

MUNICIPALITIES

Municipalities: Notice of Claims

Lederer v. Orlando Utilities Commission,
981 So. 2d 521 (Fla. 5th Dist. App. 2008)

Before a tort claim can be brought against a municipal agency, a claimant must provide notice to both the agency and the Florida Department of Financial Services (Department). However, notice is not required to be provided to the Department for claims against a municipality. A local government entity, even if part of a city, is not necessarily a municipality if it was created by the state legislature and has significant autonomy from the city.

FACTS AND PROCEDURAL HISTORY

Deborah Lederer (Lederer) brought a negligence action against the Orlando Utilities Commission (OUC). She claimed that a city employee left a water meter uncovered in her yard that caused her to fall and to sustain injuries.

Under Florida Statutes Section 768.28(6), Lederer was required to provide notice within three years to the agency that was subject to the suit. The statute also requires that notice must be given to the Department if the agency subject to the suit is not a municipality. The notice requirement is part of the state's waiver of sovereign immunity; therefore, courts have required strict compliance.

Lederer did not provide notice to the Department within the statutory period, and the OUC filed for summary judgment based on Lederer's defective notice. The trial court granted summary judgment for OUC. Lederer appealed on the basis that the OUC is a component of a municipality, and therefore, notice to the Department should not be required.

ANALYSIS

The Fifth District Court of Appeal identified the dispositive issue as whether the OUC is a municipal agency or merely a component of the municipality. The court explained that municipal agencies are distinct legal entities that possess limited, specific powers granted to them by the legislature. Because of this inde-

pendence, notice of a claim must be provided to the Department within three years. However, component parts of a municipality fall under the municipality exception to Section 768.28(6), and therefore, notice to the OUC alone would be sufficient if the OUC was a city department. Lederer argued that the OUC was an integral component of the city, like its fire and police departments, for which notice is not required.

The court held that the OUC is not a component part of the city because the OUC was created by special act of the state legislature. The special act provided that “the OUC would have substantial autonomy to operate independent of the City government.” *Lederer*, 981 So. 2d at 524. The court explained that agencies created by the state are generally separate entities, whereas those created by the city are part of the municipality. Moreover, the OUC acted independently of the City’s control with respect to its management, operations, and financing powers under the act. Consequently, the court concluded that the OUC is sufficiently distinct from the City as to require notice to the Department.

Judge Vincent G. Torpy dissented, concluding that the OUC is a component part of the City for the purposes of the claim. He highlighted the fact that the water meter was owned by the City and was left open by a City employee. He criticized the majority’s reasoning that the OUC is part of the City for only some purposes but not for this purpose. Here, the OUC was managing the City’s water meter and the City’s employee; therefore, he would have found the OUC was a component part of the City for the purposes of Lederer’s claim.

SIGNIFICANCE

Lederer reinforces the legal significance of the distinction between a municipality and municipal agencies. The distinction is significant for the practitioner because if a municipal agency is to be a party to an action, notice must be given to the agency *and* the Department. As the court points out, the factual distinction between a municipality and a municipal agency is decidedly murky. Therefore, it may not always be obvious when it is necessary to provide notice to the Department.

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RESEARCH REFERENCES

- 1 Eugene McQuillin, *The Law of Municipal Corporations*, §§ 2.13, 2.28, 2.30 (2008).
- 56 Am. Jur. 2d *Municipal Corporations* § 787 (2008).

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