

# GOVERNMENTAL IMMUNITY

## Governmental Immunity: Sovereign Immunity

*Cunningham v. City of Dania*,  
771 S.2d 12 (Fla. Dist. App. 4th 2000)

A city owes a duty of care to a victim killed in a drive-by shooting while visiting a public park, if the city has provided security within the park. The city's duty is to protect visitors from reasonably foreseeable criminal acts by third parties.

### FACTS

At least seven shootings occurred inside and near Modello Park in the eight years before the drive-by shooting that killed John Cunningham's son. Two of the seven shootings were drive-by shootings. Modello Park also had a high rate of gang-related activity, assault, battery, robbery, illegal possession of weapons, and drug-related offenses. The City of Dania (City) operated and provided security for Modello Park. When Cunningham's son was killed in a drive-by shooting while visiting the park, Cunningham sued the City for wrongful death. Cunningham argued that, because of the history of violent crimes in the park, the City knew or should have known that visitors encountered a heightened threat of criminal activity. He also argued that the City breached its duty to maintain and operate Modello Park because it failed to provide adequate security or warn visitors of allegedly dangerous conditions. The trial court dismissed Cunningham's claim for failure to state a cause of action due to the City's sovereign immunity.

### ANALYSIS

Would a drive-by shooting in a park, which is generally known to be a place of gang-related violence, be an event reasonably foreseeable to a city, thereby raising a duty of protection to invitees? "[G]overnmental entity[ies] may be liable to an invitee for reasonably foreseeable criminal attacks committed by third parties on public property." *Cunningham*, 771

S.2d at 13. A government can be held liable for criminal attacks by third parties only if it has an underlying common-law or statutory duty of care. Governmental functions are divided into four categories, and the category of governmental function performed determines whether there is governmental liability. Categories I and II include the discretionary functions of legislative and executive officers, enforcement of laws, and public safety. Neither category creates governmental liability, because there is no common-law duty of care regarding those functions. Categories III and IV include capital improvements, property-control operations, and the provision of professional, educational, and general services for the welfare of citizens. There may be governmental liability under Categories III and IV, because there is a common-law duty of care regarding those functions. Further, there is no sovereign immunity for a governmental function falling into categories III and IV, if the governmental function is an operational function rather than a planning function.

The City assumed and undertook the responsibility to provide security at Modello Park, which is either a Category III or IV operational function. Therefore, the City did not enjoy sovereign immunity for this function and had the same duty to maintain and operate Modello Park as a private-property owner would have. A private-property owner has the duty to protect visitors from reasonably foreseeable criminal attacks by third parties.

Specifically, the scope of the City's duty to park visitors is limited to protecting citizens from reasonably foreseeable criminal activities by third parties. The City does not have the duty to supervise legal activities of third parties that may result in negligent injury. For example, the City would not be responsible for preventing injury to visitors by other visitors engaged in typical recreational activities during low-use hours. However, when additional risk factors are present, such as an increase in violent criminal attacks, the City owes a duty of care to its visitors. Therefore, because Modello Park had a high rate of violent, criminal attacks, the City owed a duty to the victim to protect him from an event reasonably foreseeable to the City, such as a drive-by shooting.

## RESEARCH REFERENCES

- *Trianon Park Condominium Assn., Inc. v. City of Hialeah*, 468 S.2d 912 (Fla. 1985) (dividing governmental liability into four categories).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 18, § 53.30 (3d ed., Clark Boardman Callaghan 1993).

Lindsey A. Smith