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Opinion No. 09-47

County Employees Sued in Individual Capacities

QUESTIONS

1. Are there any state statutes that require a county to pay the attorneys' fees and litigation expenses for county employees who have been sued in their individual capacities for acts or omissions within the scope of their employment?

2. Is the answer to Question No. 1 different if the persons being sued in their individual capacities are appointed or elected county officials?

3. Is the answer to Question No. 1 different if the county is also a named defendant in the lawsuit?

OPINIONS

1. There are no state statutes requiring a county to pay the attorneys' fees and litigation expenses for county employees sued in their individual capacities for acts or omissions in the scope of their employment.

2. There are no state statutes requiring a county to pay the attorneys' fees and litigation expenses for appointed or elected county officials sued in their individual capacities for acts or omissions in the scope of their employment.

3. There are no state statutes requiring a county to pay the attorneys' fees and litigation expenses for county employees sued in their individual capacities for acts or omissions in the scope of their employment even where the county is also a defendant in the suit.

ANALYSIS

There are no state statutes requiring a county to pay the attorneys' fees and litigation expenses for county employees sued in their individual capacities for acts or omissions taken in the scope of their employment under any circumstances. The Governmental Tort Liability Act (GTLA) authorizes but does not require counties to insure or indemnify their employees for claims arising under state or federal law for which the county is immune. Tenn. Code Ann. §§ 29-20-310(d) & 29-20-406. *See Chambers v. City of Chattanooga*, 71 S.W.3d 281, 285-86

(Tenn. Ct. App. 2002). Under the Act the term "employee" includes elected and appointed officials. Tenn. Code Ann. §29-20-102(2).

Under the GTLA a county may be liable for certain negligent acts of its employees. As a general rule, the Act immunizes employees against state law claims for which the county is liable. Tenn. Code Ann. § 29-20-310(b). *See Hill v. City of Germantown*, 31 S.W.3d 234, 238 (Tenn. 2000). In state law cases in which the county is immune, as a general rule no judgment may be entered against the employee in any amount in excess of the amounts established for governmental entities under the GTLA unless his acts were willful, malicious, criminal or performed for personal financial gain. Tenn. Code Ann. §29-20-310(c). County or employee liability for a claim arising under federal law is governed by the relevant federal law. *Dubuc v. Mich. Bd. of Law Examiners*, 342 F.3d 610, 617 (6th Cir. 2003).

Tenn. Code Ann. §29-20-310(d) provides:

> Local governmental entities shall have the right, as a matter of local option, to elect to insure or to indemnify their employees for claims for which the governmental entity is immune under this chapter arising under state or federal law upon such terms and conditions as the local government may deem appropriate; provided, that such indemnification may not exceed the limits of liability established for governmental entities in §29-20-403 except in causes of action in which the liability of governmental employees is not limited as provided in this chapter.

Thus, where a county would be directly liable for a claim under the GTLA or under federal law, or where a county has purchased insurance or undertaken to indemnify its employees for a claim as authorized under the GTLA, it is likely that either the county or the insurance company, in order to defend its own resources, would defend the action.

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