

ARE ELECTED OFFICIALS ENTITLED TO POLITICAL SUBDIVISION IMMUNITY?



By: Michelle J. Sheehan

The Ohio Supreme Court addressed two issues last week surrounding the extent of immunity granted to an elected official: 1) When is an elected official sued in his/her individual versus official capacity, and 2) Is an elected official considered an “employee” for purposes of immunity? The Court in *Lambert v. Clancy*, Hamilton County, 2010-Ohio-1483 held 1) absent language to the contrary, an elected official is sued in his/her official capacity and 2) an elected official is not considered an “employee” for purposes of immunity; rather, an elected official is entitled to full political-subdivision-immunity set forth in R.C. 2744.02.

In *Lambert*, Ms. Lambert received a traffic violation. Pursuant to protocol at the time, the Hamilton County Clerk of Courts published Ms. Lambert’s personal information on the website including address, date of birth, social security number and driver’s license number. Because of a transcription error on the ticket, Ms. Lambert’s driver’s license number was incorrect.

Someone stole Ms. Lambert’s personal information from the website and incurred approximately \$20,000 in unauthorized charges. The unauthorized charges included Ms. Lambert’s incorrect driver’s license number.

Ms. Lambert sued “Greg Hartmann, in his official capacity as Clerk of Courts” and the “Hamilton County Board of County Commissioners.” Patricia Clancy subsequently was elected Clerk of Courts and was substituted as the named Defendant. The trial court dismissed Ms. Lambert’s complaint without an opinion. The court of appeals reversed the trial court, concluded that the Clerk of Courts was sued as an “employee” of Hamilton County and an issue of fact existed as to whether the Clerk of Courts acted “reckless” and therefore subject to liability.

The issue before the Ohio Supreme Court was whether the Clerk of Courts was sued individually or in his/her official capacity. The Court also considered what immunity standard applied: immunity for a political subdivision or immunity for an “employee” of a political subdivision. Immunity for a political subdivision is a broader standard that grants immunity unless one of five narrow exceptions apply. R.C. 2744.02(B). Immunity is granted to employees of a political subdivision unless one of three exceptions apply. One of the exceptions provide that an employee is not entitled to immunity if the employee acted with “malicious purpose, in bad faith, or in a wanton or reckless manner.” R.C. 2744.03(A)(6).

The Ohio Supreme Court held that an individual elected to an office of a political subdivision is sued in their “official” governmental capacity unless alleged otherwise. More importantly, the elected official is entitled to government immunity for a political subdivision, not limited immunity for an employee of a political subdivision. The Ohio Supreme Court ruling clarifies and extends government immunity to “political subdivision’s departments, agencies and offices, which implement the duties of the political subdivision.” *Id.* ¶120. It also protects elected officials from being defined as “employees” and therefore subject to allegations of “reckless” behavior in order to avoid immunity. If you would like a full copy of the opinion or have any other questions on government liability, contact any member of our Government and Public Liability Practice Group.

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