Buffalo Law Review

Volume 5 | Number 2 Article 51

1-1-1956

Municipal Corporations—Notice of Tort Claim

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purpose.[30] There was no illegal extension of the City credit[31] nor violation of the Elmira Parking Authority Law, [32] which provided that neither the State nor City were to be liable on Authority bonds nor were the bonds to be payable out of funds other than those of the Authority. That law did not forid the transfer of money to the Authority, especially where that transfer was part of a scheme of action by which the City would satisfy a public requirement.[33]

The dissent argued that the contract was in direct violation of the provisions of the law[34] expressly forbidding the city from assuming any liability for payment of the bonds, as this contract did in fact and in effect bind the city to meet Authority obligations. The dissent further argued that the contract also constituted a gift of credit by a city which was expressly prohibited.[35]

On the basis of the authority cited by the majority of the Court and in view of the needs of a modern city which must be provided by the most practical methods available, the scheme entered into between the City and the Authority can not be condemned.

Notice of Tort Claim

The General Municipal Law and the Education Law enumerate the persons to be notified where notice is required as a condition precedent to bringing a tort action against any municipal corporation or officer or employee thereof.[36] The prime if not the sole objective of the notice requirement of such a statute is to insure a municipality an adequate opportunity to investigate the circumstances surrounding the accident and to explore the merits of the claims while information is readily available.[37] Unless specific statutory provision requiring such a notice is found, there need be no service of a notice in a common law tort action against an employee of a municipality in his individual capacity,[38] since he has first-hand knowledge of the tort which he allegedly has committed. However, in those instances where the law provides that the municipal corporation indemnify the employee for a judgment recovered against him on a tort claim, the legislature may specifically require that a notice of claim be given, even when the employee alone is sued.[39]

30. *Denihan Enterprises, Inc. v. O'Dwyer,* 302 N. .Y. 451, 99 N. E. 2d 235 (1951).
31. See note 24, *supra.*
32. N. Y. PUBLIC AUTHORITIES LAW § 1493.
33. *Robertson v. Zimmerman,* 268 N. Y. 52, 196 N. E. 740 (1935).
34. N. Y. PUBLIC AUTHORITIES LAW § 1493.
35. See note 24, *supra.*
36. N. Y. MUNICIPAL CORPORATION LAW §§ 50(b), (d); N. Y. EDUCATION LAW §3813.
37. *Teresta v. City of New York,* 304 N. Y. 440, 108 N. E. 23 397 (1952).
38. *O'Hara v. Sears Roebuck & Co.,* 286 App. Div. 104, 142 N. Y. S. 2d 465 (4th Dep't 1955).
39. N. Y. MUNICIPAL CORPORATIONS LAW §§ 50(b), (c) (d),

In an action against individual school teachers for negligence, in that they failed to maintain adequate supervision of physical education activities in the course of their employment, plaintiff served a notice of claim only upon the school district employer of the teachers. A statute[40] provides that no action founded upon tort shall be brought against a school district, board of education, official or teacher unless notice is given pursuant to law.[41]

On a motion to dismiss the complaint against the teachers, the Court decided[42] that sufficient notice had been given by service on the school district, the requirement of notice being in derogation of the plaintiff's right to sue without performing a condition precedent and thus to be strictly construed. Historically the notice of claim has been applied only to public corporations, and when the legislature has desired to require that the notice be served on both the public corporation and the employee, it has clearly and explicitly so stated.[43] In the instant case, the Court decided that the legislative intent and the function of the notice statute was fulfilled by service on the school district alone.

Responsibility for Highways

In a negligence action against the State for failing to maintain a highway in proper condition, it was determined that the State is responsible for highways formerly in the State system which have been discontinued unless specific notice has been given to the governmental unit on which the burden of maintenance falls.[44]

In 1926 the State relocated Route 245 so as to improve the junction of that road with Route 5, and in so doing discontinued a portion of the old route. The discontinued portion had been, prior to its accession to the State highway system, an Ontario County highway. From 1926 until 1949, when plaintiff travelled the road as a passenger in an automobile, the road was not repaired or maintained in any way.

At the time of its discontinuance from the State system, the Superintendent of Public Works made an order of discontinuance pursuant to the statute governing the situation,[45] the last paragraph of which order stated: "Ordered: That such section be and it is hereby turned over to the Town of Geneva, Ontario County,

40. N. Y. EDUCATION LAW § 3813.
41. N. Y. MUNICIPAL CORPORATIONS LAW § 50.
42. *Sandak v. Tuxedo Union School Dist.*, 308 N. Y. 226, 124 N. E. 2d 295 (1954).
43. N. Y. MUNICIPAL CORPORATIONS LAW §§ 50(b) (c), (d).
44. *Geraghty v. State*, 309 N. Y. 188, 128 N. E. 2d 302 (1955).
45. Now N. Y. HIGHWAY LAW § 62.