

Town Official's Home Considered "Public Building" Under Maine Tort Claims Act

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The Maine Supreme Judicial Court recently decided the case of *Rodriguez v. Town of Moose River* (2007 ME 68). **This case has important implications for towns where municipal officials conduct town business from their homes.**

In this case, the clerk/tax collector for the Town of Moose River conducted her official duties from her home, as was expected and required practice at the time in Moose River. The conduct of her official duties included seeing residents at her home in order to issue licenses. One resident visiting the town official's home on town business was injured on the steps to the home, allegedly because the steps had no railing. The resident sued the town and the town official for her injury.

The parties appealed to the Law Court from Superior Court rulings made on preliminary motions filed in this case. The Law Court weighed in on two basic issues in its decision: the town's immunity from suit and the town official's immunity from suit. The Law Court also remanded the case back to the Superior Court for further proceedings.

The Maine Tort Claims Act provides immunity to governmental entities for various torts (14 M.R.S. § 8103). Under 14 M.R.S. § 8104-A(2), however, this immunity does not hold in cases of "negligent acts or omissions in the construction, operation or maintenance of any public building or the appurtenances to any public building." **In the *Rodriguez* case, the Law Court determined that the town official's home was a "public building" even though it is not owned or rented by the town.** Towns will not be protected by the Maine Tort Claims Act for injuries and damages resulting from negligent acts in relation to the homes of town officials who conduct town business there. In Moose River, the town's insurance policy did not cover incidents occurring at the private homes of town officials. Consequently, the town is left with no immunity from suit under Maine law and no insurance coverage for the potential liability.

The Court also determined that the town official herself was not entitled to absolute immunity for negligent acts in the course of one's official governmental duties. First, the Court decided that no *discretionary function immunity* applied under 14 M.R.S. § 8111(1)(C). In the Court's judgment, the town official's decision about whether or not to replace the handrail did not constitute a discretionary decision reasonably encompassed by the duties of the town clerk or tax collector. In addition, the Court decided that no *intentional act immunity* applied under 14 M.R.S. § 8111(1)(E). Here, the Court explained that the town official's decision not to replace the handrail was not

an intentional act made in the course and scope of her employment because it was not an intentional act at all. The town official admitted that she did not replace the handrail because she was unable to replace it herself and her husband was too busy, thus she made no intentional act. The Court did rule, however, that the town official is entitled to limited liability because her decision about the handrail was a negligent act or omission in the course and scope of employment. Under 14 M.R.S. § 8104-D, the maximum personal liability for the town official arising from this occurrence is \$10,000.

Towns that require their officials to conduct town business from their homes need to evaluate the municipality's potential liability for the conduct of those duties. In addition, towns should inform their officials of the possible personal liability arising from conducting municipal business from their homes.

For more information on the implications of this decision, please call your Bernstein Shur attorney or contact Shana Cook Mueller at 207 228-7134 or by email at smueller@bernsteinshur.com