

Governmental Immunity

Discretionary Immunity



Indiana Tort Claims Act

Governmental entities may be liable for torts committed by its agencies and its employees.

IC 34-13-3-3: Provides a list of immunities available to governmental entities if a loss occurs from:

- Natural condition of unimproved property
- Condition of reservoir, dam, conduit, drain, or similar structure when used for an unforeseen purpose
- Temporary condition caused by weather
- Performance of a discretionary function
- Design of a highway if the incident occurs 20 years after the project was designed or substantially redesigned, government must continue to provide reasonably roads
- Third-party immunity, if the act or omission was from anyone other than the governmental entity or the governmental entity's employee
- Failure to inspect or making an inadequate inspection to determine whether property complied with or violates any law or contains a hazard to health or safety.

What is governmental immunity?



Government is protected from being held responsible for its actions or inactions that cause harm to people, provided that the harm was caused while performing its governmental functions.



Generally, protects the government's performance of core government functions, such as enacting and enforcing laws, administering programs, and providing public safety



Concept of immunity assumes negligence but denies liability

Discretionary Function Immunity IC 34-13-3- 3(a)(7)

Critical inquiry of the courts is the underlying policy of governmental immunity, i.e., whether the challenged act or omission is the type of function that the legislature intended to shield from liability - *Lee v. State*, 682 N.E.2d 576, 579 (Ind. Ct. App. 1997)

Purpose: Not to punish the State for improving roads and making them safer. In other words, to facilitate societal aims (improving roads) that outweigh the value of imposing liability on the State.

Allows the State to make decisions on how to improve the State's highways without the risk of legal liability

Avoids disincentives for effective and cost efficient measures

Standard: to design and build reasonably safe roads, not perfect ones

Peavler v. Commissioners of Monroe County Test: Planning vs. Operational

Planning activities include “government decisions about policy formation which involve assessment of competing priorities and a weighing of budgetary considerations or the allocation of scarce resource.”

Not a laundry list

Example: Wirt Curves Case - *Lee v. State*

Ultimate consideration: whether the action is one that was intended to be immune

Operational activities include routine maintenance of roads, activities already determined/established by policy

Factors to Consider

Discussion about how the area for the project was decided upon

- Benefits and drawbacks of the specific starting point

Discuss why specific repairs were selected over others

- Ex. Costs, timing, other projects in the area, ability to get materials

Discuss what can be done about the issue in the meantime

Discuss the overall cost-benefit of the plan vs other options

- Must be more than just approving finances, a deeper dive into why the choice made was the best choice

Discuss the need for the project, specifics of the projects, and the final plan that was chosen.

Must demonstrate that “conscious balancing took place”

Lee v. State: Wirt curves

A fatal vehicle accident on SR 7 and the “Wirt curves”

Plaintiff alleged INDOT was negligent in design, maintenance, and failed to warn motorists of the danger.

State asserted discretionary immunity and presented the following evidence:

Significant amount of correspondence regarding the history and the danger of the curves

Two separate investigations by INDOT into replacing the bridge near the Wirt curves

Decision to combine the construction of the Wirt curves with another project

INDOT approval of the larger construction project

Held a public hearing to obtain Federal Highway Administration funding

Final completion of the engineering of the project and moving into appraising land needed to acquire for the project

Awarded a contract for the project

How does
this affect
me?

Depositions

Affidavits

Subpoenas

Testimony