

Bond Case Briefs

Municipal Finance Law Since 1971

IMMUNITY - MASSACHUSETTS

Andrade v. City of Somerville

Appeals Court of Massachusetts, Middlesex - October 30, 2017 - N.E.3d - 92 Mass.App.Ct. 425 - 2017 WL 4873380

Shooting victim and family members brought action against city for gross negligence, negligent supervision and training, and loss of consortium, alleging that gun used to shoot victim had been wrongly returned to shooter by city's police department.

City filed motion to dismiss. The Superior Court denied city's motion. City appealed.

The Appeals Court held that victim's claims fell within licensing activity exemption under Tort Claims Act, such that city was exempt from liability.

City police department's conduct in returning firearm to licensee, whose license to carry had previously been revoked because of a disqualifying adjudication of delinquency, was based upon licensing activity described in Tort Claims Act provision that exempted public employers from liability for any claim based upon issuance, denial, suspension or revocation of license, and thus city was exempt from liability with respect to claims by shooting victim and his family members for gross negligence and negligent supervision and training, arising from licensee's actions in shooting victim with one of the firearms that was returned to him; department's duties to receive, store and dispose of weapons when licensee's firearms license was revoked were central to the licensing functions immunized from liability by the Act.

Provision of Tort Claims Act exempting public employers from liability in tort for any claim based on issuance, denial, suspension, or revocation, or failure or refusal to issue, deny, suspend or revoke any permit or license, encompasses not only claims resulting directly from a licensing decision, but also claims rooted in the licensing process; if the gravamen of a plaintiff's complaint can be traced back to one or more of the types of events or activities delineated in this provision, then the action is barred.

A local police department's duties to receive, store, and dispose of weapons when a person's firearms license is revoked or denied are central to the functions that are immunized from liability under Tort Claims Act, and cannot be parsed from the remainder of the process given the broad language of the statute.