1951

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THE TORT LIABILITY OF AMERICAN MUNICIPALITIES*

By Chester James Antieau*

For torts committed in the performance of activities ultra vires the municipal corporation, the city is customarily immune from liability.1 The great majority of courts further deny municipal liability when negligent torts are committed beyond the authorized powers of particular agents, but infra vires the municipal corporation,2 although there are well-reasoned cases contra.3 Although cities are occasionally held responsible for the wilful torts of employees,4 the majority rule is contrary.5 Municipalities have by adoption or ratification been held liable for torts of agents unauthorized but within the power of the municipal corporation.6 Municipalities are regularly not liable for torts when the actor is an independent contractor.7 Cases are more widely split when the

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1 Radford v. Clark, 113 Va. 199, 73 S.E. 571 (1912), noted in 25 Harv. L. Rev. 648 (1913); Whitacre v. City of Charlotte, 216 N.C. 657, 6 S.E. 2d 558, 126 A.L.R. 458 (1940); Posey v. North Birmingham, 154 Ala. 511, 45 S. 693 (1907). Occasional courts indicate a lack of sympathy with the defense of ultra vires. Shumack v. City of Marshalltown, 137 Iowa 72, 114 N.W 542 (1908); Augustine v. Town of Brandt, 249 N.Y. 198, 163 N.E. 732 (1928), noted in 14 Conn. L. Q. 351 (1919); Bator v. Ford Motor Co., 269 Mich. 648, 257 N.W 906, 913 (1934). “However, if the wrongful act is one which the municipality has the right to do under some circumstances or in some manner, then it is not ultra vires in the respect of relieving the city for liability for tort.” See, generally, Gettys, Liability of Municipal Corporations for Ultra Vires Tortious Acts, 8 Temple L. Q. 133 (1934).


6 Omaha v. Croft, 60 Neb. 57, 82 N.W 120 (1900); Oklahoma City v. Hill, 6 Okla. 114, 50 Pac. 242 (1897).

7 Laurel v. Ingram, 148 Miss. 774, 114 S. 881 (1928); Harvey v. City of Hillsdale, 86 Mich. 330, 49 N.W 141 (1891); Shute v. Princeton Tp., 58 Minn.
tort was occasioned by the negligence of a tenant or lessee of the municipality.8

When a municipality has constructed or maintained a nuisance it is customarily liable for damages to property,9 and sometimes to person.10 So, many cases recognize municipal liability for injuries to children under the theory of an attractive nuisance.11 Cities are also generally held liable for trespasses to private property 12

Occasionally attempted distinctions are drawn between mandatory and permissive powers of municipalities,13 between discretionary and ministerial activities,14 and between non-feasance and misfeasance15 but they are generally repudiated.

337, 59 N.W 1050 (1894). Where damage is due not to the negligence of the contractor but the orders of the municipality, the latter has been held liable. Sewall v. City of St. Paul, 20 Minn. 511 (1874). See Hepburn, The Liability of the Municipal Corporation for the Negligent Acts of the Independent Street Contractor, Notre Dame Lawyer 35 (1930).


Moore, Misfeasance and Nonfeasance in the Liability of Public Authorities, 30 L.Q.R. 276, 415 (1914); Smith, Municipal Tort Liability, 48 Mich. L. Rev. 41,
Most frequently in determining the existence of municipal tort liability courts distinguish between “governmental” or “public” and “proprietary” or “private” activities, admitting civic liability for the latter but not for the former. The distinction is unserviceable and has been criticized by innumerable courts and scholars but its use continues and must be reckoned with. The exaction of charges from users or profit-making by the city will often induce courts to call an activity proprietary although it is frequently said that “an incidental pecuniary advantage accruing to a municipality from the performance of a function characteristically public does not transfer a public function into a private one,” and many cases deny municipal liability notwithstanding charges or profits. The test of “governmental” is often said to be whether the activity is for the common good of all the people of the state and for the benefit of the public at large.

The function of legislating for the community will certainly be described as governmental and tort suits against a municipality for damages allegedly incurred by the passage of or failure to pass

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17 Fowler v. City of Cleveland, 100 Oh. St. 158, 126 N.E. 72 (1919); Irvine v. Greenwood, 89 S.C. 511, 72 S.E. 228 (1911). Seasongood, Municipal Corporations: Objections to the Governmental or Proprietary Test, 22 VA. L. Rev. 910 (1936); Doddridge, Distinction Between Governmental and Proprietary Functions of Municipal Corporations, 23 Mich. L. Rev. 325 (1925); Borchard, Government Liability in Tort, 34 Yale L.J. 1, 129, 229 (1924); YALE L.J. 759, 1039 (1926); Note. Should We Abandon the Distinction between Governmental and Proprietary Functions, 54 Harv. L. Rev. 66 (1920).

18 Foss v. City of Lansing, 237 Mich. 633, 212 N.W. 952, 52 A.L.R. 185 (1927); Borwege v. City of Owatonna, 190 Minn. 394, 251 N.W. 915 (1933). The fact that a particular activity produces a net profit has been consistently held to be conclusive of the proprietary character of the enterprise.” Peterson, Government Responsibility for Tort in Minnesota, 26 Minn. L. Rev. 293, 340 (1942). Note, 24 Va. L. Rev. 430, 436 (1938).


21 Huffman v. City of Columbus, (Oh. App. 1943), 51 N.E. 2d 410; Johnson v. City of Chicago, 258 Ill. 494, 101 N.E. 960 (1913); Hoppe v. Winona, 113 Minn. 252, 129 N.W. 577 (1911); City of Pass Christian v. Fernandez, 100 Miss. 76, 56 S. 329 (1911).
a municipal ordinance uniformly fail. And municipalities are generally not liable for wrongful legal proceedings instituted by its officers for its benefit. Somewhat similarly, injuries sustained at city halls are overwhelmingly non-compensable. So also injuries incurred through the negligent maintenance of election buildings and machinery. Generally speaking, municipal liability because of negligent operation of buildings, as well as vehicles, depends upon whether the particular use is labelled "governmental" or "proprietary." Where a building is used for both governmental and proprietary functions, liability is apt to be recognized.

Municipal protection against, and suppression of, fires is overwhelmingly considered a governmental function. So, there is no recovery for being struck by fire engines. And at common law the municipality was immune from liability for the destruction of property to prevent the spread of a conflagration, although statutes frequently change the result today. The cases are somewhat more split on the liability for failure to keep watermains free.

22 Fidelity Laboratories v. Oklahoma City, 191 Okla. 473, 130 P. 2d 834 (1942); Yellow Cab Co. v. City of Chicago, 186 F. 2d 946 (CA 7th 1951); Bagh v. City of Bristol, 127 Conn. 33, 14 A. 2d 716 (1940); Bean v. City of Moberly, 350 Mo. 975, 169 S.W. 2d 393 (1943).
23 Doyle v. City of Sandpoint, 18 Id a. 654, 112 Pac. 204 (1910). Note, 32 L.R.A. (n.s.) 34.
26 So also courthouses, Hartford County v. Love, 173 Md. 429, 196 A. 122 (1938).
29 Frederck v. City of Columbus, 58 Oh. St. 538 (1898); Hooper v. City of Childress (T. Civ. A. 1931), 34 S.W. 2d 907. Contra: City of Tallahassee v. Kaufman, 87 Fla. 117, 100 S. 150 (1924).
31 Hall and Wigmore, Compensation for Property Destroyed to Prevent Spread of Conflagration, 1 Ill. L. Rev. 501 (1907).
from obstruction and negligent installation and maintenance of fire hydrants, although the majority deny municipal liability. Municipalities are similarly immunized for torts incurred in the preservation of the peace, the enforcement of the law and the apprehension of criminals. Cities are not ordinarily liable for unlawful arrest or false imprisonment by police officers, nor for arrest and imprisonment under an invalid ordinance, nor for assault by peace officers. Likewise the maintenance of jails is considered a governmental function and the community is not ordinarily liable for torts occasioned by unsanitary conditions in jails, for deaths and injuries due to the burning of jails, or for damages due to the misconduct or negligence of those in charge of prisoners. Police officers are frequently held liable for their own torts, of course, and there are salutary holdings recognizing


33 Bartlett v. Columbus, 101 Ga. 300 (1897); Gullikson v. McDonald, 62 Minn. 278, 64 N.W. 812 (1894); City of Caldwell v. Prunelle, 57 Kan. 511, 46 Pac. 949 (1896). Note, 44 L.R.A. 795.


36 Evans v. City of Kankakee, 331 Ill. 163, 83 N.E. 223 (1907); New Kiowa v. Craven, 46 Kan. 114, 26 Pac. 426 (1891); Eddy v. Ellicottville, 54 N.Y.S. 900, 35 App. Div. 256 (1898); Gullikson v. McDonald, 62 Minn. 278, 64 N.W. 812 (1895); Wilcox v. City of Rochester, 190 N.Y. 137, 82 N.E. 1119 (1907).


municipal liability for the retention of policemen known to be unsuited for the work.\textsuperscript{40} For torts occurring in the care and preservation of the public health cities are generally not liable.\textsuperscript{41} So liability is customarily denied for injuries sustained from ambulances.\textsuperscript{42} Probably the weight of authority denies liability for torts at municipal hospitals,\textsuperscript{43} and there are cases immunizing cities even when charges have been made.\textsuperscript{44} However, many cases now recognize municipal liability for hospital torts,\textsuperscript{45} especially when patients have paid for the services.\textsuperscript{46} 

According to the majority rule there is no civic liability for torts arising from the collection, removal and disposal of garbage, refuse and ashes.\textsuperscript{47} However, there are many contra cases,\textsuperscript{48} especially when charges or profits have been made by the municipality\textsuperscript{49} 

Generally, municipalities are not liable for injuries sustained due to defective conditions at educational institutions or the negli-
gence of persons there in charge. At common law there is a similar immunity from liability for torts arising from the transportation of school pupils. For accidents at school playgrounds, the municipal corporation is ordinarily not liable, but when charges and profits are made from athletic contests there is authority recognizing municipal liability.

The older cases, representing what is still the weight of authority hold a municipal corporation immune from tort damages for accidents at parks and recreational centers. However a great many recent cases hold cities liable, and the trend has been said to recognize municipal liability. Cases can usually be found for


In all the jurisdictions where for the first time question of the liability of a city in the care of its public parks has arisen in the past ten years, the courts have classified this function as proprietary and imposed liability. Tooke, The Extension of Municipal Liability in Tort, 19 Va. L. Rev. 97, 105-6 (1932). Note, 20 Nat. Mun. Rev. 298 (1931); Note, 3 Cin. L. Rev. 183 (1929); Note, 44 W. Va. L. Q. 159 (1931); Note, 34 Mich. L. Rev. 1250 (1936); Note, 19 St. L.L. Rev. 577 (1934); Repko, American Legal Commentary on the Doctrine of Municipal Tort Liability, 9 L.C.P. 214, 227 (1942); Note, 24 Geo. L.J. 1027 (1936); Note, 24 Wash. U.L.Q. 423 (1939); Note, 16 Mich. S.B.J. 590 (1938).
activity within a municipal park results in either trespass to adjoining property\textsuperscript{73} or injury to persons outside the recreational area.\textsuperscript{74} The majority of cases deny liability for injuries due to municipal fireworks displays,\textsuperscript{75} and for having licensed or permitted private exhibitions\textsuperscript{76} although there is in the latter situation occasional liability.\textsuperscript{77} Cases are split on liability for injuries sustained at municipal auditoria and convention halls.\textsuperscript{78}

Municipalities are overwhelmingly held liable for the negligent operation of transit systems.\textsuperscript{79} Generally they are similarly liable for torts arising from electric light utilities,\textsuperscript{80} although a distinction has at times been drawn resulting in immunization from liability for torts in connection with the lighting of streets.\textsuperscript{81} Cities are also liable for torts in connection with municipal telephone\textsuperscript{82} and gas\textsuperscript{83} systems. There is a wider split in connection with municipal water system maintenance, with the majority recognizing liability.\textsuperscript{84} Thus, a city is customarily liable for having supplied polluted or contaminated water.\textsuperscript{85} Again a distinct
tion is sometimes drawn here so as to immunize a municipality when the water is provided for purposes considered governmental, such as fire fighting.  

Cities are generally held liable for torts occurring at municipal airports, parking lots, wharves, docks, ferries, markets, and cemeteries.  

A city is under no tort liability for failure to install sewers or drains, nor is it customarily liable for defects in plans for such. However, some cases hold a municipality liable where a sewer originally of ample size has become inadequate due to the growth or development of the territory For damages caused by extra-


Toledo v. Cone, 41 Oh. St. 149 (1884); Hollman v. City of Platteville, 101 Wis. 94, 76 N.W. 1119 (1898); City of Atlanta v. Rich, 64 Ga. A. 193, 12 S.E. 2d 436 (1941); Danville v. Howard, 156 Va. 32, 157 S.E. 733 (1931).  


ordinary floods or rains a municipality is usually immune. Municipalities are generally held liable for damages to property resulting from faulty construction or negligent maintenance of sewers, drains and ditches. Cities are regularly held liable in tort for pollution of streams by sewage. And, for damage to property there is always the possibility of municipal liability for having created or maintained a nuisance. The cases, on the other hand, indicate a considerable reluctance to permit recovery against a municipality on any theory, for injury to the person. A city is not liable because surface water naturally accumulates on an owner’s land, but if it diverts surface water or a water course onto private property it will generally be held responsible.

Although there are today many statutory impositions of liability, even at common law the majority of jurisdictions held municipalities responsible for torts occasioned by the negligent construction or maintenance of streets, notwithstanding the

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97 Hamilton v. City of Bismarck, 71 N.D. 321, 300 N.W. 631 (1941); Trustees of University Co-op. Co. v. City of Madison, 233 Wis. 100, 288 N.W. 742 (1939); City of Louisville v. Cope, 296 Ky. 207, 176 S.W. 2d 390 (1944).


99 The cases, on the other hand, indicate a considerable reluctance to permit recovery against a municipal liability for injury to the person. A city is not liable because surface water naturally accumulates on an owner’s land, but if it diverts surface water or a water course onto private property it will generally be held responsible.

100 See note 140 below.
"governmental" nature of the function. A minority of the courts immunized the city\textsuperscript{107} and others have emphasized the need for the city to have full and complete control over the streets before liability is admitted.\textsuperscript{108} Municipalities are often held liable for injuries sustained due to excavations\textsuperscript{109} or obstructions in the road\textsuperscript{110} that were known, or should have been known,\textsuperscript{111} to the city and which could not have been discovered by a driver exercising due care. Duty may well include the obligation to erect barriers and railings,\textsuperscript{112} and post warning signs\textsuperscript{113} except where the peril is obvious to anyone exercising due care.\textsuperscript{114} Municipal liability further extends to traffic hazards and liability should be recognized, although the cases are often split, for the fall of "silent policemen" at corners,\textsuperscript{115} the fall of stop signs at intersections,\textsuperscript{116}


\textsuperscript{108} Pyman v. City of Grand Rapids, 327 Mich. 543, 42 N.W. 2d 739 (1950).


\textsuperscript{111} Contributory negligence, of course, generally bars recovery, Owens v. Town of Boonville, - Miss. - 40 S. 2d 158 (1949), and courts often find contributory negligence or assumption of risk in using streets closed to public travel. Note, 119 A.L.R. 841.

\textsuperscript{112} Coleman, Municipal Liability for Tort in Michigan, 13 Mich. S.B.J. 165, 168 (1934); Sahm, Municipal Liability in Pennsylvania for Defective Streets, 45 Dick. L. Rev. 113 (1941); Sayfauv v. Rochester, 113 N.Y.S. 840 (1908); Stanke v. St. Paul, 71 Minn. 51, 73 N.W. 629 (1898).


\textsuperscript{114} Willis v. New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Pardini v. City of Reno, 50 Nev. 392, 263 Pac. 786 (1928) noted in 15 Va. L. Rev. 595 (1929). See also Loehe v. Village of Fox Point, 253 Wis. 375, 34 N.W. 2d 126 (1948) noted in 33 MARQ. L. Rev. 74 (1949).


\textsuperscript{116} Liable: Phinney v. City of Seattle, 34 Wash. 2d 330, 208 P. 2d 297 (1949). And there are more cases holding municipalities liable for negligence in construction and maintenance of traffic "bumpers" Vicksburg v. Harralson, 136 Miss. 872, 101 S. 713 (1924); Titus v. Bloomfield, 80 Ind. A. 483, 141 N.E. 360 (1923); Hobart v. Casbon, 81 Ind. A. 24, 142 N.E. 138 (1924); Wells v. Kenilworth, 228 Ill. A. 332 (1923). Cf. Prewitt v. City of St. Joseph, 334 Mo. 1228, 70 S.W. 2d 916 (1934).
the fall of poles supporting traffic signals, the malfunctioning of traffic signals, and the like.

For torts occasioned in alleys and on bridges most jurisdictions apply their rule on street accidents, with the majority recognizing liability. On the liability of a municipality for torts arising out of negligence in street flushing and cleaning the cases are widely split. For negligence in the cutting and care of trees along streets municipal corporations are generally liable.

Municipalities are generally liable for injuries sustained because of defective sidewalks which were known to, or should have been known by, the city. For falls due to the natural presence

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119 For negligence in the cutting and care of trees along streets municipal corporations are generally liable.
120 Notes, 15 VA. L. REV. 595 (1929); 13 TENN. L. REV. 59 (1934); 11 R. MUN. L. REV. 128 (1935); 23 MARQ. L. REV. 216 (1939); 53 A.L.R. 170.
121 For falls due to the natural presence
of ice and snow on sidewalks municipalities are customarily immune, but if the ice and snow becomes rough or uneven and a pedestrian is injured without his fault the majority of cases today recognize municipal liability, so long as the city knew or should have known of the condition and had ample time to rectify the condition. Even here, however, there are contra cases. When ice has formed from water flowing onto a sidewalk from a permitted eavestrough on a building, the majority of the courts admit municipal liability.

**Filing of Claim Statutes**

In practically all states either by statutory provision or charter requirement a tort claimant against a municipality must file his claim against the city within a relatively short period of time. These requirements are mandatory and failure to comply will regularly deny recovery. Actual knowledge on the part of city officials is ordinarily held not to dispense with the filing of claim. Nor can municipal officers waive the statutory or charter

requirements. The general rule requires substantial compliance but because these claim statutes are often in derogation of the common law they are frequently given a strict construction, and there is some inclination to ameliorate the requirements of the statute in cases involving the younger minors as well as those physically or mentally incapacitated. What is necessary in general is that the city be reasonably informed of the time, place and nature of the accident, the character of the injuries, and the amount of damages claimed.

Statutory Changes in Municipal Tort Liability

What is probably the most important single statutory change in municipal tort law is found in the California Public Liability Act of 1923 which provides: "Counties, municipalities and school districts shall be liable for injuries to persons and property on public streets, highways, buildings, grounds, works and property in all cases where the governing or managing board of such county municipality school district, or other board, officer or person having authority to remedy such condition, had knowledge or notice of the defective or dangerous condition of any such street, highway, ground, works or property and failed or neglected, for a reasonable time after acquiring such knowledge or receiving such notice, to remedy such condition or failed and neglected for a reasonable time after acquiring such knowledge or receiving such notice to take such action as may be reasonably necessary to

137 Muse v. City of Gadsden, 232 Ala. 82, 166 S. 795 (1936); City of Indianapolis v. Evans, 216 Ind. 555, 24 N.E. 2d 776 (1940); Harder v. City of Minneapolis, 40 Minn. 446, 45 N.W 350 (1889); Hampton v. City of Duluth, 140 Minn. 303, 168 N.W 20 (1918). Note, 27 N.C.L. Rev. 145, 149 (1948).
protect the public against such dangerous or defective condition.\textsuperscript{138} This has been followed by a number of other "safe place" statutes the effect of which is almost as great as the California Act.\textsuperscript{129} And many states have passed statutes making municipal corporations liable for defective construction of city streets and sidewalks.\textsuperscript{140} Municipal liability has frequently been further expanded by statutes making municipalities liable for the negligent operation of city-owned vehicles,\textsuperscript{141} as well as by more limited statutes imposing liability upon municipal corporations for negligence in the operation of carriers of school children.\textsuperscript{142}

There are numerous state statutes making municipalities and counties liable for personal and property damage of mobs within their boundaries.\textsuperscript{143} Typical is the Kansas statute which provides that "all incorporated cities and towns shall be liable for all damages that may accrue in consequence of the action of mobs within their corporate limits, whether such damage shall be the destruction of property or injury to life or limb."\textsuperscript{144} Further less frequent examples of statutory expansion of municipal tort


\textsuperscript{129} e.g. Wis. Stat. 1933, ss. 101.01, 101.06, applied in Henden v. City of Milwaukee, 226 Wis. 92, 275 N.W. 922 (1940). Annotation, 114 A.L.R. 428.

\textsuperscript{140} e.g. Mass. Laws Ann. (1932), c. 84, ss 1, 15; West Virginia Code 1887, sec. 53, ch. 43, applied in Chapman v. Milton, 31 W Va. 384, 7 S.E. 22 (1888); 25 A.J., Highways, sec. 349, n. 16.


liability can be noted in most states. Only in statutory immunization of liability for torts at municipal airports is there any discernible development contra.

Comment

Although an appreciation of the present judicial position requires utilization or at least recognition of the "governmental-proprietary" dichotomy it is concededly unserviceable as a guide to decision and it is suspected that it is a trap to mechanical adjudication. It has been suggested that it be discarded and municipalities held liable for all torts. This extreme position seems unwise. To hold a municipal corporation liable for the so-called legislative torts would so effectively stifle legislative initiative in an area where individual injury is very meager and is to this author quite unsound social engineering. Contrariwise, it has been held that municipalities should be immune from all tort liability in the absence of legislative mandate to the contrary. It is easy to comprehend the view of a court that so decides as well as the analogous judicial determination of non-liability in particular tort situations. The shifting of risk and loss from the individual to the group is one of the greatest problems in any socio-political structure and it is understandable that in a democracy especially the judiciary should consider this a responsibility of the legislature with its far superior facilities for discovering societal needs and weighing social forces.


146 Alabama Laws (1931), No. 136, sec. 5; Iowa Laws (1929), ch. 138, sec. 9; North Dakota Laws (1931), ch. 92, sec. 2; South Carolina Acts (1929), No. 562, ss. 1, 2; Texas Laws (1929 Reg. Sess.) ch. 281, sec. 1, Wis. Laws (1929), ch. 464, sec. 1.

147 Borchard, Government Liability in Tort, 34 Yale L.J. 1, 129, 229 (1924), 36 Yale L.J. 759, 1039 (1926); Doddrige, Distinction Between Governmental and Proprietary Functions of Municipal Corporations, 23 Misc. L. Rev. 325 (1935); Harno, Tort Liability of Municipal Corporations, 4 Ill. L.Q. 28 (1921); Fuller and Casner, Municipal Tort Liability in Operation, 54 Harv. L. Rev. 487 (1941); Kaufman v. Tallahassee, 84 Fla. 634, 94 S. 697 (1922); Fowler v. City of Cleveland, 100 Oh. St. 158, 126 N.E. 72 (1919).

148 Irvine v. Town of Greenwood, 89 S.C. 511, 72 S.E. 228 (1911).
Thus the task of attaching municipal tort liability is for the legislature, assuming 149 that the ethical code of our culture demands compensation by the group for individual damage at the hands of the state. There is little likelihood that states will make cities of all sizes completely liable for municipal torts. There is a far greater probability that the desirability of adopting the aforementioned safe place, street and sidewalk, vehicle, and mob liability statutes can be impressed upon the legislatures of more states. Model statutes have been prepared after much study by Professor Borchard from the experiences with individual present enactments 151 and they deserve careful consideration and adoption.

There are instances in which municipalities have indirectly absorbed the loss from torts by their employees by reimbursing the latter for judgments against them, 152 but this is discretionary and unsatisfactory. And there are other instances in which municipalities have voluntarily assumed a direct liability 153 but they are so rare as to be insignificant.

Statutes imposing further municipal tort liability may point the way but the social objective may often fail when juries of tax payers too readily find contributory negligence or assumption of risk, and there seems to be such an inclination when the defendant municipality is a small community. Further consideration must be given to this problem as admittedly sizable tort judgments will


150 To adhere to the ancient rule in the presence of existing relations would seem to involve the obvious contradiction that the state, which is formed to protect society, is under no obligation, when acting for itself, to protect an individual member of society.” Fowler v. City of Cleveland, 100 Oh. St. 158, 166, 126 N.E. 72, 75 (1919). See also: Fuller and Casner, Municipal Tort Liability in Operation, 54 Harv. L. Rev. 487, 461 (1941); Repko, American Legal Commentary on Doctrines of Municipal Tort Liability, 9 L.C.P. 214, 233 (1942); Borchard, op. cit. note 147; Smith, op. cit. note 149.

151 Borchard, op. cit. note 145.


be disastrous to the less populated municipality. Beyond statutory increase in tort liability further consideration must be given to the idea of pooling the risks of small cities and villages or shifting municipal loss to the state upon payment of a nominal sum per person or assessed valuation. This seems to offer the most socially desirable means of doing justice to the injured individual while protecting the integrity of the smaller community.