.C. 2744.01(C)(1) and (G)(1) to reach their determinations that ownership and operation of a residential public housing facility by a metropolitan housing authority was somehow a governmental function. In essence, the Seventh and Eighth District Courts simply assumed that ownership and operation of a public housing facility was a governmental function, without any significant legal analysis under R.C. Chapter 2744 to support that conclusion. Therefore, those two cases are legally distinguishable from the decision of the Ninth District Court in the instant case.

Both Country Club Hills Homeowners Assn., supra., and Rhoades, supra., are also factual distinguishable from the instant case. In Country Club Hills Homeowners Assn., the Seventh District Court addressed a taxpayer suit brought for the purpose of obtaining an

injunction against the Jefferson Metropolitan Housing Authority (JMHA) to prevent the JMHA from commencing construction of low-income housing in the City of Steubenville. The question of tort immunity of political subdivisions under R.C. Chapter 2744 was not at issue and was not even addressed in that case. In Rhoades, the Eight District Court considered a case in which a resident of the Cuyahoga Metropolitan Housing Authority (CMHA) filed a complaint against CMHA, under §1983 and 2000e of Title 42 of the United States Code seeking compensation for alleged injuries caused by his arrest on charges that he used a telephone to harass CMHA staff. The trial court granted summary judgment in favor of CMHA, primarily on grounds that the resident failed to demonstrate any facts other than his exoneration on the criminal charges which would entitle him to relief. The Eighth District Court affirmed after providing a very limited analysis of CMHA's claims of immunity under R.C. §2744.02(B).

In the allegedly conflicting decision of McCloud v. Nimmer (8th Dist. 1991), 72 Ohio App. 3d 533, 595 N.E.2d 492, which is relied upon by LMHA in this case, the Eighth District Court undertook the governmental vs. proprietary functions analysis only with respect to the City of Cleveland's training of its police officers, which was obviously a governmental function. McCloud, supra at 536-39. Although the plaintiff-appellees lived in a Cuyahoga Metropolitan Housing Authority (CMHA) unit, they did not name the CMHA as a defendant in their action against an off-duty Cleveland Police Officer for the accidental shooting and his employer, the City of Cleveland, for negligent training of its police officers. Thus, the question of whether the ownership and operation of a public housing facility constituted a governmental or proprietary function under R.C. Chapter 2744 was never at issue before the trial or appellate courts. The trial court granted summary judgment in favor of the City of Cleveland on grounds of immunity under R.C. 2744.02(A), which judgment was affirmed on appeal.

The federal case of Cuyahoga Metropolitan Housing Authority v. City of Cleveland (N.D. Ohio, 1972) 342 F.Supp. 250, 65 Ohio Ops. 2d 227, which is relied upon by LMHA, also did ***not*** undertake the governmental vs. proprietary functions analysis or even address the issue of political subdivision immunity under R.C. Chapter 2744. Indeed, the case was decided thirteen years before the General Assembly enacted the current version of the Political Subdivision Tort Liability Act, R.C. Chapter 2744, in 1985.

In the allegedly conflicting decision of Jones v. Lucas Metro. Hous. Auth. (Aug. 29, 1997), 6th Dist. No. L - 96 - 212, 1997 Ohio App. LEXIS 3807, the parties actually agreed at the trial court level that the operation by the Lucas Metropolitan Housing Authority of plaintiff-appellants' housing complex was a governmental function. Jones, supra. at *7, fn 2. On appeal of the trial court's decision granting summary judgment to the Housing Authority on grounds of statutory immunity under R.C. 2744.02(A), the Sixth District Court—expressly relying upon the Seventh District Court's decision in Country Club Hills Homeowners Assn., supra.—found “**preliminarily** that LMHA's ownership and operation of a subsidized housing complex falls into the class of those activities described in R.C. §2744.02(C)(1) & (2) and therefore constitutes a governmental function as a matter of law.” (Emphasis added). However, the Jones court reversed and remanded judgment of the trial court on grounds that the exception to statutory immunity under R.C. 2744.02(B)(4) might be applicable.

Furthermore, Judge Sherck of the Sixth District Court wrote a concurrence in the Jones case stating that:

I concur with the majority in its decision to reverse and remand. However, I disagree with the majority's analysis in this matter. LMHA is a landlord. As such, it is involved in an activity which is customarily engaged in by nongovernmental persons. Moreover, even though LMHA may be a governmental entity, being a landlord is not one of the statutorily defined "governmental functions." Consequently, I agree with the opinion of the Second District Court of Appeals

which held that, " *** ownership of and operation of a residential public housing facility is not a 'governmental activity' but a 'proprietary function' *** " subject to the same liability for civil wrongs as any other landlord. *Parker v. Dayton Metro. Housing Auth.* (May 31, 1996), 1996 Ohio App. LEXIS 2556, Montgomery App. No. 15556, unreported. See, also, R.C. 2744.02(B)(2).

Thus, the concurring opinion agreed with the position of Ms. Moore in this case, which has been adopted by both the Second District in Parker, supra., and the Ninth District Court herein, that the operation ownership of and operation of a residential public housing facility is a "proprietary function" and that the statutory exception to tort immunity of political subdivisions under R.C. 2744.02(B)(2) is therefore applicable.

As the foregoing demonstrates, none of the allegedly conflicting cases relied upon by LMHA clearly and unequivocally support its position that ownership and operation of a residential public housing facility is somehow a "governmental function," rather than a "proprietary function" as determined by both the Ninth District and Second Courts in their thorough statutory analysis of that issue under R.C. 2744.01(C) and (G).

E. Summation of proprietary vs. governmental function analysis.

Outside of Ohio, the case of In re World Trade Ctr. Bombing Litig. (2004), 3 Misc.3d 440, 776 N.Y.S. 2d 713, hauntingly illustrates the correctness of Ms. Moore's position that LMHA and other metropolitan housing authorities are engaged in a proprietary function when they voluntarily choose to act as landlords by owning and operating housing facilities for lease to tenants. The action involved over one hundred seventy-five (175) consolidated cases by tenants alleging negligence on the part of the Port Authority of New York and New Jersey, as owners of the World Trade Center, arising from the terrorist truck bombing of that famous commercial office space complex on February 26, 1993. The trial court noted that "[i]t well settled that when a public entity acts in a proprietary capacity as a landlord, it is subject to ordinary tort

liability.” In re World Trade Ctr. Bombing Litig., *supra.* at 460-61, citing Miller v. State of New York (1984), 62 N.Y.2d 506, 511-12, 467 N.E.2d 493, 478 N.Y.S. 2d 829, and Price v. New York City Hous.Auth. (1998), 92 N.Y.2d 553, 557-58, 706 N.E.2d 1167, 684 N.Y.S. 2d 143. However, the same public entity remains immune from negligence claims arising out of its government functions, such as providing police protection. *Id.*, citing Weiner v. Metropolitan Transp. Auth. (1982), 55 N.Y.2d 175, 433 N.E.2d 124, 448 N.Y.S.2d 141 Miller v. State of New York, 62 N.Y.2d at 510; and Price v. New York City Hous.Auth., 92 N.Y.2d at 557-58. The trial court denied the Port Authority’s motion for summary judgment, where the negligent acts alleged by the plaintiffs involved the Port Authority’s proprietary functions as a landlord in failing to adopt recommended security measures for the underground parking garage and where the threat of a terrorist bombing was arguably foreseeable based on studies commission by the Port Authority itself.

If the General Assembly had intended the ownership and operation of a residential public housing facility to be governmental functions, then it would have expressly listed those activities under R.C. 2744.01(C)(2) as being governmental functions or, at the very least, made the language of R.C. 3735.27 through R.C. 3735.50 mandatory so that such activities by a metropolitan housing authority qualified as governmental functions pursuant the R.C. 2744.01(C)(2)(x). By failing to do so, the General Assembly clearly did *not* intend for such functions by a metropolitan housing authority to constitute governmental function.

Based on the foregoing analysis, the Ninth District Court of Appeals correctly concluded that the ownership and operation of a public housing facility by a metropolitan housing authority such as LMHA is a proprietary function. The exception to political subdivision tort immunity under R.C. 2744.02(B)(2) therefore applies to the wrongful death action in the instant case.

Thus, the Ninth District Court of Appeals decision and journal entry, reversing the trial court's grant of summary judgment to LMHA on grounds of statutory immunity and remanding this case for further proceedings, must be affirmed.

Proposition of Law No. II:

The exception to political subdivision immunity under R.C. 2744.02(B)(5) applies, where a metropolitan housing authority is created and chooses to function as the landlord.

In the event that the ownership and operation of a public housing facility by a metropolitan housing authority is deemed to be a governmental function, the exception to political subdivision immunity under R.C. 2744.02(B)(5) applies where that metropolitan housing authority has voluntarily chosen to function as the landlord in a landlord-tenant relationship like that of LMHA and Ms. Moore in the instant case.

R.C. 2744.02(B)(5) provides that:

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 person or property when civil 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. Civil 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 a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(Emphasis added).

By virtue of its ownership and operation of the Pagodas facility in the City of Oberlin, Ohio, and its leasing of a residential premises to Ms. Moore as a tenant, LMHA was her "landlord," as defined in R.C. 5321.01(B), and therefore subject to the requirements of both Ohio's Landlord/Tenant Act, R.C. Chapter 5321, and R.C. 3735.40, which sets forth definitions

regarding housing projects. As the Ninth District Court noted in its decision and journal entry below:

Like tenants in a private rental relationship with a private landlord, [Ms. Moore] signed a lease agreement with LMHA. The agreement contained the same types of terms as those contained in private lease agreements including a lease term, [Ms. Moore]'s obligations with regard to utilities, occupancy terms, and LMHA's obligations with regard to the apartment.

Moore v. Lorain Metro. Hous. Auth., *supra* at ¶ 20.

Housing projects, and other rental units owned and operated by a metropolitan housing authority, are ***not*** among those specifically excluded from the definition of “residence premises” under R.C. 5321.01(C) of the Landlord/Tenant Act. Ohio courts have implicitly found the requirements under R.C. Chapter 5321 to be applicable to metropolitan housing authorities which have chosen to function as landlords. *See Robinson v. Akron Metro. Hous. Auth.* (Aug. 1, 2001), 9th Dist. No. 20405, 2001 Ohio App. LEXIS 3374; Portage Metropolitan Housing Authority v. Brown (11th Dist. 1990), 66 Ohio App.3d 737, 586 N.E.2d 168; and Straughter v. Stark Metro. Housing Authority (June 1, 1992), 5th Dist. No. CA-8696, 1992 Ohio App. LEXIS 2995; and Wayne Metro. Hous. Auth. (Oct. 18, 1988), 9th Dist. Nos. 2369, 2403, 1988 Ohio App. LEXIS 4052.

R.C. 5321.04(A)(4) requires that a landlord such as LMHA to “[m]aintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him[.]”

R.C. 5321.04(A)(1) requires a landlord to comply with the requirements of all applicable housing, building, health and safety codes. O.A.C. 4101:2-89-04 states that smoke detectors are required within private areas. O.A.C. 4101:2-89-04(A) provides, in part, that “[e]ach dwelling unit, apartment, and condominium unit shall have at least one smoke detector installed in the

immediate vicinity but outside of all sleeping rooms." Homer Verdin, the executive director of LMHA, further admitted that the requirement to provide smoke detectors also comes to LMHA through the United States Department of Housing and Urban Development (HUD). Housing and Urban Development Multi-Family Asset Management and Project Servicing Directive, Number 4350.1, §35-1 through §35-5.

In order to impose liability, R.C. 5321.04 requires that a landlord receive notice of a defective condition in order to be liable. Moore v. Lorain Metro. Hous. Auth., *supra* at ¶ 24, citing Robinson, 2001 Ohio App. LEXIS 3374 at *59. However, where a landlord has been placed on notice of the defective condition, the tenant's continued occupancy of the rental premises does not constitute a waiver of the landlord's duty to maintain the premises as required by R.C. 5321.04 or a waiver of the tenant's right to recover for damages resulting from the landlord's breach of duty. Miller v. Ritchie (1989), 45 Ohio St. 3d 222, 543 N.E.2d 1265, syllabus at paragraph two.

In the instant case, there was evidence that Danielle Moore informed LMHA and its agents or employees of a problem with her smoke detector. (Moore Depo., pp. 96-103). On or about October 17, 2003, some two days before the fire, LMHA maintenance person Michael Burnley and another LMHA employee visited Ms. Moore's unit and removed that defective smoke detector, but did not replace it with another smoke detector that same day as promised. (Moore. Depo., pp. 101-103). Thus, there was evidence that LMHA had notice of the defective condition so as to impose liability in this case.

The case of Thompson v. Bagley, 3rd Dist. No. 11-04-12, 2005 Ohio 1921, is analogous to instant case in that a political subdivision subjected itself to liability under an Ohio statute by voluntarily choosing to operate a public facility or accommodation. In Thompson, a child

drowned in a swimming pool operated by the defendant-appellee school district during a supervised gym activity. The Third District Court found that there were questions of fact concerning the negligence of the political subdivision employees regarding the incident, which occurred on property owned by the employer, pursuant to R.C. 2744.02(B)(4). The Court further noted that O.A.C. 3701-31 and R.C. 3749.02 established mandatory rules and regulations applicable to the maintenance and operation of public swimming pools. Those provisions operated to assign liability to political subdivisions which chose to operate a public swimming pool.

Contrary to LMHA's argument that, under the principle of *ejusdem generis*, the examples of R.C. 2743.02 and R.C. 5591.37 listed in the language of R.C. §2744.02(B)(5) somehow limit that exception to immunity only to similar statutes imposing civil liability, the General Assembly clearly used the statutory language "**including, but not limited to**, sections 2743.02 and 5591.37 of the Revised Code[.]" in R.C. §2744.02(B)(5). (*See* Merit Brief of Appellant Lorain Metropolitan Housing Authority, pp. 9-10.) Such statutory language is expansive, rather than limiting, in its scope and denotes the General Assembly's intention to set forth a non-exhaustive list of examples. *See State v. Muncie* (2001), 91 Ohio St.3d 440, 448, 2001 Ohio 93, 746 N.E.2d 1092 (the phrase "including, but not limited to" precedes a nonexhaustive list of examples). Thus, it cannot be said that a section of the Revised Code which expressly imposes civil liability upon the political subdivision must do so in the same express terms as either R.C. 2743.02 or R.C. 5591.37 in order for the exception to political subdivision immunity under R.C. §2744.02(B)(5) to apply.

Nonetheless, the voluntary entry of a metropolitan housing authority into a landlord-tenant relationship like that of LMHA and Ms. Moore further constitutes a "special relationship"

under R.C. 2743.02(A)(3)(b), which relationship waives its statutory immunity for nonperformance of its duties or obligations as a landlord.

By choosing to function as a landlord, LMHA assumed affirmative obligations to Ms. Moore and its other tenants under R.C. 5321.04. *See* R.C. 2743.02(A)(3)(b)(i). There was knowledge on the part of LMHA and its agents or employees that inaction could lead to harm, where Mr. Verdin, as executive director of LMHA, acknowledged the obligation of LMHA to provide operational smoke detectors for each unit and inspect those smoke detectors periodically to ensure they were operational. (Verdin Depo. 13-14, 20). *See* R.C. 2743.02(A)(3)(b)(ii). In the days before the October 19, 2003 fire, Ms Moore had direct contact with LMHA maintenance employees concerning defects with her unit's smoke detector. (Moore Depo. 96-103). *See* R.C. 2743.02(A)(3)(b)(iii). Furthermore, Ms. Moore justifiably relied on LMHA's affirmative undertaking to inspect, and its promise to replace, her defective smoke detector. (Moore Depo. 101-103). *See* R.C. 2743.02(A)(3)(b)(iv).

Based on the foregoing analysis, the Ninth District Court of Appeals correctly concluded the exception to political subdivision immunity under R.C. 2744.02(A)(5) was applicable. Thus, the Ninth District Court of Appeals decision and journal entry, reversing the trial court's grant of summary judgment to LMHA on grounds of statutory immunity and remanding this case for further proceedings, must be affirmed.

Proposition of Law No. III:

If the ownership and operation of a residential public housing facility by a political subdivision is determined to be a governmental function, then exception to political subdivision immunity under R.C. 2744.02(B)(4) for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of that governmental function is applicable to such an occurrence at residential public housing units.

In the event that the ownership and operation of a public housing facility by a metropolitan housing authority such as LMHA is deemed to be a governmental function, the exception to political subdivision immunity under R.C. 2744.02(B)(4) is applicable in this case.

R.C. 2744.02(B)(4) provides that:

Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects 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.

(Emphasis added).

In Hubbard v. Canton City Sch. Bd. of Educ. (2002), 97 Ohio St. 3d 451, 2002 Ohio 6718, 780 N.E.2d 543, syllabus, this Court specifically interpreted R.C. 2744.02(B)(4) stating:

The exception to political-subdivision immunity in R.C. 2744.02(B)(4) applies to all cases where an injury resulting from the negligence of an employee of a political subdivision occurs within or on the grounds of buildings that are used in connection with the performance of a governmental function.

In so doing, this Court applied its long-standing rule concerning statutory interpretation that "where the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom."

Hubbard, supra at ¶14.

In the instant case, it is undisputed Ms. Moore's rental unit within the Pagodas, which was located at 106 South Park Street in the City of Oberlin, Ohio, was owned by LMHA. (Verdin deposition, pp. 20). Danielle Moore testified under oath that she personally observed Mike Burnley, a maintenance employee of LMHA, remove the smoke detector from her rental unit on or about October 17, 2003 and fail to replace that smoke detector the same day as promised by LMHA. (Moore deposition, pp. 101-03). Another smoke detector was never installed prior to the fire on October 19, 2003 which killed two of Ms. Moore's four minor children. No smoke detector, or any part of a smoke detector mechanism, was ever recovered by firefighters or post-fire investigators from the Danielle Moore's rental unit at 106 South Park Street. (Kirin Depo., pp. 70, ln. 10; Ryba Depo., pp. 28, ln. 18). Thus, the exception to political subdivision immunity under R.C. 2744.02(B)(4) is clearly applicable with respect to the negligence of LMHA agents or employees in this wrongful death case.

Although argued by the parties in their respective appellate briefs, the Ninth District Court did not address this issue below. Moore v. Lorain Metro. Hous. Auth., supra at ¶ 20. However, in granting summary judgment to LMHA, the trial court erroneously determined that R.C. 2744.02(B)(4) was inapplicable on grounds that a residential public housing facility was not sufficiently similar to the specifically listed examples of office buildings and courthouses as "buildings that are used in connection with the performance of a governmental function." Contrary to the trial court's incorrect analysis and LMHA's argument in this case, the exception to political subdivision immunity set forth R.C. 2744.02(B)(4) is unambiguous and expressly applies with respect to all "buildings that are used in connection with the performance of a governmental function" with specified exception of "jails, places of juvenile detention,

workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.” (See Merit Brief of Appellant Lorain Metropolitan Housing Authority, pp. 11-16). As previously noted, the statutory language “**including, but not limited to**” set forth in R.C. 2744.02(B)(4) is expansive, rather than limiting, in its scope and denotes the General Assembly’s intention to set forth a non-exhaustive list of examples. See State v. Muncie (2001), 91 Ohio St.3d 440, 448, 2001 Ohio 93, 746 N.E.2d 1092 (the phrase “including, but not limited to” precedes a nonexhaustive list of examples). Thus, it cannot be said that R.C. §2744.02(B)(4) applies only with respect to office buildings and courthouses, or to similar such buildings, and not to residential public housing units.

In Spencer v. Lakeview School District, 11th Dist. No. 2002-T-0175, 2004 Ohio 5303, the plaintiff-appellant parents sued the defendant-appellee school district, alleging negligent supervision and wrongful death claims associated with the death of their child following an asthma attack in gym class. Because the alleged negligence occurred on school property in a building used in connection with a governmental function, the Eleventh District Court determined that R.C. 2744.02(B)(4) applied and therefore reversed the trial court’s judgment granting summary judgment in favor of the school district on the basis of statutory immunity. Clearly, a school gym is ***not*** the same or similar to an office building or courthouse

In Jones v. Lucas Metro. Hous. Auth. (Aug. 29, 1997), 6th Dist. No. L-96-212, 1997 Ohio App. LEXIS 3807—which is one of the four cases that LMHA successfully moved to have certified to this court as being in conflict with the decision and journal of the Ninth District Court below—the Sixth District Court actually agreed with the position of Ms. Moore in this case that R.C. 2744.02(B)(4) is applicable. Specifically, in its decision reversing the trial court’s judgment that erroneously granted summary judgment to the Lucas Metropolitan Housing

Authority on grounds of statutory immunity and remanding the case for further proceedings, the

Jones court determined that:

***[T]he provisions of R.C. 2744.01 and R.C. 2744.02 are not ambiguous and, therefore, principles of statutory construction are not applicable. Accordingly, based on our earlier finding that appellee's operation of subsidized housing is a governmental function, it follows that a defect such as a damaged lock in a subsidized apartment building might provide the basis for a claim for damages resulting from the existence of such defect. However, pursuant to R.C. 2744.02(B)(4), appellants must also demonstrate that their loss resulted from the negligence of appellee's employees in order for the exception to governmental immunity to apply to appellee.

Jones, 1997 Ohio App. LEXIS 3807 at *12-13.

In the factually and legally analogous case of Cobos v. Dona Ana County Hous. Auth. (1998), 126 N.M. 418, 970 P.2d 1143, the New Mexico Supreme Court reversed the decision of the court of appeals, which affirmed the dismissal of a wrongful death lawsuit filed by plaintiff-appellant low-income residents against the defendant-appellee housing authority on the basis of governmental immunity. The New Mexico Supreme Court held that the statutory "building waiver" under New Mexico law, which is analogous to the exception to political subdivision immunity under R.C. 2744.02(B)(4), and that defendant-appellee's employees owed a duty of care to plaintiff-appellants in the maintenance of plaintiff-appellants' home as part of their control of the housing project.

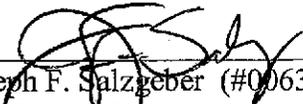
Based on the foregoing analysis, the exception to political subdivision immunity under R.C. 2744.02(A)(5) is clearly applicable in this case. Thus, the Ninth District Court of Appeals decision and journal entry, reversing the trial court's grant of summary judgment to LMHA on grounds of statutory immunity and remanding this case for further proceedings, must be affirmed.

CONCLUSION

Based on the foregoing analysis of all three propositions of law, Ms. Moore respectfully urges this Court to rule that, pursuant to R.C. 2744.01(C)(1) and (G)(1), the ownership and operation of residential public housing facility by a metropolitan housing authority is a propriety function and the exception to political subdivision tort immunity under R.C. 2744.02(B)(2) is therefore applicable given the facts of this case. In the event that this Court determines the ownership and operation of residential public housing facility by a metropolitan housing authority to be a governmental function, Ms. Moore respectfully urges this Court to rule that the exceptions to political subdivision tort immunity under both R.C. 2744.02(B)(4) and (B)(5) are applicable given the facts of this case.

Ms. Moore further requests that this Court affirm the decision and journal entry of the Ninth District Court of Appeals reversing the judgment of the trial court, which erroneously granted summary judgment to LMHA on immunity grounds, and remanding the case back to the trial court for further proceedings.

Respectfully submitted,



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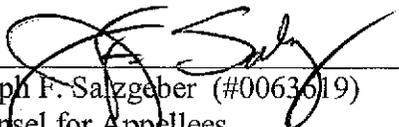
CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing *Merit Brief of Appellees Danielle Moore, et al.* were served by ordinary U.S. mail on this 18th day of June, 2008, upon the following:

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APPENDIX

A

ORC Ann. 2743.02

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2743. COURT OF CLAIMS
STATE LIABILITY

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ORC Ann. 2743.02 (2008)

§ 2743.02. State waiver of immunity; civil action against state officer or employee

(A) (1) The state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 [3737.22.1] of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

(3) (a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

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(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

(iii) Some form of direct contact between the state's agents and the injured party;

(iv) The injured party's justifiable reliance on the state's affirmative undertaking.

(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals owned or operated by political subdivisions which have been determined by the supreme court to be subject to suit prior to July 28, 1975.

(C) Any hospital, as defined in section 2305.113 [2305.11.3] of the Revised Code, may purchase liability insurance covering its operations and activities and its agents, employees, nurses, interns, residents, staff, and members of the governing board and committees, and, whether or not such insurance is purchased, may, to such extent as its governing board considers appropriate, indemnify or agree to indemnify and hold harmless any such person against expense, including attorney's fees, damage, loss, or other liability arising out of, or claimed to have arisen out of, the death, disease, or injury of any person as a result of the negligence, malpractice, or other action or inaction of the indemnified person while acting within the scope of the indemnified person's duties or engaged in activities at the request or direction, or for the benefit, of the hospital. Any hospital electing to indemnify such persons, or to agree to so indemnify, shall reserve such funds as are necessary, in the exercise of sound and prudent actuarial judgment, to cover the potential expense, fees, damage, loss, or other liability. The superintendent of insurance may recommend, or, if such hospital requests the superintendent to do so, the superintendent shall recommend, a specific amount for any period that, in the superintendent's opinion, represents such a judgment. This authority is in addition to any authorization otherwise provided or permitted by law.

(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.

(E) The only defendant in original actions in the court of claims is the state. The state may file a third-party complaint or counterclaim in any civil action, except a civil action for two thousand five hundred dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. The officer or employee may participate in the immunity determination proceeding before the court of claims to determine whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or

A2

employee is entitled to personal immunity under section 9.86 of the Revised Code.

(G) Whenever a claim lies against an officer or employee who is a member of the Ohio national guard, and the officer or employee was, at the time of the act or omission complained of, subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 2671, et seq., then the Federal Tort Claims Act is the exclusive remedy of the claimant and the state has no liability under this section.

(H) If an inmate of a state correctional institution has a claim against the state for the loss of or damage to property and the amount claimed does not exceed three hundred dollars, before commencing an action against the state in the court of claims, the inmate shall file a claim for the loss or damage under the rules adopted by the director of rehabilitation and correction pursuant to this division. The inmate shall file the claim within the time allowed for commencement of a civil action under section 2743.16 of the Revised Code. If the state admits or compromises the claim, the director shall make payment from a fund designated by the director for that purpose. If the state denies the claim or does not compromise the claim at least sixty days prior to expiration of the time allowed for commencement of a civil action based upon the loss or damage under section 2743.16 of the Revised Code, the inmate may commence an action in the court of claims under this chapter to recover damages for the loss or damage.

The director of rehabilitation and correction shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this division.

History:

135 v H 800 (Eff 1-1-75); 136 v H 682 (Eff 7-28-75); 136 v H 1192 (Eff 1-30-76); 136 v H 82 (Eff 9-29-76); 137 v H 149 (Eff 2-7-78); 138 v S 76 (Eff 3-13-80); 142 v H 267 (Eff 10-20-87); 143 v H 111 (Eff 7-1-89); 145 v S 172 (Eff 9-29-94); 149 v S 115 (Eff 3-19-2003); 149 v S 281. Eff 4-11-2003; 150 v H 95, § 1, eff. 9-26-03; 150 v H 316, § 1, eff. 3-31-05; 151 v H 25, § 1, eff. 11-3-05.

A3

ORC Ann. 2744.01

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
 CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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ORC Ann. 2744.01 (2008)

§ 2744.01. Definitions

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 [3319.30.1] 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;

A4

(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 job and family 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

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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 school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(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) (i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) 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

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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, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 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 [713.23.1] 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 [307.05.2] of the Revised Code, fire and ambulance district created pursuant to section 505.375 [505.37.5] 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 [343.01.2] of the Revised Code, community school established under Chapter 3314. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(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.

A7

(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.

History:

141 v H 176 (Eff 11-20-85); 141 v H 205, § 1 (Eff 6-7-86); 141 v H 205, § 3 (Eff 1-1-87); 142 v H 295 (Eff 6-10-87); 142 v H 815 (Eff 12-12-88); 142 v S 367 (Eff 12-14-88); 143 v H 656 (Eff 4-18-90); 144 v H 210 (Eff 5-1-92); 144 v H 723 (Eff 4-16-93); 145 v H 152 (Eff 7-1-93); 145 v H 384 (Eff 11-11-94); 146 v H 192 (Eff 11-21-95); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 148 v H 205 (Eff 9-24-99); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 24, § 1 (Eff 10-26-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 24, § 3 (Eff 1-1-2002); 149 v S 106. Eff 4-9-2003; 150 v S 222, § 1, eff. 4-27-05; 151 v H 162, § 1, eff. 10-12-06.

A8

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

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ORC Ann. 2744.02 (2008)

§ 2744.02. Classification of functions of political subdivisions; liability; exceptions

(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 person 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) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) 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 person 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 person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that 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;

A9

(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 sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person 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 person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that 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 person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects 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 person or property when civil 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. Civil 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 a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.

† History:

141 v H 176 (Eff 11-20-85); 143 v H 381 (Eff 7-1-89); 145 v S 221 (Eff 9-28-94); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 106. Eff 4-9-2003; 152 v H 119, § 101.01, eff. 9-29-07.

A10

ORC Ann. 2744.03

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AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 9, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 12, 2008 ***

TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

Go to the Ohio Code Archive Directory

ORC Ann. 2744.03 (2008)

§ 2744.03. Defenses or immunities of subdivision and employee

(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 person 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 2152.19 or 2152.20 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 person or property resulted from the exercise of judgment or discretion in determining whether to

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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) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil 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 that section provides for a criminal penalty, 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.

History:

141 v H 176 (Eff 11-20-85); 141 v S 297 (Eff 4-30-86); 145 v S 221 (Eff 9-28-94); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 106. Eff 4-9-2003.

A12

ORC Ann. 2921.01

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 12, 2008 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION
IN GENERAL

Go to the Ohio Code Archive Directory

ORC Ann. 2921.01 (2008)

§ 2921.01. Definitions

As used in sections 2921.01 to 2921.45 of the Revised Code:

(A) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

(B) "Public servant" means any of the following:

(1) Any public official;

(2) Any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;

(3) A person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. A person is a candidate for purposes of this division if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election.

(C) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

(D) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

(E) "Detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted

A13

of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of section 2945.37, 2945.371 [2945.37.1], 2945.38, 2945.39, 2945.40, 2945.401 [2945.40.1], or 2945.402 [2945.40.2] of the Revised Code; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under division (E) of section 311.29 of the Revised Code or division (B) of section 5149.03 of the Revised Code. For a person confined in a county jail who participates in a county jail industry program pursuant to section 5147.30 of the Revised Code, "detention" includes time spent at an assigned work site and going to and from the work site.

(F) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States.

(G) "Valuable thing or valuable benefit" includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(H) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," "political party," and "political contributing entity" have the same meanings as in section 3517.01 of the Revised Code.

(I) "Provider agreement" and "medical assistance program" have the same meanings as in section 2913.40 of the Revised Code.

History:

134 v H 511 (Eff 1-1-74); 141 v H 340 (Eff 5-20-86); 141 v H 300 (Eff 9-17-86); 141 v H 428 (Eff 12-23-86); 142 v H 708 (Eff 4-19-88); 143 v H 51 (Eff 11-8-90); 144 v S 37 (Eff 7-31-92); 145 v H 42 (Eff 2-9-94); 145 v H 571 (Eff 10-6-94); 146 v S 8 (Eff 8-23-95); 146 v S 2 (Eff 7-1-96); 146 v H 154 (Eff 10-4-96); 146 v S 285 (Eff 7-1-97); 147 v H 293 (Eff 3-17-98); 147 v S 134 (Eff 7-13-98); 148 v H 661. Eff 3-15-2001; 150 v H 1, § 1, eff. 3-31-05; 151 v S 115, § 1, eff. 4-26-05.

ORC Ann. 3735.27

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*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 12, 2008 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3735. METROPOLITAN HOUSING AUTHORITY; COMMUNITY REINVESTMENT AREAS

METROPOLITAN HOUSING AUTHORITY

Go to the Ohio Code Archive Directory

ORC Ann. 3735.27 (2008)

§ 3735.27. Metropolitan housing authority created

(A) Whenever the director of development has determined that there is need for a housing authority in any portion of any county that comprises two or more political subdivisions or portions of two or more political subdivisions but is less than all the territory within the county, a metropolitan housing authority shall be declared to exist, and the territorial limits of the authority shall be defined, by a letter from the director. The director shall issue a determination from the department of development declaring that there is need for a housing authority within those territorial limits after finding either of the following:

(1) Unsanitary or unsafe inhabited housing accommodations exist in that area;

(2) There is a shortage of safe and sanitary housing accommodations in that area available to persons who lack the amount of income that is necessary, as determined by the director, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without congestion.

In determining whether dwelling accommodations are unsafe or unsanitary, the director may take into consideration the degree of congestion, the percentage of land coverage, the light, air, space, and access available to the inhabitants of the dwelling accommodations, the size and arrangement of rooms, the sanitary facilities, and the extent to which conditions exist in the dwelling accommodations that endanger life or property by fire or other causes.

The territorial limits of a metropolitan housing authority as defined by the director under this division shall be fixed for the authority upon proof of a letter from the director declaring the need for the authority to function in those territorial limits. Any such letter from the director, any certificate of determination issued by the director, and any certificate of appointment of members of the authority shall be admissible in evidence in any suit, action, or proceeding.

A certified copy of the letter from the director declaring the existence of a metropolitan housing authority and the territorial limits of its district shall be immediately forwarded to each appointing authority. A metropolitan housing authority shall consist of members who are residents of the territory in which they serve.

A15

(B) (1) Except as otherwise provided in division (C), (D), or (E) of this section, the members of a metropolitan housing authority shall be appointed as follows:

(a) (i) In a district in a county in which a charter has been adopted under Article X, Section 3 of the Ohio Constitution, and in which the most populous city is not the city with the largest ratio of housing units owned or managed by the authority to population, one member shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the board of county commissioners, one member shall be appointed by the chief executive officer of the city that has the largest ratio of housing units owned or managed by the authority to population, and two members shall be appointed by the chief executive officer of the most populous city in the district.

(ii) If, in a district that appoints members pursuant to division (B)(1)(a) of this section, the most populous city becomes the city with the largest ratio of housing units owned or managed by the authority to population, when the term of office of the member who was appointed by the chief executive officer of the city with the largest ratio expires, that member shall not be reappointed, and the membership of the authority shall be as described in division (B)(1)(b) of this section.

(b) In any district other than one described in division (B)(1)(a) of this section, one member shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the board of county commissioners, and two members shall be appointed by the chief executive officer of the most populous city in the district.

(2) At the time of the initial appointment of the authority, the member appointed by the probate court shall be appointed for a period of four years, the member appointed by the court of common pleas shall be appointed for three years, the member appointed by the board of county commissioners shall be appointed for two years, one member appointed by the chief executive officer of the most populous city in the district shall be appointed for one year, and the other member appointed by the chief executive officer of the most populous city in the district shall be appointed for five years.

If appointments are made under division (B)(1)(a) of this section, the member appointed by the chief executive officer of the city in the district that is not the most populous city, but that has the largest ratio of housing units owned or managed by the authority to population, shall be appointed for five years.

After the initial appointments, all members of the authority shall be appointed for five-year terms, and any vacancy occurring upon the expiration of a term shall be filled by the appointing authority that made the initial appointment.

(3) For purposes of this division, population shall be determined according to the last preceding federal census.

(C) For any metropolitan housing authority district that contained, as of the 1990 federal census, a population of at least one million, two members of the authority shall be appointed by the legislative authority of the most populous city in the district, two members shall be appointed by the chief executive officer of the most populous city in the district, and one member shall be appointed by the chief executive officer, with the approval of the legislative authority, of the city in the district that has the second highest number of housing units owned or managed by the authority.

At the time of the initial appointment of the authority, one member appointed by the legislative authority of the most populous city in the district shall be appointed for three years, and one such member shall be appointed for one year; the member appointed by the chief executive officer of the city with the second highest number of housing units owned or managed by the authority shall be appointed, with the approval of the legislative authority,

A16

for three years; and one member appointed by the chief executive officer of the most populous city in the district shall be appointed for three years, and one such member shall be appointed for one year. Thereafter, all members of the authority shall be appointed for three-year terms, and any vacancy shall be filled by the same appointing power that made the initial appointment. At the expiration of the term of any member appointed by the chief executive officer of the most populous city in the district before March 15, 1983, the chief executive officer of the most populous city in the district shall fill the vacancy by appointment for a three-year term. At the expiration of the term of any member appointed by the board of county commissioners before March 15, 1983, the chief executive officer of the city in the district with the second highest number of housing units owned or managed by the authority shall, with the approval of the municipal legislative authority, fill the vacancy by appointment for a three-year term. At the expiration of the term of any member appointed before March 15, 1983, by the court of common pleas or the probate court, the legislative authority of the most populous city in the district shall fill the vacancy by appointment for a three-year term.

After March 15, 1983, at least one of the members appointed by the chief executive officer of the most populous city shall be a resident of a dwelling unit owned or managed by the authority. At least one of the initial appointments by the chief executive officer of the most populous city, after March 15, 1983, shall be a resident of a dwelling unit owned or managed by the authority. Thereafter, any member appointed by the chief executive officer of the most populous city for the term established by this initial appointment, or for any succeeding term, shall be a person who resides in a dwelling unit owned or managed by the authority. If there is an elected, representative body of all residents of the authority, the chief executive officer of the most populous city shall, whenever there is a vacancy in this resident term, provide written notice of the vacancy to the representative body. If the representative body submits to the chief executive officer of the most populous city, in writing and within sixty days after the date on which it was notified of the vacancy, the names of at least five residents of the authority who are willing and qualified to serve as a member, the chief executive officer of the most populous city shall appoint to the resident term one of the residents recommended by the representative body. At no time shall residents constitute a majority of the members of the authority.

(D) (1) For any metropolitan housing authority district located in a county that had, as of the 2000 federal census, a population of at least four hundred thousand and no city with a population greater than thirty per cent of the total population of the county, one member of the authority shall be appointed by the probate court, one member shall be appointed by the court of common pleas, one member shall be appointed by the chief executive officer of the most populous city in the district, and two members shall be appointed by the board of county commissioners.

(2) At the time of the initial appointment of a metropolitan housing authority pursuant to this division, the member appointed by the probate court shall be appointed for a period of four years, the member appointed by the court of common pleas shall be appointed for three years, the member appointed by the chief executive officer of the most populous city shall be appointed for two years, one member appointed by the board of county commissioners shall be appointed for one year, and the other member appointed by the board of county commissioners shall be appointed for five years. Thereafter, all members of the authority shall be appointed for five-year terms, with each term ending on the same day of the same month as the term that it succeeds. Vacancies shall be filled in the manner provided in the original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term shall hold office as a member for the remainder of that term.

(E) (1) One resident member shall be appointed to a metropolitan housing authority when required by federal law. The chief executive officer of the most populous city in the district shall appoint that resident member for a term of five years. Subsequent terms of that resident member also shall be for five years, and any vacancy in the position of the resident member shall be filled by the chief executive officer of the most populous city in the district. Any member appointed to fill such a vacancy shall hold office as a resident member for the

A17

remainder of that term. If, at any time, a resident member no longer qualifies as a resident, another resident member shall be appointed by the appointing authority who originally appointed the resident member to serve for the unexpired portion of that term.

(2) On and after the effective date of this amendment, any metropolitan housing authority to which two additional members were appointed pursuant to former division (E)(1) of this section as enacted by Amended Substitute House Bill No. 95 of the 125th general assembly shall continue to have those additional members. Their terms shall be for five years, and vacancies in their positions shall be filled in the manner provided for their original appointment under former division (E)(1) of this section as so enacted.

(F) Public officials, other than the officers having the appointing power under this section, shall be eligible to serve as members, officers, or employees of a metropolitan housing authority notwithstanding any statute, charter, or law to the contrary. Not more than two such public officials shall be members of the authority at any one time.

All members of an authority shall serve without compensation but shall be entitled to be reimbursed for all necessary expenses incurred.

After a metropolitan housing authority district is formed, the director may enlarge the territory within the district to include other political subdivisions, or portions of other political subdivisions, but the territorial limits of the district shall be less than that of the county.

(G) (1) Any vote taken by a metropolitan housing authority shall require a majority affirmative vote to pass. A tie vote shall constitute a defeat of any measure receiving equal numbers of votes for and against it.

(2) The members of a metropolitan housing authority shall act in the best interest of the district and shall not act solely as representatives of their respective appointing authorities.

History:

GC § 1078-30; 115 v PtII, 56, § 2; 117 v 324; Bureau of Code Revision, 10-1-53; 139 v S 72 (Eff 3-15-83); 141 v H 325 (Eff 6-6-86); 149 v H 94. Eff 9-5-2001; 150 v H 95, § 1, eff. 9-26-03; 150 v S 18, § 1, eff. 5-27-05; 151 v H 66, § 101.01, eff. 9-29-05.

A18

ORC Ann. 3735.31

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 12, 2008 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3735. METROPOLITAN HOUSING AUTHORITY; COMMUNITY REINVESTMENT AREAS

METROPOLITAN HOUSING AUTHORITY

Go to the Ohio Code Archive Directory

ORC Ann. 3735.31 (2008)

§ 3735.31. Powers of metropolitan housing authority

A metropolitan housing authority created under sections 3735.27 to 3735.50 of the Revised Code, constitutes a body corporate and politic. To clear, plan, and rebuild slum areas within the district in which the authority is created, to provide safe and sanitary housing accommodations to families of low income within that district, or to accomplish any combination of the foregoing purposes, the authority may do any of the following:

(A) Sue and be sued; have a seal; have corporate succession; receive grants from state, federal, or other governments, or from private sources; conduct investigations into housing and living conditions; enter any buildings or property in order to conduct its investigations; conduct examinations, subpoena, and require the attendance of witnesses and the production of books and papers; issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance; and in connection with these powers, any member of the authority may administer oaths, take affidavits, and issue subpoenas;

(B) Determine what areas constitute slum areas, and prepare plans for housing projects in those areas; purchase, lease, sell, exchange, transfer, assign, or mortgage any property, real or personal, or any interest in that property, or acquire the same by gift, bequest, or eminent domain; own, hold, clear, and improve property; provide and set aside housing projects, or dwelling units comprising portions of housing projects, designed especially for the use of families, the head of which or the spouse of which is sixty-five years of age or older; engage in, or contract for, the construction, reconstruction, alteration, or repair, or both, of any housing project or part of any housing project; include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions that the federal government has attached to its financial aid of the project; lease or operate, or both, any project, and establish or revise schedules of rents for any projects or part of any project; arrange with the county or municipal corporations, or both, for the planning and replanning of streets, alleys, and other public places or facilities in connection with any area or project; borrow money upon its notes, debentures, or other evidences of indebtedness, and secure the same by mortgages upon property held or to be held by it, or by pledge of its revenues, or in any other manner; invest any funds held in reserves or sinking funds or not required for immediate disbursements; execute contracts and all other

A19

instruments necessary or convenient to the exercise of the powers granted in this section; make, amend, and repeal bylaws and rules to carry into effect its powers and purposes;

(C) Borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its territorial limits; take over or lease or manage any housing project or undertaking constructed or owned by the federal government; comply with any conditions and enter into any mortgages, trust indentures, leases, or agreements that are necessary, convenient, or desirable;

(D) Subject to section 3735.311 [3735.31.1] of the Revised Code, employ a police force to protect the lives and property of the residents of housing projects within the district, to preserve the peace in the housing projects, and to enforce the laws, ordinances, and regulations of this state and its political subdivisions in the housing projects and, when authorized by law, outside the limits of the housing projects.

(E) Enter into an agreement with a county, municipal corporation, or township in whose jurisdiction the metropolitan housing authority is located that permits metropolitan housing authority police officers employed under division (D) of this section to exercise full arrest powers as provided in section 2935.03 of the Revised Code, perform any police function, exercise any police power, or render any police service within specified areas of the county, municipal corporation, or township for the purpose of preserving the peace and enforcing all laws of the state, ordinances of the municipal corporation, or regulations of the township.

History:

GC § 1078-34; 115 v PtII, 56, § 6; 117 v 324; Bureau of Code Revision, 10-1-53; 125 v 903(1003) (Eff 10-1-53); 128 v 616 (Eff 8-28-59); 140 v H 129, §§ 1, 3 (Eff 4-12-85); 142 v H 261 (Eff 11-1-87); 146 v H 566 (Eff 10-16-96); 147 v H 596. Eff 3-9-99.

A20

ORC Ann. 3735.39

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TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3735. METROPOLITAN HOUSING AUTHORITY; COMMUNITY REINVESTMENT AREAS

METROPOLITAN HOUSING AUTHORITY

Go to the Ohio Code Archive Directory

ORC Ann. 3735.39 (2008)

§ 3735.39. Dissolution; procedure

Whenever a metropolitan housing authority desires to discontinue its operations it shall make application to the director of development, for authority to dissolve. If such application is granted, the director shall take possession and dispose of all property belonging to the authority, and, after paying the debts and liabilities of the authority and the expenses of administering the dissolution, the balance remaining shall be paid into the sinking fund of the county in which the authority existed.

 **History:**

GC § 1078-40; 115 v PtII, 56, § 12; Bureau of Code Revision, 10-1-53; 141 v H 325. Eff 6-6-86.

A21

ORC Ann. 3735.40

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TITLE 37. HEALTH -- SAFETY -- MORALS
 CHAPTER 3735. METROPOLITAN HOUSING AUTHORITY; COMMUNITY REINVESTMENT AREAS
 HOUSING PROJECTS

Go to the Ohio Code Archive Directory

ORC Ann. 3735.40 (2008)

§ 3735.40. Definitions

As used in sections 3735.27, 3735.31, and 3735.40 to 3735.50 of the Revised Code:

(A) "Federal government" includes the United States, the federal works administrator, or any other agency or instrumentality, corporate or otherwise, of the United States.

(B) "Slum" has the meaning defined in section 1.08 of the Revised Code.

(C) "Housing project" or "project" means any of the following works or undertakings:

(1) Demolish, clear, or remove buildings from any slum area. Such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes.

(2) Provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes.

(3) Accomplish a combination of the foregoing. "Housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

(D) "Families of low income" means persons or families who lack the amount of income which is necessary, as determined by the metropolitan housing authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

(E) "Families" means families consisting of two or more persons, a single person who has attained the age at which an individual may elect to receive an old age benefit under Title II of the "Social Security Act" or is under disability as defined in section 223 of that act, 49 Stat.

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622 (1935), 42 U.S.C. 401, as amended or the remaining member of a tenant family.

(F) "Families" also means a single person discharged by the head of a hospital pursuant to section 5122.21 of the Revised Code after March 10, 1964.

History:

GC § 1078-49; 117 v 324; Bureau of Code Revision, 10-1-53; 128 v 616 (Eff 8-28-59); 130 v 859 (Eff 3-10-64); 135 v H 1 (Eff 3-22-73); 136 v H 244. Eff 8-26-76; 152 v S 7, § 1, eff. 10-10-07.

A23

ORC Ann. 3735.50

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AND FILED WITH THE SECRETARY OF STATE THROUGH JUNE 9, 2008 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2008 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 12, 2008 ***

TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3735. METROPOLITAN HOUSING AUTHORITY; COMMUNITY REINVESTMENT AREAS
HOUSING PROJECTS

Go to the Ohio Code Archive Directory

ORC Ann. 3735.50 (2008)

§ 3735.50. Metropolitan housing authority is a political subdivision

A metropolitan housing authority, created under section 3735.27 of the Revised Code, constitutes a political subdivision of the state within the meaning of section 5739.02 of the Revised Code.

History:

GC § 1078-49a; 117 v 915; Bureau of Code Revision. Eff 10-1-53.

A24

ORC Ann. 3749.02

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TITLE 37. HEALTH -- SAFETY -- MORALS
CHAPTER 3749. SWIMMING POOLS

Go to the Ohio Code Archive Directory

ORC Ann. 3749.02 (2008)

§ 3749.02. Rules for public swimming pools, spas and special use pools

The public health council shall, subject to Chapter 119. of the Revised Code, adopt rules of general application throughout the state governing the issuance of licenses, approval of plans, layout, construction, sanitation, safety, and operation of public swimming pools, public spas, and special use pools. Such rules shall not be applied to the construction, erection, or manufacture of any building to which section 3781.06 of the Revised Code is applicable when the building or structure is either integral to or appurtenant to a public swimming pool, a public spa, or a special use pool.

History:

142 v H 68. Eff 9-10-87.

A25

ORC Ann. 5321.01

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TITLE 53. REAL PROPERTY
CHAPTER 5321. LANDLORDS AND TENANTS

Go to the Ohio Code Archive Directory

ORC Ann. 5321.01 (2008)

§ 5321.01. Definitions

As used in this chapter:

(A) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

(B) "Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

(C) "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does not include any of the following:

(1) Prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or residential arrangements that are used or occupied as a requirement of a community control sanction, a post-release control sanction, or parole;

(2) Hospitals and similar institutions with the primary purpose of providing medical services, and homes licensed pursuant to Chapter 3721. of the Revised Code;

(3) Tourist homes, hotels, motels, recreational vehicle parks, recreation camps, combined park-camps, temporary park-camps, and other similar facilities where circumstances indicate a transient occupancy;

(4) Elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition;

(5) Orphanages and similar institutions;

(6) Farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants;

(7) Dwelling units subject to sections 3733.41 to 3733.49 of the Revised Code;

A26

(8) Occupancy by an owner of a condominium unit;

(9) Occupancy in a facility licensed as an SRO facility pursuant to Chapter 3731. of the Revised Code, if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, or by an entity or group of entities in which such an organization has a controlling interest, and if either of the following applies:

(a) The occupancy is for a period of less than sixty days.

(b) The occupancy is for participation in a program operated by the facility, or by a public entity or private charitable organization pursuant to a contract with the facility, to provide either of the following:

(i) Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of mentally ill persons, developmentally disabled persons, adults or juveniles convicted of criminal offenses, or persons suffering from substance abuse;

(ii) Shelter for juvenile runaways, victims of domestic violence, or homeless persons.

(10) Emergency shelters operated by organizations exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, for persons whose circumstances indicate a transient occupancy, including homeless people, victims of domestic violence, and juvenile runaways.

(D) "Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

(E) "Security deposit" means any deposit of money or property to secure performance by the tenant under a rental agreement.

(F) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(G) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(H) "Student tenant" means a person who occupies a dwelling unit owned or operated by the college or university at which the person is a student, and who has a rental agreement that is contingent upon the person's status as a student.

(I) "Recreational vehicle park," "recreation camp," "combined park-camp," and "temporary park-camp" have the same meanings as in section 3729.01 of the Revised Code.

(J) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(K) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(L) "School premises" has the same meaning as in section 2925.01 of the Revised Code.

(M) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

A27

(N) "Preschool or child day-care center premises" has the the same meaning as in section 2950.034 [2950.03.4] of the Revised Code.

History:

135 v S 103 (Eff 11-4-74); 140 v S 244 (Eff 3-20-84); 143 v S 258 (Eff 8-22-90); 145 v H 438 (Eff 10-12-94); 146 v H 347 (Eff 10-16-96); 149 v H 520. Eff 4-3-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v S 5, § 1, eff. 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v H 368, § 1, eff. 10-13-04; 152 v S 10, § 1, eff. 7-1-07.

A28

ORC Ann. 5321.04

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TITLE 53. REAL PROPERTY
CHAPTER 5321. LANDLORDS AND TENANTS

Go to the Ohio Code Archive Directory

ORC Ann. 5321.04 (2008)

§ 5321.04. Obligations of landlord

(A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;

(5) When he is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal;

(6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days

A 29

after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

✧ **History:**

135 v S 103 (Eff 11-4-74); 143 v S 258. Eff 8-22-90.

A30

ORC Ann. 5591.37

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TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5591. COUNTY BRIDGES
GUARDRAILS

Go to the Ohio Code Archive Directory

ORC Ann. 5591.37 (2008)

§ 5591.37. Noncompliance

Negligent failure to comply with section 5591.36 of the Revised Code shall render the county liable for all accidents or damages resulting from that failure.

History:

RS § 4941-3; 86 v 101, § 3; GC § 7565; Bureau of Code Revision, 10-1-53; 146 v H 350 (Eff 1-27-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 106. Eff 4-9-2003.

A31

OAC Ann. 4101:2-89-04

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*** THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF MAY 5-9,
2008 ***

4101:2 Board of Building Standards: Ohio Mechanical Code
Chapter 4101:2-89 Early Fire Warning Systems

OAC Ann. **4101:2-89-04** (2008)

4101:2-89-04. Detectors required within private areas.

(A) Each dwelling unit, apartment, and condominium unit shall have at least one smoke detector installed in the immediate vicinity but outside of all sleeping rooms. Alarm signaling devices shall be clearly audible in all bedrooms within the dwelling unit, apartment, and condominium unit when all intervening doors are closed.

(B) When more than one sleeping room occurs within a dormitory or dwelling unit, one detector may serve more than one room provided that the required exits from such sleeping rooms are in a single private corridor within fifteen feet of the detector.

(C) When bedroom or sleeping areas are not fully enclosed or separated from other living areas within a living or sleeping unit, the smoke detector shall be installed nearest the area designated for sleeping.

(D) Dormitories accommodating more than ten people in one sleeping area shall have detector spacing determined by the "square of protection" as listed for the specific detector used or for each ten people, whichever is greater.

(E) For the purpose of installation and maintenance only, the applicable sections of the "National Fire Protection Association," "Standard for the Installation, Maintenance, and Use of Household Fire Warning Equipment," "NFPA No. 74-1975" shall be considered accepted engineering practice.

(F) Smoke detectors shall be tested, certified, and labeled to be in compliance with the "Underwriters Laboratories, Inc.," "Standard for Single and Multiple Station Smoke Detectors," "UL No. 217-1976" as revised February 1977.

History:R.C. 119.032 Review Dates: 07/10/2007 and 07/01/2012.

A32