

## Immunity

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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### **Waiver of Immunity**

A governmental entity may waive its immunity from suit only by express provisions or endorsement of a policy or contract of insurance authorized by this law to cover its liabilities. The law also provides that any contract of insurance to cover liabilities under federal law shall not be construed or deemed to be a waiver of such immunity. T.C.A. § 29-20-404.

### **Situations Where Immunity is Removed**

Governmental entities are not immune from suit for injuries resulting from an employee's negligent operation of a motor vehicle or other equipment while in the scope of his or her employment. However, this provision does not repeal T.C.A. § 55-8-101, T.C.A. § 55-8-108, or T.C.A. § 55-8-132, which relate to operating authorized emergency vehicles. The immunities provided by these sections are expressly continued. T.C.A. § 29-20-202.

Governmental entities are not immune from suit for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk, or highway owned and controlled by the governmental entity, including any traffic-control devices. This provision does not apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved. T.C.A. § 29-20-203.

Governmental entities are not immune from suit for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir, or other public improvement owned and controlled by the governmental entity. Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive or actual notice to the governmental entity of the condition is alleged and proved. T.C.A. § 29-20-204.

Governmental entities may be sued for injury proximately caused by a negligent act or omission of an employee within the scope of his employment, unless the injury arises or results from:

- riots, unlawful assemblies, public demonstrations, mob violence, or civil disturbances; assessing, levying, or collecting taxes.
- exercising or performing or failing to exercise or perform a discretionary function, or whether or not the discretion is abused;
- false imprisonment pursuant to a *mittimus* from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interfering with contract rights, inflicting mental anguish, or invading right of privacy or civil rights;
- issuing, denying, suspending, or revoking or failing or refusing to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;
- failing to make an inspection or making an inadequate or negligent inspection of any property.
- instituting or prosecuting any judicial or administrative proceeding, even if malicious or without probable cause;
- misrepresentation by an employee, whether or not such is negligent or intentional; or
- Y2K-related computer failures occurring before January 1, 2005. T.C.A. § 29-20-205.

The nine exceptions listed above are categories in which governmental entities may not be sued for the negligent acts of their employees. Except for these listed categories, governmental entities are liable for any injury proximately caused by a negligent act or omission of any employee within the scope of his or her employment.

T.C.A. § 29-20-201 grants immunity from suit to all members of boards, commissions, agencies, authorities, or other governing bodies of governmental entities arising from their affairs except for willful, wanton, or grossly negligent acts.

*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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