

# An overview on liability and local governments



By Richard Whisnant  
For the NC Soil and Water Districts  
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## Outline and objectives

- Liability: a high-level overview
- When is government immune from liability?
- When are individuals in government at risk personally?
- What can districts do to minimize liability and still get the work done?



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## Liability: a high-level overview

- When I ask “am I liable for this,” why is the answer never clear?
- Types of liability
  - Tort:** someone is injured, wants to be made whole, injury caused by someone else acting unreasonably
  - Contract:** someone fails to fulfill a contractual duty
  - Statute:** someone fails to fulfill a statutory duty
- Not covering: federal law (see 1983)



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## Isn't government immune from liability?

- NC local government liable for its employees' torts only if they act
  - Within the scope of their employment, and
  - While carrying out a “proprietary”, not a “governmental”, function
- Or if purchase insurance (city, county)



King George III



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## Governmental vs. proprietary activities

### Governmental

- “discretionary, political, legislative, for the public at large”
- Traditionally just done by government: traffic lights, police cars, fire alarms, zoning enforcement, storm drain maintenance, sanitation

### Proprietary

- Commercial or chiefly for the particular community being governed
- Functions done by both government and private sector
- Fees charged for service
- Eg: landfill fees, water and electricity as enterprises, airports, muni golf courses



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## Public duty doctrine

- Certain local government activities don't create liability to individual citizens, because the government's duty is to the public at large
- Exceptions:
  - Special duty from promise or other circumstances
  - Special relationship, such as witness protection
- NC Sup Ct 2003: PD only for law enforcement



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## Liability of individuals in government

- Suit against someone “in official capacity” is in essence against the government unit
- Suit against someone “in individual capacity” is a claim of personal liability
- Intentional torts always actionable (e.g. assault)
- Negligence: absolute versus qualified liability
- Differs for different roles: public servants, public officials, legislators, judges, etc.



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## Immunity for public officials vs. public employees

- **Officials:** immunity for negligence unless act with malice, for corrupt reasons, or outside the scope of duties
- **Employees:** can be liable for injuries caused by negligence in the course of performing their duties (no immunity)
- Distinction: officials have position created by legislation, normally take oath, perform legally imposed duties, exercise certain amount of discretion



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## General advice for minimizing liability

- Act reasonably and be prepared to document why your actions were reasonable
- Try not to hurt anyone
- Fulfill statutory and contractual duties
- Anticipate conflict: segue to conservation easements



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