

Public Official Liability

The potential exposures for public officials are vast and can come from internal or external sources. Much of this increased exposure has been the result of various court decisions that have greatly expanded the area of civil rights litigation for elected and appointed officials.

Lawsuits may be filed against individual officials, a public entity, or both. Suits stem from both action and inaction. Injuries or property damage resulting from the careless actions or inaction of public officials, employees or agents often involve claims of negligence under state law. For Cities and Counties, claims resulting from land use regulation, emergency powers of law enforcement, limitations placed on a citizen or business may involve federal statutory or constitutional rights and are normally tried in federal court.

The potential list of areas of exposure for public officials is considerable. This advisory is offered as a guide to key issues that have occurred frequently or have resulted in significant losses. Some of the areas of exposure facing public officials include:

- Discrimination in the selection, promotion, discipline, or dismissal of employees.
- Improper training or supervision of employees.
- Administration of grants.
- Granting or denying franchises, permits, or licenses.
- Unequal provision of public services, or the failure to provide a service.
- Failure to protect public trust, including failure to attend meetings, or to examine documents.
- Use of inside information for personal benefit.
- Keeping silent about improper conduct of fellow officials.
- Making unauthorized payments.
- Failure to take advantage of legitimate financial opportunities presented to the public entity.
- Harassment of a business or employee.
- Failure to conduct inspections properly.
- Bidding and purchasing practices.
- Disclosure of personnel records.
- Denial of due process.

- Issues with implications for Cities and Counties include, but are not limited to:
 - Land use claims.
 - Assessment of taxes.
 - Improper treatment of suspects or criminals.

With all the exposure issues previously listed, it may seem quite a challenge to avoid liability. Some general but effective risk management practices to follow include:

- **Never hesitate to consult with your legal counsel.**
- Ensure your policies and practices regarding employment practices are effective, especially in areas related to employee selection, promotion, discipline and firing.
- The amount, topics and quality of training for your employees is a critical factor and should be a priority. This is a common area attacked by plaintiff attorneys.
- Ensure that your board complies with the Missouri Sunshine Law or the Kansas Open Meetings Act and the Kansas Open Records Act
- Avoid any issues that may be considered a conflict of interest. If the governing body discusses a conflicting issue, applicable individuals should refrain from voicing an opinion and abstain from voting on an issue of this nature.
- Assess past and potential public official liability exposures. Ensure that critical areas are addressed by an ordinance and/or policy when practical.
- Make every effort to ensure that all ordinances, practices and regulations are uniformly enforced and make sure they are Current, Clear, Comprehensive, Constitutional, and Consistent. Key terms should be defined.
- When speaking publicly, do not make assumptions, do not speculate, and make no empty promises.
- Try to ensure any ordinance, policy, or practice does not deprive a person of a “liberty” or “property” interest. If this is a possibility, make sure that any affected individual or group is given due process.
- When appropriate, ensure that any member of the public that may be affected by the outcome of a new ordinance, policy, or regulation is given adequate notice to ensure that such persons will be given the opportunity to be heard before implementation.
- Any time a potentially negative action or decision affects an individual or organization, a written statement containing reasons for the decision

should be made available to the affected parties. This applies to both internal and external issues.

- Be very cautious if a request for a reference regarding a former employee is made – you should have a policy on this matter.
- Be sure any license or permit applicant has access to necessary information pertaining to all items required as part of the application process. Requirements and fees should be reasonable and consistently applied.
- Keep good minutes of board, commission or council meetings.
- Remember that documentation, both as a governing body and as an individual, can be very important.
- When applicable, Cities and Counties must:
 - Ensure your policies and practices regarding law enforcement liability are effective, especially in areas related to use of force, vehicle operations, search and seizure and the care, custody and control of prisoners
 - Have a comprehensive land use plan