

ORIGINAL

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

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MERIT BRIEF OF DEFENDANT/APPELLANT, CITY OF AKRON, OHIO

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
III. LAW AND ARGUMENT	3
<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).....	
	3
IV. CONCLUSION.....	9
V. CERTIFICATE OF SERVICE	10
 APPENDIX	
Notice of Appeal to Ohio Supreme Court (February 3, 2012)	1
Decision and Journal Entry, Ninth District Court of Appeals (December 21, 2011)..	14
Order, Summit County Common Pleas Court (January 24, 2011).....	24
R.C. 2744.01	28
R.C. 2744.02	33
R.C. 2744.03	35
R.C. 4765.49	37

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Cater v. Cleveland</i> (1998), 83 Ohio St.3d 24, 1998 Ohio 421	3, 4, 8
<i>Cincinnati v. Thomas Soft Ice Cream, Inc.</i> , 52 Ohio St.3d 76, 80 (1977)	7
<i>Feitshans v. Darke Cty.</i> (1996), 16 Ohio App.3d 14	8
<i>Franks v. Lopez</i> (1994), 69 Ohio St.3d 345, 1994 Ohio 487	4
<i>Harman v. City of Fostoria</i> , 6 th Dist. No. 93WD059, (Feb. 18, 1994)	5
<i>Howard v. Miami Twp. Fire Division</i> , 119 Ohio St.3d 1, 2008-Ohio-2792	3
<i>Onderak v. Cleveland Metroparks</i> , 8 th Dist. No. 77864, (Dec. 7, 2000)	
<i>Perkins v. Norwood City Schools</i> , 85 Ohio St.3d 1999-Ohio-261	4
<i>Riffle v. Physicians and Surgeons Ambulance Service</i> , 9 th Dist. No. 25829, 2011 Ohio 6595	6
<i>State ex el. Dublin Secs Inc. v. Ohio Div. of Secs.</i> , 68 Ohio St.3d 426, 430, 1994 Ohio 340	4
<i>Watkins v. Akron</i> , 9 th Dist. No. CA-24077, 2008-Ohio-4995	8

Other Authorities:

R.C. 1.51
R.C. 1533.181
R.C. 2744.01(C)(2)(a)
R. C. 2744.02(A)(1)
R.C. 2744.02(B)(5)
R.C. 2744.03(A)(7)
R.C. 2765.49
R.C. 4731.90
R.C. 4765.49(B)

I. INTRODUCTION

The Appellant-City filed a motion for judgment on the pleadings in the trial court asserting that the Appellees-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). 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 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).

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 immunity statutes conflict. 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. 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). 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.

The court of appeals' holding effectively allows a plaintiff to completely avoid the immunities and burdens of proof under Chapter 2744.

II. STATEMENT OF THE FACTS

On or about December 26, 2008, at approximately 4:10 in the morning, City of Akron Fire Department Emergency Medical Services ("EMS") were dispatched to 1823 Penthley Avenue, Akron, Ohio reference a pregnancy related problem with Plaintiff-Appellee Andrea Riffle, who was in her third trimester and had serious bleeding (Complaint, ¶¶5, 7). Akron Fire Department Paramedic Stacie Frabotta, Company Officer Todd Kelly, Medic Peter Mattuci and Medic Thomas Whatley arrived on scene at approximately 4:17 a.m., obtained vital signs on Ms. Riffle and contacted American Medical Response (AMR) at approximately 4:23 a.m. to transport Ms. Riffle to the labor and delivery unit of Akron City Hospital as a Code II patient (Complaint, ¶¶8, 9). AMR arrived on scene at 4:28 a.m. (Complaint ¶9).

AMR arrived at Akron City Hospital between 4:50 and 5:08 a.m. wherein Ms. Riffle was "taken immediately to obstetrical triage where fetal bradycardia was diagnosed and an emergency cesarean section was performed" at 5:22 a.m. (Complaint,

¶11). At approximately 5:37 a.m. an infant girl was delivered and “a diagnosis of placental abruption was given as the cause for the fetal bradycardia.” (Complaint ¶12). The infant was transferred to Akron Children’s Hospital and died on December 29, 2008 (Complaint, ¶13).

On November 24, 2009, Andrea and Dan Riffle, individually and as co-administrators of the estate of Tenley Jayne Riffle filed a Complaint against Defendants Physicians and Surgeons Ambulance Service, Inc. d/b/a American Medical Response and the City of Akron for negligently assessing and emergently transporting Ms. Riffle to the hospital (“First Claim”) and failing to properly train emergency medical service providers with the “requisite knowledge base.” (Second Claim).

The City of Akron filed an Answer on January 21, 2010 and moved for judgment on the pleadings as to all claims raised in the Complaint. The court of appeals affirmed the trial court’s order denying the City’s Motion on different grounds.

III. LAW AND ARGUMENT

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).

A. Three-Tiered Immunity Analysis of Ohio Revised Code Chapter 2744.

The Ohio Supreme Court has developed a three-tiered analysis for determining political subdivision immunity issues under R.C. 2744. *Cater v. Cleveland*, 83 Ohio St.3d 24, 1998 Ohio 421; *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 Ohio 487. 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. §2744.03. *Perkins v. Norwood City Schools*, 85 Ohio St. 3d 191, 1999-Ohio-261. Applying this three-tiered analysis, the City of Akron is statutorily immune from liability and, thus, is entitled to judgment as a matter of law.

B. There Is No Conflict Between R.C. 2744.02(A) and R.C. 4765.49(B).

It is a well-established rule of statutory construction that where a general provision conflicts with a special provision, a court should strive to construe them so as to give meaning to both. Only if the provisions cannot be reconciled, does the court determine whether the special provision prevails over the general provision, including consideration as to whether there is an intent to the contrary. R.C. 1.51; *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, 68 Ohio St. 3d 426, 430, 1994 Ohio 340. This Court in *Cater v. City of Cleveland* reasoned:

***R.C. 1.51 provides that if there are conflicting statutory provisions, effect should be given to both the general provision and special or local provision, if possible. Thus, under the cardinal rule of statutory construction, "all statutes which relate to the same general subject matter must be read *in pari materia*." *Johnson's Markets, Inc. v. New Carlisle Dept. of Health* (1991), 58 Ohio St.3d 28, 35, 567 N.E.2d 1018, 1025. In construing statutes together, this court must give full application to both statutes unless they are irreconcilable and in hopeless conflict. *Id.*, citing *Courts v. Rose* (1950), 152 Ohio St.458, 40 O.O. 482, 90 N.E. 2d 139.

83 Ohio St.3d at 24.

Initially, R.C. 2744.02(A) and R.C. 4765.49(B) 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, (Dec. 7, 2000). Simply because the statutes may provide overlapping immunities does not establish a conflict contemplated under R.C. 1.51. *Id.* Courts have applied this 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, (Feb. 18, 1994). The court of appeals 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. 2765.49, 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. Accordingly, the two statutes are not in conflict.

Moreover, in this case, the court of appeals failed to reconcile the two statutes and incorrectly found that they are hopelessly in conflict. In fact, the two statutes are easily reconciled and harmonized. The two statutes reasonably co-exist within the framework of the three-tiered analysis of Chapter 2744. R.C. 2744.02(A) exists as the grant of immunity in the first tier of the immunity analysis, while R.C. 4765.49(B) fits neatly as an additional "defense or immunity...established by the Revised Code" in the third tier of the immunity analysis, under R.C. 2744.03(A)(7). Since truly there exists no hopeless conflict between the two statutes, the "which one prevails" analysis conducted by the court of appeals is unwarranted.

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 observed that "[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 v. Physicians and Surgeons Ambulance Service*, 9th Dist. No. 25829, 2011 Ohio 6595¶16 (citing *State ex rel. Dublin Secs. Inc. v. Ohio Div. of Secs.*, supra, 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. The General Assembly clearly expressed its intent that all political subdivision immunity be analyzed within the framework of Chapter 2744, including the application of other common law and statutory immunities and defenses like the one at issue herein. In the third tier of the Chapter 2744 immunity analysis, 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). It directly contravenes the General Assembly’s intent to set aside the Chapter 2744 framework and jump directly to R.C. 4765.49(B). 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.

C. The City of Akron Is Immune Under The “Blanket Immunity” Provision of R.C. 2744.02(A).

The City of Akron is a political subdivision of the State of Ohio and was entitled to the blanket immunity for governmental or proprietary functions provided under R.C. 2744.02. *Watkins v. Akron*, 9th Dist. No. CA-24077, 2008-Ohio-4995. R.C. §2744.02(A)(1), generally referred to as the “blanket immunity” provision, provides specifically:

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.

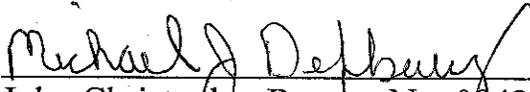
Under this provision, a political subdivision like the City of Akron, is not liable in damages for any action in connection with a governmental or propriety function. In this case, there is no question that the City of Akron is a political subdivision. Furthermore, “[t]he provision or nonprovision of ***emergency medical*** services” is a governmental function. R.C. 2744.01(C)(2)(a). Thus, the City of Akron is immune from liability under R.C. 2744.02(A)(1) unless an exception in R.C. 2744.02(B) applied. *Feitshans v. Darke Cty.*, 116 Ohio App. 3d 14 (1996). Herein, there is no exception to immunity under R.C. 2744.02(B)(1)-(5). Accordingly, the City is immune from liability.

IV. CONCLUSION

For the aforementioned reasons the City of Akron respectfully requests that this Court reverse the decision of the court of appeals, and find that the City is immune from liability under R.C. 2744.02(A).

Respectfully submitted,

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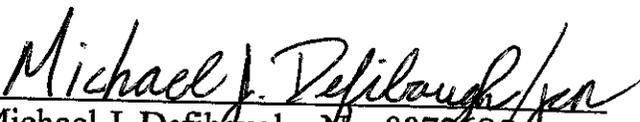
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And
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Defendant-Appellant

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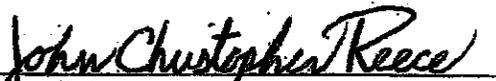
CLERK OF COURT
SUPREME COURT OF OHIO

Pursuant to Supreme Court Rule II 2.2(A)(3), Appellant/Defendant City of Akron hereby gives notice of appeal to the Supreme Court of Ohio from the Ninth District Court of Appeals' December 21, 2011 decision and judgment entry. A copy of the court of appeals decision is attached to this Notice. (See Ex. "A").

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO
COUNTY OF SUMMIT

ANDREA RIFFLE, et al.

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. DICKENSON
 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.

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ANDREA RIFFLE, et al.

C.A. No. 25829

Appellees

v.

PHYSICIANS AND SURGEONS
AMBULANCE SERVICE

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

Defendant

and

CITY OF AKRON

Appellant

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

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{¶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.

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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[.]”

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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.

DANIEL M. HERRIGAN

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SUMMIT COUNTY
CLERK OF COURTS
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

ANDREA RIFFLE,)	CASE NO. CV-2009-11-8537	49
)		
Plaintiff,)		
)		
vs.)	JUDGE ROWLANDS	
)		
PHYSICIANS AND SURGEONS)		
AMBULANCE SERVICE, et. al.,)	<u>ORDER</u>	
Defendants.)		

This matter comes before the Court on Defendant City of Akron's ("Akron") motion for judgment on the pleadings. Upon consideration, this Court finds the motion is not well taken and is denied.

This matter arises on claims of negligence and medical malpractice resulting in injuries to Andrea Riffle and the death of Plaintiffs' infant daughter on December 29, 2008. Relevant to this order, Plaintiffs assert that the City of Akron's Fire Department EMS and American Medical Response acted with "a total disregard and complete absence of all care for the safety of Andrea Riffle and her unborn infant with an indifference to the consequences of failure to assess and the failure to emergently transport," and that this "unreasonable and wanton conduct" was a proximate cause of the injuries and death asserted in this case.

In considering a motion for judgment on the pleading, the court presumes all factual allegations in the complaint are true, and makes all reasonable inferences in favor of the non-moving party. The motion will be granted only on a demonstration beyond doubt that the

plaintiff can prove no set of facts on which relief can be granted. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242. Therefore, for the purpose of this order only, the Court accepts as true Plaintiffs' allegations that Akron's emergency medical care employees acted with willful and wanton misconduct.

Akron has asserted a defense of statutory immunity under Chapter 2744 of the Revised Code. Ohio has created a three-tiered scheme for determining whether a political subdivision is immune from civil liability. *Hubbard v. Canton City School Bd. Of Educ.*, 97 Ohio St.3d 451, 780 N.E.2d 543, 2002-Ohio-6718 at ¶10. Under § 2744.02(A)(1), a political subdivision is generally not liable civilly when performing governmental or proprietary functions. However, this immunity is subject to exceptions indicated in R.C. § 2744.02(B). Finally, if the actions of a political subdivision fall within one of the articulated exceptions, immunity can be restored if one of the defenses defined in R.C. § 2744.03(A) applies. In the instant matter, no restorative defense under R.C. § 2744.03(A) has been asserted.

It is undisputed that Akron is a political subdivision. The provision of emergency medical, ambulance, rescue, and fire services are specifically designated governmental functions. R.C. § 2744.01(C)(2)(a). Therefore the first tier is met under R.C. § 2744.02(A)(1), and unless a specific exception to immunity exists, Akron is immune from liability. Relevant to this order, R.C. § 2744.02(B)(5) provides, "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." Plaintiffs point to R.C. § 4765.49(B), which states, "A political subdivision * * * is not liable in damages in a civil action for injury, death, or loss of to person or property arising out of any actions taken by a first responder, EMT-basic, EMT-1, or paramedic * * * unless the services are provided in a manner that constitutes willful or wanton misconduct." Plaintiffs contend that this

statute creates an affirmative obligation, and holds a political subdivision liable for the wanton and reckless actions of its emergency personnel. Akron argues that R.C. § 4765.49 merely provides an additional defense, and does not impose liability upon a political subdivision for the willful or wanton misconduct of emergency workers in its employ.

This Court finds Akron's position unsupportable. Akron argues that R.C. § 4765.49 is "an additional defense" beyond the scope of 2744.02. However, this interpretation would render R.C. § 4765.49 a nullity. As a governmental function, R.C. § 2744.02 provides blanket immunity to emergency workers. If R.C. § 4765.49 does not provide an exception to that immunity, it has no meaning whatsoever. "Because R.C. § 3303.21 [which has been renumbered R.C. § 4765.49] pertains specifically to emergency medical services and, further, limits the immunity of a political subdivision and its emergency employees to cases not involving willful and wanton conduct, it is reconcilable with R.C. § 2744.02 and we must, accordingly, address whether the evidence in this case reasonably supports a conclusion that the instant appellees engaged in willful and wanton misconduct." *Fuson v. City Of Cincinnati* (1993), 91 Ohio App.3d 734, 738, 633 N.E.2d 612.

While Akron has attempted to dismiss *Fuson* as overruled or wrongly decided, this Court finds numerous cases which have considered the conduct of emergency medical personnel under R.C. § 4765.49. This Court in particular points to *Bostic v. City of Cleveland*, Cuyahoga App. No. 79336, 2002-Ohio-333, which Akron cited in its own brief. *Bostic* deals with the exception regarding the operation of a motor vehicle by an emergency medical worker under R.C. § 2744.02(B)(1)(c), and has no direct application to the case at hand. However, in determining the extent of the exception under R.C. § 2744.02(B)(1)(c), the Eighth District considered and analogized to R.C. § 4765.49. In doing so, the court stated, "R.C. chapter 4765 specifically governs the provision of emergency medical services," and repeats that a political subdivision is immune "unless willful or wanton

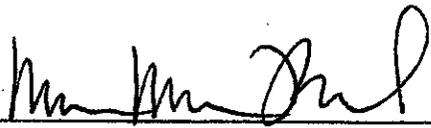
misconduct is shown." Akron has provided no case indicating R.C. § 4765.49 has been superseded or is without effect for pursuing liability in cases of willful or wanton misconduct.

Finally, this Court would point to the language of R.C. § 2744.02(B)(1)(c). "[It is a full defense to liability when 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 * * *, *the operation of the vehicle did not constitute willful and wanton misconduct*, and the operation complies with the precautions of section 4511.03 of the revised code." R.C. § 2744.02(B)(1)(c) (emphasis added). This language parallels that of R.C. 4765.49(B). Both statutes provide that a political subdivision is obligated to not allow its employees to act with willful and wanton misconduct in responding to emergency medical calls. Short of that obligation, political subdivisions are immune from liability.

Plaintiffs have articulated a claim for willful and wanton misconduct by medical care workers in the City of Akron's employ. Pursuant to R.C. § 2744.02(B)(5) and R.C. § 4765.49(B), this conduct falls within an exception to the statutory immunity of R.C. § 2744.02(B)(1). Therefore, Akron's motion for judgment on the pleadings is denied.

Pursuant to R.C. § 2744.02(C), this is a final, appealable order and the Court finds no just cause for delay.

It is so ordered.



JUDGE MARY MARGARET ROWLANDS

cc: Attorney Ann R. Combs
Attorney Donald H. Switzer
Attorney John Christopher Reece
Attorney Michael J. Fuchs

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

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ORC Ann. 2744.01 (2012)

§ 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;

(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 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 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.

(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.

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

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ORC Ann. 2744.02 (2012)

§ 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;

(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.

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

Go to the Ohio Code Archive Directory

~~ORC Ann. 2744.03 (2012)~~

§ 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 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.

TITLE 47. OCCUPATIONS -- PROFESSIONS
CHAPTER 4765. DIVISION OF EMERGENCY MEDICAL SERVICES

Go to the Ohio Code Archive Directory

ORC Ann. 4765.49 (2012)

§ 4765.49. Civil immunity of emergency medical personnel and agencies

(A) A first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's administration of emergency medical services, unless the services are administered in a manner that constitutes willful or wanton misconduct. A physician or registered nurse designated by a physician, who is advising or assisting in the emergency medical services by means of any communication device or telemetering system, is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's advisory communication or assistance, unless the advisory communication or assistance is provided in a manner that constitutes willful or wanton misconduct. Medical directors and members of cooperating physician advisory boards of emergency medical service organizations are not liable in damages in a civil action for injury, death, or loss to person or property resulting from their acts or omissions in the performance of their duties, unless the act or omission constitutes willful or wanton misconduct.

(B) 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 with the state, any political subdivision, joint ambulance district, or joint emergency medical services district for the provision of 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, or for injury, death, or loss to person or property arising out of any actions of licensed medical personnel advising or assisting the first responder, EMT-basic, EMT-I, or paramedic, unless the services are provided in a manner that constitutes willful or wanton misconduct.

(C) A student who is enrolled in an emergency medical services training program accredited under section 4765.17 of the Revised Code or an emergency medical services continuing education program approved under that section is not liable in damages in a civil action for injury, death, or loss to person or property resulting from either of the following:

(1) The student's administration of emergency medical services or patient care or treatment, if the services, care, or treatment is administered while the student is under the direct supervision and in the immediate presence of an EMT-basic, EMT-I, paramedic, registered nurse, or physician and while the student is receiving clinical training that is required by the program, unless the services, care, or treatment is provided in a manner that constitutes willful or wanton misconduct;

(2) The student's training as an ambulance driver, unless the driving is done in a manner that constitutes willful or wanton misconduct.

(D) An EMT-basic, EMT-I, paramedic, or other operator, who holds a valid commercial driver's license issued pursuant to Chapter 4506. of the Revised Code or driver's license issued pursuant to Chapter 4507. of the Revised Code and who is employed by an emergency medical

service organization that is not owned or operated by a political subdivision as defined in section 2744.01 of the Revised Code, is not liable in damages in a civil action for injury, death, or loss to person or property that is caused by the operation of an ambulance by the EMT-basic, EMT-I, paramedic, or other operator while responding to or completing a call for emergency medical services, unless the operation constitutes willful or wanton misconduct or does not comply with the precautions of section 4511.03 of the Revised Code. An emergency medical service organization is not liable in damages in a civil action for any injury, death, or loss to person or property that is caused by the operation of an ambulance by its employee or agent, if this division grants the employee or agent immunity from civil liability for the injury, death, or loss.

(E) An employee or agent of an emergency medical service organization who receives requests for emergency medical services that are directed to the organization, dispatches first responders, EMTs-basic, EMTs-I, or paramedics in response to those requests, communicates those requests to those employees or agents of the organization who are authorized to dispatch first responders, EMTs-basic, EMTs-I, or paramedics, or performs any combination of these functions for the organization, is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's acts or omissions in the performance of those duties for the organization, unless an act or omission constitutes willful or wanton misconduct.

(F) A person who is performing the functions of a first responder, EMT-basic, EMT-I, or paramedic under the authority of the laws of a state that borders this state and who provides emergency medical services to or transportation of a patient in this state is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the person's administration of emergency medical services, unless the services are administered in a manner that constitutes willful or wanton misconduct. A physician or registered nurse designated by a physician, who is licensed to practice in the adjoining state and who is advising or assisting in the emergency medical services by means of any communication device or telemetering system is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the person's advisory communication or assistance, unless the advisory communication or assistance is provided in a manner that constitutes willful or wanton misconduct.

(G) A person certified under section 4765.23 of the Revised Code to teach in an emergency medical services training program or emergency medical services continuing education program, and a person who teaches at the Ohio fire academy established under section 3737.33 of the Revised Code or in a fire service training program described in division (A) of section 4765.55 of the Revised Code, is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the person's acts or omissions in the performance of the person's duties, unless an act or omission constitutes willful or wanton misconduct.

(H) In the accreditation of emergency medical services training programs or approval of emergency medical services continuing education programs, the state board of emergency medical services and any person or entity authorized by the board to evaluate applications for accreditation or approval are not liable in damages in a civil action for injury, death, or loss to person or property resulting from their acts or omissions in the performance of their duties, unless an act or omission constitutes willful or wanton misconduct.

(I) A person authorized by an emergency medical service organization to review the performance of first responders, EMTs-basic, EMTs-I, and paramedics or to administer quality assurance programs is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the person's acts or omissions in the performance of the person's duties, unless an act or omission constitutes willful or wanton misconduct.

History:

RC § 4731.90, 136 v H 832 (Eff 8-31-76); 137 v S 347 (Eff 7-13-78); 137 v H 1092 (Eff 7-21-78); 138 v H 1 (Eff 5-16-79); 138 v H 201 (Eff 2-28-80); 140 v H 446 (Eff 6-20-84); 141 v H 176 (Eff 11-20-85); RC § 3303.21, 141 v H 222 (Eff 5-15-86); 141 v H 428 (Eff 12-23-86); 143 v H 381 (Eff 7-1-89); RC § 4765.49, 144 v S 98 (Eff 11-12-92); 145 v H 384 (Eff 11-11-94); 146 v S 150 (Eff 11-24-95); 146 v H 405 (Eff 10-1-96); 149 v S 115. Eff 3-19-2003; 151 v H 401, § 1, eff. 4-5-07.