

# 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. Town officers can also face criminal charges if they violate state law. Finally, towns can be the subject of administrative actions, which can bring both civil and criminal sanctions. This is most likely to take place in an enforcement action for a violation of an environmental regulation.

### **§ 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

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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.

How an action may be brought against a town will depend upon the claimed harm and the remedy being sought. Some example actions include:

- **Tort Claim:** Arises if a person claims a personal injury or property damage. A tort is a civil wrong. Tort claims seek compensation for injuries that are the result of the actions or inactions of another person. Examples include negligence, trespass, and assault. Chapter 12 of this manual discusses how the Legislature has capped the amount of compensation that a person may recover for damages from a town, as well as given towns, and other local governments immunity from liability for certain tort claims.

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 the plaintiff's injury; and
- (4) that the 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 snowplow 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.

- **Breach of Contract:** Alleges a failure to live up to a legal promise. 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.
- **Employment Claims:** 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.
- **Compliance / Statutory:** Allege the board failed to follow 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. A writ is not a claim like a tort or a contract—instead, it seeks the remedy offered by the writ based on a claim. 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 can subject a town official to criminal laws that do not apply to the general 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 started in several ways. These include a criminal complaint, on the county attorney's own initiative, or a referral from the State Auditor's office.

Examples of possible criminal complaints a

town officer may face:

- Any officer who knowingly exceeds the powers of the office, or fails to perform a known mandatory 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.
- 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.
- The failure to get sealed bids when required by the municipal contracting law could result in officers being prosecuted for a misdemeanor. Minn. Stat. § 365.37.
- No officer or employee shall sell to any other officer or employee any property owned by the township except pursuant to specific conditions. Violating this provision is a misdemeanor. Minn. Stat. § 15.054.

A person convicted of a misdemeanor can be sentenced up to 90 days in jail and/or a \$1,000 fine. A gross misdemeanor carries a penalty of up to a \$3,000 fine, up to one year in jail, or both.

In addition, failing to properly follow the election laws can subject town clerks and officers serving

### § 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. Section 1983 creates a cause of action against any person who, “under color of state law,” violates a plaintiff’s federal constitutional or statutory rights. Seeking damages under § 1983 is often more attractive to potential plaintiffs than state law tort claims because state immunities and damage caps do not apply, and the plaintiff who wins this type of suit can be awarded attorney’s fees.

The Americans with Disabilities Act (ADA) is an

as election judges to criminal penalties. For example:

- Town officers or other employees who intentionally fail to follow Chapter 201 are guilty of a felony. Minn. Stat. § 201.27.
- Any individual who serves as an election judge in violation of any of the provisions of Minn. Stat. §§ 204B.19 to 204B.25, is guilty of a misdemeanor. Minn. Stat. § 204B.26.
- An election judge who fails to carry out the duties to challenge a voter is guilty of a gross misdemeanor. Minn. Stat. § 204C.12.
- A clerk who issues a Certificate of Election to a candidate who has not certified that all campaign finance reports have been filed is guilty of a misdemeanor. Minn. Stat. § 211A.05, subd. 1.
- All election materials must be retained for 22 months after the election. An individual who intentionally damages, defaces, or mutilates any ballot, election file, or election register or adds anything to a ballot, election file, or election register can be found guilty of a felony. Minn. Stat. 206C, subd. 4. State law considers ballot destruction a general intent crime and the law does not recognize a mistake of law defense to avoid criminal penalties. *State v. Shane*, 883 N.W.2d 606 (Minn. Ct. App. 2016) (ballots burned).

other example of a federal law under which a town could face federal action. 42 U.S.C. § 12101. 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 occurs.

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.

