

IN THE SUPREME COURT OF OHIO
CASE NO. _____

12-0205

Appeal from the Court of Appeals
Ninth Appellate District
Summit County, Ohio
Case No. 25829

ANDREA RIFFLE, et al.

Plaintiff-Appellees

v.

PHYSICIANS AND SURGEONS AMBULANCE SERVICE
and
CITY OF AKRON

Defendant-Appellant

DEFENDANT/APPELLANT, CITY OF AKRON, OHIO'S
MEMORANDUM IN SUPPORT OF JURISDICTION

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TABLE OF CONTENTS

	<u>Page</u>
I. EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
II. STATEMENT OF THE CASE AND FACTS	
A. Background.....	3
B. The Trial Court Denied the Benefit of Immunity Based on the Exception of R.C. 2744.02(B)(5).....	4
C. The Court of Appeals Found That an Irreconcilable Conflict Exists and That R.C. 4765.49(B) Applies.....	5
III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW	5
<u>Proposition of Law</u> : R.C. 4765.49 does not conflict with R.C. 2744.02 under a R.C. 1.51 analysis, but serves as an additional immunity defense under R.C. 2744.03(A)(7).	
IV. CONCLUSION	9
CERTIFICATE OF SERVICE.....	10
APPENDIX	

I. EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.

This case presents a situation where the Ninth District Court of Appeals ignored this Court's directive that all Ohio political subdivision tort liability must be determined by applying a three-tiered analysis under Chapter 2744 of the Ohio Revised Code.

In lawsuits against political subdivisions, including an action against a city for the provision of emergency medical services, political subdivisions are presumptively immune from liability unless a plaintiff pleads and proves an exception to immunity under R.C. 2744.02(B)(1)-(5). This is particularly significant herein given that none of these five exceptions apply. However, the Ninth District held that Chapter 2744's three-tiered analysis plays no role in the determination of the City's liability in this case, and that R.C. 4765.49 – an immunity defense statute located elsewhere in the Revised Code - is the controlling liability standard. The Ninth District's standard departs entirely from the three-tiered analysis, and completely deprives the City of the immunities and defenses available in the three tiered analysis under Chapter 2744.

The Ninth District improperly transformed an immunity statute into a statutory cause of action. R.C. 4765.49(B) is a civil immunity statute that must be asserted by a political subdivision as an affirmative defense. The Ninth District's holding effectively allows a plaintiff to use R.C. 4765.49(B), or some other immunity statute, as a cause of action, and completely avoid the immunities and burdens of proof under Chapter 2744. The Ninth District has created a new imposition of a duty and consequent liability. This finding is wrong as a matter of law.

The Ninth District's opinion contravenes the General Assembly's manifest intent expressed in R.C. 2744.03(A)(7). If a plaintiff successfully asserts a R.C. 2744.02(B)(1)-(5) exception to R.C. 2744.02(A)(1) political subdivision immunity, the Legislature intended for the political subdivision,

under the third tier, to reach elsewhere to avail itself to “any defense or immunity available at common law or established by the Revised Code.” R.C. 2744.03(A)(7). R.C. 4765.49(B) is just such one of those third-tier immunity defenses. *See also e.g.*, R.C. 1533.181 (Recreational Immunity Statute); R.C. 4931.49 (Dispatcher Immunity Statute). It is not an independent cause of action.

This case has statewide importance and goes far beyond a narrow dispute between the parties. This Court’s determination of the appropriate application of statutory defenses will have a significant effect on how cases against political subdivisions are litigated throughout the state. When courts have been faced with applying immunities outside those found in Chapter 2744, the courts have been varied and inconsistent in their reasoning. Some courts have found that the immunity statute serves as a R.C. 2744.02(B)(5) exception to immunity. Other courts held that the immunity statute presents an irreconcilable conflict, and that the more specific immunity provision prevails. And then other courts have reasoned that the immunity statute provides an additional immunity defense available to the political subdivision in the third tier under R.C. 2744.03(A)(7). Review by this Honorable Court will provide guidance to Ohio courts and litigants.

The two statutes at issue do not present an irreconcilable conflict that requires a court to choose one over the other. The purpose of the two statutes is the same: an effort to limit taxpayer’s exposure to liability.

Political subdivision immunity under Chapter 2744 of the Ohio Revised Code is the General Assembly’s effort to limit taxpayer’s exposure to liability by limiting the liability of political subdivisions to causes of action delineated in the that Chapter. The Ninth District’s decision expands political subdivision liability and opens the door to “new” causes of action based on tortured reasoning that an affirmative immunity defense can be a cause of action.

Therefore, this matter is of great general or public interest warranting this Court’s review.

II. STATEMENT OF THE CASE AND FACTS

A. Background

Andrea Riffle experienced bleeding in her third trimester of pregnancy, and called City of Akron 911. The City dispatched Fire Department paramedics to her home. The paramedics attended to Mrs. Riffle and determined that her condition warranted a Code II -- transport by private ambulance. A private ambulance company, American Medical Response arrived and transported Mrs. Riffle to the hospital. The hospital medical personnel performed an emergency caesarean section, and the baby died three days later.

Mrs. Riffle and her husband, Dan Riffle filed this civil action against the City in Summit County Common Pleas Court. The City alternatively pled as affirmative defenses, *inter alia*, Ohio Revised Code Chapter 2744 immunities and defenses, and R. C. 4765.49(B) (“Civil immunity of emergency medical personnel and agencies”).

The City filed a motion for judgment on the pleadings asserting that the Riffles failed to state a claim against the City upon which relief can be granted. The City argued that it was performing a governmental function as defined in R. C. 2744.01(C)(2)(a) (“[t]he provision or nonprovision of...emergency medical, ambulance and rescue services”), and is therefore immune from liability under R. C. 2744.02(A)(1).

B. The Trial Court Denied the Benefit of Immunity Based on the Immunity Exception of R.C. 2744.02(B)(5).

The trial court denied the City’s motion, holding that the Riffles could proceed under the R.C. 2744.02(B)(5) exception to R.C. 2744.02(A) immunity. The trial court held that the Riffles articulated a claim for willful and wanton misconduct and that R.C. 4765.49(B) serves as an exception to immunity under R.C. 2744.02(B)(5) for that allegation. R.C. 2744.02(B)(5) states that a political

subdivision can be liable when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.

C. The Court of Appeals Found That an Irreconcilable Conflict Exists and That R.C. 4765.49(B) Applies.

Initially, the court of appeals rejected the trial court's opinion that R.C. 4765.49(B) is a R.C. 2744.02(B)(5) exception to R.C. 2744.02(A)(1) immunity. The court of appeals held that R.C. 4765.49 shows a purpose to create immunity when liability would otherwise exist, and that R.C. 4765.49(B) does not expressly impose civil liability on political subdivisions as required by R.C. 2744.02(B)(5) (Op. at ¶¶ 5-8).

Then, the court of appeals turned its attention to a statutory conflict analysis under R.C. 1.51. Initially, the court of appeals found that the two statutes conflict,

Section 2744.02(A)(1) and Section 4765.49(B) "cover the same subject matter" in that they both provide immunity to political subdivisions that provide emergency medical services. Section 4765.49(B) contains an exception for services that "are provided in a manner that constitutes willful or wanton misconduct." Section 2744.02(A)(1) does not have a similar exception. The two sections, therefore, conflict because the application of Section 2744.02(A)(1)'s broad language would render the willful or wanton misconduct exception in Section 4765.49(B) meaningless to the extent it applies to political subdivisions.

(Op. at ¶11). Implicit in the court of appeals' opinion is the determination that the two statutes cannot be reconciled.

The court of appeals proceeded to determine that R.C. 2744.02 was enacted after and has been more recently amended than R.C. 4765.49 (Op. at ¶15). Then, the court of appeals found that there is nothing in R.C. 2744.02 that expresses an intention by the General Assembly for that section to prevail over the more specific section of R.C. 4765.49(B) (Op. at ¶16).

Therefore, the court of appeals held that in cases involving alleged willful or wanton misconduct by an EMT or paramedic working for a political subdivision, R.C. 4765.49(B) applies instead of R.C. 2744.02(A)(1) with regard to the political subdivision's immunity (Op. at ¶17).

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law : R.C. 4765.49 does not conflict with R.C. 2744.02 under a R.C. 1.51 analysis, but serves as an additional immunity defense under R.C. 2744.03(A)(7).

Whether a political subdivision is immune from liability is a question of law. *Conley v. Shearer*, 64 Ohio St.3d 284, 292 (1992). As a political subdivision, the City is presumptively immune for acts carried out by government officials. R.C. 2744.02; *see also, Cook v. City of Cincinnati*, 103 Ohio App. 3d 80, 85, 90, 96 (1st Dist. 1995) (observing a presumption of immunity). The Plaintiff bears the burden of demonstrating that an exception to immunity applies. When immunity is raised, as here, the “burden lies with the Plaintiff to show that one of the recognized exceptions apply” under R.C. §2744.02(B); *Maggio v. Warren*, 11th Dist. No. 2006-T-0028, 2006-Ohio-6880 at ¶37.

The Ohio Supreme Court has developed a three-tiered analysis for determining immunity questions under R.C. 2744. *Cater v. Cleveland*, 83 Ohio St.3d 24(1998); *Howard v. Miami Twp. Fire Division*, 119 Ohio St.3d 1, 2008-Ohio-2792. The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function of the political subdivision. *Franks v. Lopez*, 69 Ohio St.3d 345 (1994). This “blanket immunity” applies to protect a political subdivision from liability unless one of the enumerated exceptions applies. The second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability. Under the third tier, which is only reached if an exception applies, the political subdivision can still establish immunity by demonstrating one of the defenses set forth in R.C. §2744.02. *Perkins v. Norwood City Schools*, 85 Ohio St.3d 191, 1999-Ohio-261. In this case, it was unequivocally established that pursuant to this three-tiered analysis, the City was statutorily immune from liability and is entitled to judgment as a matter of law.

The court of appeals, however, held that under R.C. 1.51, R.C. 2744.02(A) and R.C. 4765.49(B) are in conflict. The court incorrectly engaged in a conflict analysis under R.C. 1.51. “[If] two statutes, one general and the other specific, involve the same subject matter, 1.51 must be applied.” *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 430 (1994). In a conflict analysis, the alleged conflicting statutes are to be reconciled if possible. In the event reconciliation is not possible, “the special...provision prevails...unless the general provision is the later adoption and the manifest intent is that the general provision prevails.” *Id.*

In the instant case, R.C. 4731.90 [amended to 4765.49] was enacted in 1976. Chapter 2744 was enacted in 1985. The court of appeals noted “[a] later general provision...shall control over the special provision...only if...the ‘manifest intent’ of the General Assembly is that the general provision shall prevail.” *Riffle*, C.A. No. 25829, ¶16 (citing *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 430 (1944), quoting *Cincinnati v. Thomas Soft Ice Cream, Inc.*, 52 Ohio St.2d 76, 80 (1977)). The court of appeals found that the General Assembly did not express a “manifest intent” in R.C. 2744.02(A) that it would prevail over R.C. 4765.49. The court concluded that, “in cases involving alleged willful or wanton misconduct by a first responder, EMT-basic, EMT-I, or paramedic working for a political subdivision, Section 4765.49(B) applies instead of Section 2744.02(A)(1)”. This conclusion ignores Chapter 2744’s three-tiered analysis and deprives political subdivisions of immunity under R.C. 2744 in contravention of the General Assembly’s intent.

Initially, R.C. 4765.49 and R.C. 2744.02 are not in conflict. Both statutes serve the same purpose: to limit taxpayer’s exposure to liability. *Onderak v. Cleveland Metroparks*, 8th Dist. No. 77864, 2000 WL 1803230 (Dec. 7, 2000). Simply because the statutes may provide overlapping immunities does not establish a conflict under R.C. 1.51. *Id.*

Moreover, the General Assembly expressed its intent that a political subdivision's immunity is analyzed under Chapter 2744. R.C. 2744.03(A)(7) expressly states:

The political subdivision...is entitled to any defense or immunity available at common law or established by the Revised Code.

The General Assembly clearly intended for a political subdivision to avail itself to additional defenses and immunities like R.C. 4765.49 by enacting R.C. 2744.03(A)(7). If an exception to immunity is established under R.C. 2744.02(B)(1)-(5), the political subdivision may avail itself to the additional defenses and immunities identified in R.C. 2744.03(A)(1)-(5), and under R.C. 2744.03(A)(7). This analysis is consistent with the three-tiered analysis enunciated in *Cater v. City of Cleveland*, supra.

Courts have applied this same reasoning in cases involving the interaction of Chapter 2744 and R.C. 1533.181 - Ohio's Recreational User Immunity Statute. In *Onderak v. Cleveland Metroparks*, supra, the court observed that there may be overlapping protection in the recreational user immunity statute and the Political Subdivision Tort Liability Act. However, the court held,

***The two statutes in question are not in conflict, both serving the same purpose. Furthermore, the legislature clearly intended for the recreational user statutory immunity to remain applicable to political subdivisions, as evidenced by the language of R.C. 2744.03(A)(7).

Id. at *3, quoting with approval, *Harman v. City of Fostoria*, 6th Dist No. 93WD059, (1994 WL 50259 (Feb. 18, 1994)).

Furthermore, using R.C. 4765.49 as an independent basis for liability is inconsistent with this Court's decision regarding analogous defenses provided under R.C. 2744.03. In *Cater v. City of Cleveland*, supra, appellant (plaintiff) argued that R.C. 2744.03(A)(5) provided an independent basis for liability beyond the exceptions. R.C. 2744.03(A)(5) provides:

The political subdivision is immune from liability if the injury, death, or loss to personnel or property resulted from the exercise of judgment or discretion in

determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

In rejecting appellant's argument, the Court found that R.C. 2744.03(A)(5) "is a defense to liability; it cannot be used to establish liability." *Id.* "Therefore, appellants can only argue that the city is not entitled to the defense of R.C. 2744.03(A)(5) because the city acted in a reckless or wanton manner."

Id.

In *Dolis v. City of Tallmadge*, 9th Dist. No. 21803, 2004-Ohio-4454 appellants (plaintiffs) raised the identical argument under R.C. 2744.03(A)(5) and the court succinctly found:

Appellants claim that Tallmadge's requirements that Thomas direct traffic was judgment or discretion exercised with malicious purpose, in bad faith, or in a wanton or reckless manner, and therefore Tallmadge is not immune from liability. The language of this section would be applicable only if Tallmadge found it necessary to raise those defenses. However, this section of the statute constitutes the third tier of the immunity analysis, and we need not surpass the hurdle of the second tier. *Id.*

The Ninth District's decision herein deprives political subdivisions of the immunities under R.C. 2744.02(A)(1) in derogation of the well-established three-tiered analysis under Chapter 2744. By enacting Chapter 2744 and R.C. 4765.49, the General Assembly clearly intended to limit political subdivisions' exposure to liability for alleged injuries sustained when an employee of a political subdivision is engaged in an emergency medical response. The Ninth District's opinion transforms an immunity statute into an independent cause of action, eviscerating the General Assembly's intent.

IV. CONCLUSION

For the aforementioned reasons the City of Akron implores this court to take jurisdiction of this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction was sent this 2nd day of January, 2012 by first-class United States mail, postage prepaid, to the following:

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APPENDIX

Ninth District Court of Appeals Opinion dated December 21, 2011.

COURT OF APPEALS
DANIEL M. HERRIGAN

STATE OF OHIO
COUNTY OF SUMMIT
ANDREA RIFFLE, et al.

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 25829

Appellees

v.

PHYSICIANS AND SURGEONS
AMBULANCE SERVICE

Defendant

and

CITY OF AKRON

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2009-11-8537

DECISION AND JOURNAL ENTRY

Dated: December 21, 2011

DICKINSON, Judge.

INTRODUCTION

{¶1} Andrea Riffle called 911, reporting that she was in her third trimester of pregnancy and experiencing serious bleeding. A short time later, several City of Akron paramedics arrived at her home and took her vital signs. The paramedics did not take the fetus's vital signs and, instead of taking Mrs. Riffle immediately to the hospital, called American Medical Response to take her. American Medical Response arrived a few minutes after receiving the paramedics' call and took Mrs. Riffle to the hospital. Doctors diagnosed her fetus as having fetal bradycardia and performed an emergency cesarean section. The baby died three days later.

{¶2} Mrs. Riffle and her husband, Dan Riffle, sued the City, the paramedics who came to her house, and American Medical Response for contributing to their daughter's death. The City moved for judgment on the pleadings, alleging it is immune under Section 2744.02 of the Ohio Revised Code. The trial court denied its motion, concluding that, to the extent the Riffles alleged the City's paramedics' conduct was willful and wanton, the City was not entitled to immunity because, while Section 4765.49(B) of the Ohio Revised Code provides immunity to governmental entities that provide emergency medical services in a negligent manner, it specifically excludes from immunity willful or wanton conduct of such governmental entities. The City has appealed, assigning as error that the trial court incorrectly determined that the Riffles' claims against it are not barred by Section 2744.02. We affirm because Section 4765.49(B) more specifically addresses governmental entities that provide emergency medical services than does Section 2744.02, and, therefore, it, rather than the more general provisions of Section 2744.02, applies to the alleged facts of this case.

POLITICAL SUBDIVISION IMMUNITY

{¶3} The City's assignment of error is that the trial court incorrectly denied its motion for judgment on the pleadings based on sovereign immunity. Specifically, it has argued it has immunity under Section 2744.02 of the Ohio Revised Code. Under Section 2744.02(A)(1), "[e]xcept 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." The provision or nonprovision of emergency medical services is a governmental function. R.C. 2744.01(C)(2)(a).

{¶4} The Riffles have argued that, although Section 2744.02(A)(1) provides a general blanket of immunity to political subdivisions, there is an exception under Section 2744.02(B)(5) that applies in this case. Under Section 2744.02(B)(5), “a political subdivision is liable for injury, death, or loss to person or property [if] 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.”

{¶5} According to the Riffles, Section 4765.49(B) of the Ohio Revised Code expressly imposes liability on political subdivisions for willful or wanton misconduct of their employees who provide emergency medical services. Under Section 4765.49(B), “[a] political subdivision . . . that provides emergency medical services . . . is not liable in damages in a civil action for injury, death, or loss to person or property arising out of any actions taken by a first responder, EMT-basic, EMT-I, or paramedic working under the officer’s or employee’s jurisdiction, . . . unless the services are provided in a manner that constitutes willful or wanton misconduct.”

{¶6} Section 2744.02(B)(5) provides two examples of statutes that “expressly impose[]” liability on a political subdivision. The first is Section 2743.02, which provides that “[t]he state hereby waives its immunity from liability . . . and consents to be sued . . . in the court of claims created in this chapter[.]” The other is Section 5591.37, which provides that “[n]egligent

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.”

{¶7} Section 4765.49 is different from the examples given in Section 2744.02(B)(5). While the language used in Sections 2743.02 and 5591.37 indicates that the purpose of those statutes is to establish liability when it would not otherwise exist, the language of Section 4765.49 shows a purpose to create immunity when liability would otherwise exist. Section 4765.49(B) provides that governmental entities, their employees, and entities that contract with them are “not liable in damages in a civil action for injury, death, or loss to person or property arising out of any actions taken by a first responder . . . unless the services are provided in a manner that constitutes willful or wanton misconduct.” Section 4765.49(A) provides the same immunity from claims of negligence to non-governmental entities and individuals who provide emergency medical services. There can be no doubt that Section 4765.49’s purpose in regard to non-governmental actors is to establish immunity for negligent conduct, not establish liability for willful or wanton misconduct because, in its absence, liability for both negligence and willful or wanton misconduct would exist.

{¶8} Construing statutes with “unless” or “except” clauses similar to that in Section 4765.49, other districts have determined that the language of such statutes does not “expressly impose[]” liability on a political subdivision under Section 2744.02(B)(5). *Svette v. Caplinger*, 4th Dist. No. 06CA2910, 2007-Ohio-664, at ¶33 (interpreting former version of Section 4931.49(A), which provided that “[t]he state . . . is not liable in damages . . . arising from any act or omission, except willful or wanton misconduct, in connection with . . . bringing into operation a 9-1-1 system[.]”); *Messer v. Butler County Bd. of Comm’rs*, 12th Dist. Nos. CA2008-12-290, CA2009-01-004, 2009-Ohio-4462, at ¶16-19 (interpreting current version of R.C. 4931.49(B));

see also *Magda v. Greater Cleveland Reg'l Transit Auth.*, 8th Dist. No. 92570, 2009-Ohio-6219, at ¶16-21 (interpreting Section 2745.01, which provides that an employer is not liable for tortious conduct “unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.”). We agree with the City that Section 4765.49(B) does not “expressly impose[]” civil liability on political subdivisions under Section 2744.02(B)(5).

{¶9} So we are left with two statutes, both of which appear to apply in this case. One that appears to provide immunity to governmental entities that provide emergency medical services for all claims related to those services and one that appears to provide immunity only to negligence claims related to those services. The Riffles have argued that Section 2744.02(A)(1) does not apply in this case because it conflicts with Section 4765.49(B). They have argued that, if two statutes apply to the same set of facts but are in conflict, the more specific statute applies, which, in this case, is Section 4765.49(B).

{¶10} “It is a well-settled principle of statutory construction that when two statutes, one general and the other special, cover the same subject matter, the special provision is to be construed as an exception to the general statute which might otherwise apply.” *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 429 (1994) (following *Acme Eng'g Co. v. Jones*, 150 Ohio St. 423, paragraph one of the syllabus (1948)). That principle is codified in Section 1.51 of the Ohio Revised Code, which provides that, “[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later

adoption and the manifest intent is that the general provision prevails.” *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 2004-Ohio-4354, at ¶14.

{¶11} Section 2744.02(A)(1) and Section 4765.49(B) “cover the same subject matter” in that they both provide immunity to political subdivisions that provide emergency medical services. Section 4765.49(B) contains an exception for services that “are provided in a manner that constitutes willful or wanton misconduct.” Section 2744.02(A)(1) does not have a similar exception. The two sections, therefore, conflict because the application of Section 2744.02(A)(1)’s broad language would render the willful or wanton misconduct exception in Section 4765.49(B) meaningless to the extent it applies to political subdivisions.

{¶12} The City has argued that Section 4765.49(B)’s willful or wanton misconduct exception is not meaningless because, unlike Section 2744.02(A)(1), Section 4765.49(B) also applies to private organizations that enter into contracts with political subdivisions to provide emergency medical services. See *Bostic v. City of Cleveland*, 8th Dist. No. 79336, 2002 WL 199906 at *2 (Jan. 31, 2002) (suggesting that Section 4765.49(B)’s “apparent purpose is, *inter alia*, to ensure the same level of immunity for [government] contractors and their employees as is granted to direct government employees and political subdivisions performing the same functions.”). Just because there are circumstances under which Section 4765.49(B) applies and Section 2744.02(A)(1) does not, however, does not mean they do not “cover the same subject matter” regarding the immunity of a political subdivision that provides emergency medical services. Applying Section 2744.02(A)(1) to the facts of this case would render Section 4765.49(B), to the extent it applies to political subdivisions, meaningless.

{¶13} Under Section 1.51, the first step in resolving a conflict is to determine whether the provisions at issue are general, special, or local. *State v. Chippendale*, 52 Ohio St. 3d 118,

120 (1990). Section 2744.02(A)(1) is a general immunity statute, bestowing immunity on all the governmental functions of a political subdivision. *Swanson v. City of Columbus*, 87 Ohio App. 3d 748, 751 (1993) (“[Section] 2744.02(A) confers blanket immunity upon political subdivisions with respect to all governmental functions[.]”); R.C. 2744.01(C)(2)(a). Section 4765.49(B) is a special provision specifically addressing the immunity of “[a] political subdivision, joint ambulance district, joint emergency medical services district, or other public agency, and any officer or employee of a public agency or of a private organization operating under contract or in joint agreement with one or more political subdivisions, that provides emergency medical services, or that enters into a joint agreement or a contract . . . for the provision of emergency medical services[.]”

{¶14} “[If] two statutes, one general and the other specific, involve the same subject matter, [Section] 1.51 must be applied.” *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 430 (1994). Under Section 1.51, the two sections are to be reconciled as much as possible, but if a conflict exists, “the special . . . provision prevails . . . unless the general provision is the later adoption and the manifest intent is that the general provision prevail.” See *Dublin Secs.*, 68 Ohio St. 3d at 430 (quoting R.C. 1.51).

{¶15} The General Assembly first enacted a specific immunity statute regarding emergency medical personnel in 1976 at Section 4731.90 of the Ohio Revised Code. It was later moved to Section 3303.21, then to Section 4765.49, and was last amended in April 2007. Section 2744.02 was enacted in 1985 and was last amended in September 2007. Accordingly, Section 2744.02 was both enacted after and has been more recently amended than Section 4765.49.

{¶16} Under Section 1.51, however, “[a] later general provision . . . shall control over the special provision . . . only if . . . the ‘manifest intent’ of the General Assembly is that the general provision shall prevail.” *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 430 (1994) (quoting *Cincinnati v. Thomas Soft Ice Cream Inc.*, 52 Ohio St. 2d 76, 80 (1977)); see also *State v. Chippendale*, 52 Ohio St. 3d 118, 122 (1990) (“[If] a general and a special provision cover the same conduct, the legislature may expressly mandate that such provisions are to run coextensively.”). There is nothing in Section 2744.02 that expresses an intention by the General Assembly for that section to prevail over a specific section regarding the immunity of political subdivisions that provide emergency medical services. See *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 2004-Ohio-4354, at ¶15 (concluding Section 2301.24 applied instead of Section 149.43 because, even though Section 149.43 was enacted more recently, the legislature did not express its intent that Section 149.43, a general statute, should prevail over more specific statutes regarding copying costs); *State v. Conyers*, 87 Ohio St. 3d 246, 250 (1999) (resolving conflict between Section 2921.01(E) and Section 2967.15(C)(2)).

{¶17} We conclude that, in cases involving alleged willful or wanton misconduct by a first responder, EMT-basic, EMT-I, or paramedic working for a political subdivision, Section 4765.49(B) applies instead of Section 2744.02(A)(1). This conclusion is consistent with the conclusions reached by the other districts that have considered this issue. *Blair v. Columbus Div. of Fire*, 10th Dist. No. 10AP-575, 2011-Ohio-3648, at ¶28; *Johnson v. City of Cleveland*, 194 Ohio App. 3d 355, 2011-Ohio-2152, at ¶21; *Fuson v. City of Cincinnati*, 91 Ohio App. 3d 734, 738 (1993). The trial court correctly denied the City’s motion for judgment on the pleadings. The City’s assignment of error is overruled.

CONCLUSION

{¶18} The trial court correctly determined that Section 4765.49(B) governs whether the City has immunity regarding the Riffles' claims. The judgment of the Summit County Common Pleas Court is affirmed.

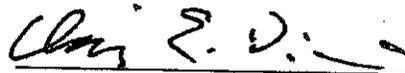
Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.



CLAIR E. DICKINSON
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

JOHN CHRISTOPHER REECE and MICHAEL J. DEFIBAUGH, Attorneys at Law, for Defendant.

AMY RULEY COMBS, Attorney at Law, for Appellees.