

Chapter Eleven

Liability

Any discussion of a town's exposure to a lawsuit must start with an understanding that under Minn. Stat. § 365.02, a town can sue and be sued. In addition, towns and town officers can face criminal charges.

§ 11-1. Civil Actions

Civil actions are lawsuits between private parties, which may include government entities, alleging some injury or damage to the plaintiff (the person bringing the lawsuit). Civil actions typically arise as either: 1) actions at law in which the plaintiff alleges a violation of a statute or common law; or 2) actions in equity which seek a remedy based on concepts of fairness when no remedy is offered by law. When a party loses a civil lawsuit, the party may be required to pay money to the plaintiff, or be ordered to take some action (called specific performance) or stop taking some action (called a restraining order or injunction), or be subject to some other result the judge believes to be fair.

To bring a civil action against a town, a person must have "standing." Standing requires that the person bringing the suit have some connection to the controversy. A person usually must have suffered some actual injury, or be able to point to a statute that specifically gives them standing.

Taxpayer suits are an exception to this general rule. In these types of suits, a person attempts to force the board to take or stop an action. For example, a person, based on his or her status as a taxpayer, could bring a lawsuit to stop an alleged unlawful disbursement of public funds or to stop the execution of an alleged unlawful contract.

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How an action may be brought against a town will depend upon the claimed harm and the remedy being sought. If personal injury or property damage is being alleged, the complaint against the town will likely be a tort claim. Tort claims seek compensation for injuries that result from the conduct of another person. Examples of common tort claims are negligence, trespass, and assault. Chapter 11 of this manual discusses how the Legislature has given towns and other local governments immunities from certain tort claims and capped the damages that may be awarded for others.

The most common tort claim brought against townships is for negligence. To prove negligence, a plaintiff must show:

- (1) a duty;
- (2) that the duty was breached;
- (3) that the breach was the proximate cause of plaintiff's injury; and
- (4) that plaintiff was in fact injured.

Negligence cases often result in arguments over whether a duty existed and whether it was breached. For example, a person injured by a town snow plow may claim that the plow operator had a duty to stop at a stop sign. The issue would become whether there actually was a duty to stop and if so, whether the operator failed to do so.

Towns may also be sued for breach of contract. Suits based on a contract are not torts

even if damages are sought. Considering the large number of contracts that towns enter in a year, combined with the often-informal nature of those contracts, this is a substantial source of lawsuits.

Another source of civil actions comes from the relationship towns have with employees. Employment claims against a town can come directly from an employee for a variety of reasons ranging from harassment to injuries suffered on the job.

Other challenges to town actions may allege the board failed to follow proper statutory procedures before it acted, or did not have sufficient justification for a decision. If the claimant prevails, a court may order the town to reconsider its decision or reverse the decision outright.

Occasionally, a "writ" is brought against a town. There are a variety of writs provided in law, including writs of error, certiorari, mandamus, prohibition, and *quo warranto*. Minn. Stat. § 480.04. A writ commonly brought against local governments is the writ of mandamus. A writ of mandamus asks a court to order the town to perform a non-discretionary duty the town has failed to perform. For example, a mandamus action may be brought against a town that fails to establish a cartway when it was required to do so by law.

§ 11-2. Criminal Actions

Once a person takes the oath of office they become a public official. Being a public official has special duties and obligations and can subject a person to criminal laws that do not apply to the public. These criminal statutes are intended to guard against potential abuse of the power and trust that goes with holding public office. Minn. Stat. §§ 609.415-.465. A criminal investigation into the actions of an officer may be initiated in several ways.

These include a criminal complaint, the county attorney's own initiative, or a referral from the state auditor's office.

Any officer who knowingly exceeds the powers of the office, fails to perform a known mandatory ministerial duty of office, or knowingly makes a false report may be prosecuted for a gross misdemeanor. Minn. Stat. § 609.43. If an officer after leaving public office exercises the powers of the office or fails

to turn over the records and property of the office to the successor, he or she may be prosecuted for a gross misdemeanor. Minn. Stat. § 609.44. A gross misdemeanor carries a penalty of up to a \$3,000 fine, up to one year in jail, or both.

It's important that town officers be aware of the criminal penalties associated with public contracting. For instance, the failure to get sealed bids when required by the municipal contracting law could result in the officers being prosecuted for a misdemeanor. Minn. Stat. § 365.37. An officer who violates the

conflict of interest prohibition by contracting with his or her town without following proper procedures could be prosecuted for a gross misdemeanor. Minn. Stat. § 471.87.

Town clerks and officers serving as election judges need to pay attention to the fact that there are a variety of criminal penalties associated with failing to properly follow the election laws in conducting elections. Minn. Stat. §§ 201.27; 204B.26; 204C.12. Intentional violations of some election laws are a felony.

§ 11-3. Federal Claims

Towns are also subject to suit based on federal law and the United States Constitution. One of the most common federal claims is a "Section 1983" claim. 42 U.S.C. § 1983. A § 1983 claim is one that is brought when a person believes their Constitutional rights have been violated by a government or government official. A motivating factor for alleging a § 1983 violation is that a plaintiff who wins this type of suit can be awarded attorney's fees.

The Americans with Disabilities Act (ADA) is another example of a federal law under which a town could face federal action. 42 U.S.C.

Chap. 126. Under the ADA, towns are required to make certain accommodations, both in its facilities and for its employees, for persons with disabilities. Attorney's fees can be awarded if a violation is found.

There are a variety of other federal statutory and constitutional claims that can be made against towns. These include claims of violations of Federal wetlands laws, the First Amendment's guarantee of freedom of speech and religion, and the Fourth Amendment rights of due process and eminent domain.



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