

CLAIMS AGAINST THE STATE: THE PUBLIC DUTY RULE

The Public Duty Rule shields public officials from civil liability for negligent performance of public duties in the absence of a "special relationship" between the individual plaintiff and the official. At common law, this rule operated separately from the distinct doctrine of sovereign immunity. This article will explore the development of the Public Duty Rule under common law leading up to the enactment by the 125th Ohio General Assembly of HB 316, which became effective on March 31, 2005.

The Public Duty Rule Before HB 316

The Ohio Supreme Court articulated the Public Duty Rule in *Sawicki v. Village of Ottawa Hills*.¹ In *Sawicki*, the plaintiff's decedent was killed by a criminal after the village police failed to respond to telephone calls for help. The plaintiff claimed that the village police department was liable for the decedent's death because the police dispatcher failed to send police officers outside their jurisdiction in response to the urgent call. In considering the village's liability, the court articulated the Public Duty Rule as follows:

When a duty which the law imposes upon a public official is a duty to the public, a failure to perform it, or an inadequate

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or erroneous performance, is generally a public and not an individual injury.

The court reviewed the origins of the rule which dates back to 1855. In *South v. Maryland*,² a sheriff was sued by a kidnapping victim for failing to carry out the duties of his office. The court, found that the sheriff owed the plaintiff no duty, noting that a sheriff owes a duty to the public, not to private citizens. The breach of a public duty may give rise to criminal indictment of the official, reasoned the *South* court, but not to civil liability. The court made clear that the Public Duty Rule is separate and distinct from the defense of sovereign immunity.

As applied to the facts before it, the *Sawicki* court found that the Public

Duty Rule applied because a municipality's duty to respond to calls to police is owed to the general public and not to the individual caller. The court then considered whether the plaintiff's claim fell into the "special relationship" exception to the rule. The court set-forth the four elements of the special relationship exception to the Public Duty Rule:

- (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured;
- (2) knowledge on the part of the municipality's agents that inaction could lead to harm;
- (3) some form of direct contact between the municipality's agents and the injured party;
- (4) that party's justifiable reliance on the municipality's affirmative undertaking.

The *Sawicki* court found that the plaintiff satisfied none of the four requirements, and held that the Public Duty Rule barred the plaintiff's claim against the village.

In 2002, in *Wallace v. Ohio Department of Commerce*³ the Ohio Supreme Court considered whether the Public Duty Rule should apply to claims against the State of Ohio as well as to claims against political subdivisions. In *Wallace*, the Plaintiff brought suit in the Court of Claims alleging that the State Fire Marshal negligently failed to inspect a fireworks store resulting in a fire which killed nine people. The State claimed that



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36 the Public Duty Rule precluded any finding of liability because the Fire Marshal's duty to inspect is owed to the public, not to individuals. The Ohio Supreme Court disagreed, holding that the Public Duty Rule conflicts with the state sovereign immunity statute⁴ which specifically requires the state's liability to be determined in accordance with the same rules of law applicable to suits between private parties. The *Wallace* court reasoned that, because the Public Duty Rule is not available to private litigants, it should not be available to the State. As set-forth in *Wallace*, the Public Duty Rule applied to claims brought against municipalities and other political subdivisions,⁵ but not to claims brought against the State of Ohio.

HB 316: Codification of the Public Duty Rule

In response to the Ohio Supreme Court's decision in *Wallace*, the 125th General Assembly passed HB 316, amending the Court of Claims Act found in Chapter 2743 of the Ohio Revised Code. The amendment specifically extends the State's immunity to include the protection of the Public Duty Rule, including the special relationship exception. Amended Revised Code 2743.01 defines a "public duty" as follows:

(E)(1) "Public duty" includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

(a) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity;

(b) Supervising, rehabilitating, or liquidating corporations or other business entities.

(2) "Public duty" does not include any action of the state under circumstances in which a special relationship can be established between the state

and an injured party as provided in division (A)(3) of section 2743.02 of the Revised Code.

Amended Revised Code 2743.02(C) shields the State from liability with respect to the performance of public duties as follows:

(3)(a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

(iii) Some form of direct contact between the state's agents and the injured party;

(iv) The injured party's justifiable reliance on the state's affirmative undertaking.

The H.B. 316 amendment to R.C. 2743 effectively supersedes *Wallace*, and adds the Public Duty Rule to the long list of defenses available to the State of Ohio.

Application of the Public Duty Rule

There are no cases applying the Public Duty Rule since the passage of HB 316. We may seek guidance, however, from pre-*Wallace* cases which applied the Public Duty Rule along with its special relationship exception.

In *Hurst v. Ohio Department of Rehabilitation and Correction*⁶, the Ohio Supreme Court considered the claim brought by the estate of a man who was murdered by a parole violator. The estate claimed that the Ohio Department of Rehabilitation and Correction could have prevented the murder by timely reporting the parolee as at-large.⁷ Rejecting the estate's claim, the *Hurst* court held that the statutes requiring state authorities to report absconded parolees were not specific enough to establish a special relationship between the decedent and the State. Hence, the court held that the estate's claim was barred by the Public Duty Rule.⁸

Generally, courts are inclined to apply the Public Duty Rule when the statute imposing a duty upon a governmental entity is not sufficiently specific. For example, in *Burgess v. Doe*⁹, the court found that "no special relationship exists simply because a member of the general public requests assistance from the police."¹⁰ In *Andersen v. Ohio Dept of Insurance*¹¹, the court held that no special relationship existed between a Health Maintenance Organization and the Ohio Department of Insurance for which the Department could be held liable for negligently liquidating the HMO.

On the other hand, courts tend to find the existence of a special relationship, thus avoiding application of the rule, when statutes proscribe specific conduct. In *Yates v. Mansfield Bd. of Education*,¹² for example, the court considered R.C. 2151.421 which imposes upon school employees the duty to immediately report actual or suspected child abuse to appropriate authorities. In *Yates*, a former high

school student reported to the school's principal that she had been sexually assaulted by a teacher several years earlier. Rather than reporting the incident, the principal conducted his own investigation and concluded that the student was lying; he took no action against the teacher. Later, the same teacher sexually assaulted a second student. The parents of the second student brought an action against the school board and the principal, claiming that the principal could have prevented the second assault by complying with his statutory duty to report the first incident. Based primarily upon the specificity of the statute, the Ohio Supreme Court noted that "the statute is not directed at or designed to protect the public at large, but intended to protect a specific child who is reported as abused or neglected."¹³

HB 316 Side Note: Qualified Immunity For Injuries To Inmates

In addition to restoring the Public Duty Rule as a defense available to the State of Ohio, the Ohio General Assembly took the opportunity to also extend qualified immunity to county and municipal officials with respect to injuries suffered by prisoners while on voluntary work detail. H.B. 316 enacted R.C. 341.27 (applicable to county correctional facilities), and R.C. 753.06 (applicable to municipal correctional facilities), to relieve correctional officers from liability for civil damages caused by or suffered by a prisoner working on a work detail unless the damages result from malice or wanton or reckless misconduct. In order for this qualified immunity to apply, the statute provides that the inmate must be informed of qualified immunity.

Endnotes

- ¹ (1988), 37 Ohio St.3d 22
- ² (1855), 59 U.S. (18 How) 396, 15 L.Ed.433
- ³ *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St.3d 266, 2002-Ohio-4210.
- ⁴ R.C. 2743.02
- ⁵ See *Yates v. Mansfield Bd. of Education* 102 Ohio St. 3d 205 (2004); *State v. Automobile Mutual Ins. Co. V.*

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Titanium Metals Corp., 158 Ohio App.3d 139 (2004); *Cooke v. Montgomery County* 158 Ohio App.3d 139 (2004)

⁶ 72 Ohio St.3d 325, 1995-Ohio-68
⁷ Indeed, immediately before the murder, the parolee had been held in custody for an unrelated drunk driving charge. He was released because the fact of his parole violation had not been entered into various crime computer networks.

⁸ In *Hurst*, the Ohio Supreme Court carefully distinguished its prior decisions holding that statutes, which required the state to confine furloughed prisoners during non-working hours, were specific enough to create a duty to persons injured by the escapees. See, *Reynolds v. State* (1984), 14 Ohio St. 3d 68, and

Crawford v. Ohio Div. of Parole & Community Serv. (1991), 57 Ohio St. 3d 184.

- ⁹ (1996), 116 Ohio App.3d 61
- ¹⁰ *Burgess*, supra. at 67.
- ¹¹ (1990), 58 Ohio St.3d 215
- ¹² 102 Ohio St. 3d 205, 2004-Ohio-2491
- ¹³ *Yates*, supra. at 212, citing *Brodie v. Summit Cty. Children Serv. Bd.* (1990), 51 Ohio St. 3d. 112.