**IMMUNITY - WASHINGTON**

## Fabre v. Town of Ruston

**Court of Appeals of Washington, Division 2 - March 19, 2014 - P.3d - 2014 WL 1064804**

Casino and its owner filed suit against town, mayor, and members of town council for negligence, negligent misrepresentation, and tortious interference with business expectancy, arising out of town council's enactment of ordinances, later declared void and/or repealed, which replaced graduated tax on social card games with flat 20% tax and banned house-banked social card games. The Superior Court entered summary judgment for defendants on all claims and dismissed complaint. Plaintiffs appealed.

The Court of Appeals held that:

- Town was not performing proprietary function when they enacted ordinances, as required to come within "proprietary function" exception to public duty doctrine on claims negligence and negligent misrepresentation;
- Negligence claims did not come within "special relationship" exception to public duty doctrine; and
- Town was immune from suit for tortious interference with business expectancy.

Town was performing government function, and not propriety function, when it enacted ordinances replacing graduated tax on casino's revenues on social card games with flat 20 percent tax and banning house-banked social card games, and thus, casino's claims for negligence and negligent misrepresentation arising out of enactment of such ordinances, both of which were subsequently repealed, did not come within proprietary function exception to public duty doctrine.

Casino could not have justifiably relied on representations of former mayor that casino would always be allowed to operate, and thus, casino did not have "special relationship" with town, as required for casino's claims for negligence and negligent misrepresentation arising out of council's enactment of ordinances replacing graduated tax on social card games with flat 20% tax and banning house-banked social card games to come within "special relationship" exception to public duty doctrine, where mayor did not have independent authority to establish tax or prohibit or allow social card games, mayor could not represent to casino how future town councils would vote and legislate, and mayor had no authority to bind future members of council to such promise.

Town was engaged in purely legislative acts when it enacted ordinances replacing graduated tax on social card games with flat 20% tax and banning house-banked social card games, and thus, town was immune from suit for tortious interference with business expectancy, in action brought by casino, regardless of whether ordinances were subsequently declared void and/or repealed.

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