LOCAL GOVERNMENT SOVEREIGN IMMUNITY 101
By Amanda Coffey

Is it still true that “the King can do no wrong”? The answer, as it so often is in law, is “it depends.”

Sovereign immunity is one of the fundamental tenets of local government, and attorneys working or interacting with local government agencies must be aware of the nuances of this principle.

Local governments, including states, counties, municipalities, and state agencies, are immune from tort liability or taxation (among other things outside the scope of this article). Sovereign immunity is based on policy considerations including separation of powers, the protection of public funds, and the efficient and uninterrupted administration of government functions. Each state has unique variations on the rules of sovereign immunity, so research on your local rules is always recommended. This article uses principles of Florida law as an example.

Policy Arguments in Support of Sovereign Immunity

There are several strong public policy arguments supporting sovereign immunity:

- **Separation of powers**: Local governments must be free to make political and operational decisions without fear of excessive court entanglement.

- **Protection of the public purse**: Taxpayer funds must be protected from excessive litigation costs defending tort suits.

- **Freedom to allocate and prioritize resources**: Although a local government has the duty to exercise reasonable care to protect its citizens, it must be able to administer government services without becoming liable for every foreseeable harm, which would be overly burdensome.

Immunity from Suit

Florida’s constitution grants states and their subdivisions “absolute sovereign immunity” from suit. This is a complete jurisdictional bar that differs from immunity from liability. Immunity from suit limits subject matter jurisdiction even in instances where there is potential liability under the common law, unless the fact pattern falls under a statutory waiver of sovereign immunity.

Most states have established statutory waivers to curb potential injustices that could result from absolute sovereign immunity. Further, sovereign immunity can be waived by contract.

**Statutory Waiver**: Many states have codified a limited waiver of liability for torts, establishing specific fact patterns under which a local government can be liable; procedural requirements for filing suit; statutes of limitation; and a limitation on damages and attorney fees.

When waiver of sovereign immunity is statutory, a local government agency is immune from liability for its policy/planning level decisions (referred to as governmental or discretionary actions). However, it can be held liable for the torts of its agents in the execution or enactment of policies (proprietary or operational actions). Policy choices that are immune include decisions about how much priority placed on law enforcement, the allocation of resources such as staff or public funds, and when/how laws are enforced. Operational actions, on the other hand, include the method of
performing government functions. For example, the negligence of a municipal employee that results in injury to a citizen can expose the municipality to tort liability, if the specific fact pattern falls under the statutory waiver.

In limited instances, a planning level activity can result in liability if the government agency has created and knows about a “hidden danger or trap” that the public could not reasonably be aware of.

Even in the case of the waiver of sovereign immunity, a plaintiff must still demonstrate all the necessary elements of a tort in order to prevail in a suit.

**Contractual Waiver:** Sovereign immunity can be waived explicitly or impliedly by contract. Local government practitioners should carefully review contracts for indemnification clauses or other contract provisions that could inadvertently waive sovereign immunity.

**Immunity from Property Tax**

In Florida, the state and its political subdivisions (such as counties) are immune from property tax. Immunity from taxation is based on an *absence* of power to tax, and is therefore much stronger than a statutory exemption from taxation. State or county-owned land is always immune from tax, regardless of its use.

Municipalities, on the other hand, are not immune from taxation in Florida. Instead, they are granted a tax exemption for property that is owned by the municipality *and* used for a municipal or public purpose.

**Resources for Additional Research**

Sovereign immunity is an important and complex issue that local government attorneys must be familiar with. For a general starting point for research on sovereign immunity in multiple states, see:

- 57 Am. Jur. 2d Municipal, County, School, and State Tort Liability § 1 et seq.;
- 71 Am. Jur. 2d State and Local Taxation § 242 et seq.;
- 20 C.J.S. Counties §§275–296 (Liability for Torts);
- 20 C.J.S. Counties §§369–384 (Taxation); and
- 63 C.J.S. Municipal Corporations § 884 (Governmental or Sovereign Immunity in General).