

Eleven Questions Pertaining to Liability for Lack of Police Training

By: *Thomas F. McGuire, Attorney at Law*

Question #1: Why train the law enforcement officer?

Answer #1: The answer is twofold:

- A. Philosophically, so that the officer may better do the job for which the position exists (i.e., to protect and serve).
- B. Practically, to minimize the occurrence of liability which may be imposed upon the governmental unit and/or the officer should the law enforcement officer improperly act or fail to act.

Question #2: Under State of Illinois law, can a governmental unit be liable for the wrongful acts of its law enforcement officers?

Answer #2: Of course! Both 65 ILCS 5/1-4-6, pertaining to municipal police officers, and 55 ILCS 5/5-1002, pertaining to Deputy Sheriffs, require the indemnification (i.e., reimbursement) of a judgment against a law enforcement officer up to \$500,000.00 *so long as the officer is engaged in the performance of duties as a police officer and so long as the officer has not engaged in willful misconduct.*

Question #3: How is a law enforcement officer to know the duties which the officer is expected to perform?

Answer #3: By training; a term defined in Random House Dictionary of the English Language - 2nd Edition as the “education, instruction or discipline of a person that is being trained.”

Question #4: How is a law enforcement officer to know what is and what is not “willful misconduct?”

Answer #4: By training; for the term “willful misconduct” is best understood by the words of 745 ILCS 10/1-210 which defines the term “willful and wanton conduct” as:
“...a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.”

Question #5: Doesn't it cost money to train the police?

Answer #5: Of course it does. It costs the governmental unit money to pay for the instruction! It costs the government money for the officers to travel to the training! However, if the training is not received by the law enforcement officer, how is the officer to know what is and what is not within the duty of a police officer? How is the officer to know what is accepted and professional conduct as opposed to willful misconduct? To those who would answer the questions with the words “common sense” the response is that the term “common sense” is oftentimes not common. Nor is a proper response to a call for police service in this day and age something which is inbred by the occurrence of birth. While indeed it does cost the governmental unit money to train the police, the financial investment is minimal when compared against the aforementioned State of Illinois indemnification requirement of up to \$500,000.00 for each occurrence in which indemnification applies.

Question #6: Up to this point, you have mentioned liability for lack of police training based on State of Illinois law. What about liability based on Federal law?

Answer #6: In the Supreme Court of the United States case of *Pembaur v City of Cincinnati* (1986) 106 S. Ct. 1292, the Supreme Court of the United States held that liability may be imposed upon a municipality for a single decision by municipal policy makers under appropriate authority, i.e., if the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or the action occurs repeatedly. The key question is whether there is an affirmative link between the policy of the municipality and the particular constitutional violation alleged (e.g., illegal arrest, search and seizure, use of force).

In the Supreme Court of the United States case of *City of Canton, Ohio v Harris* (1989) 109 S. Ct. 1197, the Supreme Court of the United States held that a local governmental unit could indeed be sued in Federal Court for failure to train its personnel. Such a view was considered in the Chicago based Federal Court of Appeals decision of *Tapia v City of Greenwood, Indiana* (7th Cir. 1992) 965 F.2d 336, 338-339 in which the Federal Court of Appeals, which has jurisdiction over the states of Illinois, Wisconsin, and Indiana, stated:

“Where a city’s failure to train its police officers in a relevant respect evidences ‘deliberate indifference’ to the rights of persons with whom the police come into contact, such an inadequacy can be thought of as city ‘policy or custom’ that is actionable under e1983. *Harris*, 489 U.S. at 389, 109 S. Ct. at 1205; *Erwin* 872 F.2d at

1298-98. It may happen that...the need for enhanced training is so obvious, and the inadequacy of training is so likely to result in the violation of constitutional rights, that a jury could reasonably attribute to the policy makers a deliberate indifference to those training needs.; *Harris*, 489 U.S. at 390, 109 S. Ct. at 1204-05. In such a case, the failure to offer proper training constitutes a policy for which a city is liable when improper training actually imposes injury. *Erwin*, 872 F.2d at 1298; *Harris*, 489 U.S. at 390, 109 S. Ct. at 1205.”

It is interesting to note that in the *Tapia* case, it was determined that the City had properly fulfilled its training responsibilities, i.e., the training provided by the City to its police officers was found to have been sufficient.

Question #7:

Can you give an Illinois based case in which the aforestated principle was applied?

Answer #7:

Yes! In *Lenard v Argento* (7th Cir. 1983) 699 F.2d 874 which involved the Village of Melrose Park, Illinois, the Court held that where there is a pattern of constitutionally offensive acts with failure to invoke remedial measures, the failure to invoke remedial measures may result in governmental liability for subsequent violations *if* supervisory inaction amounts to deliberate indifference or tacit authorization of the offensive acts. Additionally, in *Brandon v Holt-Director of Police for the City of Memphis* (1985) 105 S.Ct. 873 the City and Director of Police were held liable *not because* they actually knew and/or sanctioned the wrongful conduct of a police officer, *but because* the agent of the City (i.e., the Director of Police) *should have known* of the dangerous propensity and yet did not have such knowledge.

Question #8:

Who is a governmental policy maker?

Answer #8:

Depending on the facts of the case, it could be the head of the law enforcement agency (i.e., Chief/Sheriff), the legislative body of the governmental unit (i.e., City Council/County Board), or the head of the governmental unit (i.e., Mayor/County Board Chairman). All of these people have input into how the law enforcement agency acts and reacts, be the input day to day hands-on input (i.e., Chief/Sheriff) or long range goals and objectives (i.e., Mayor/County Board Chairman/City Council/County Board). As was stated in the aforesaid case of *Lenard v Argento* where there is a pattern of constitutionally offensive acts with failure to invoke remedial measures, municipal liability may attach for subsequent violations if the supervisor's inaction amounts to deliberate indifference or tacit authorization of the offensive acts. The occurrence of professional training and its implementation minimizes the aforestated standard being applied.

Question #9:

Are you saying that under State of Illinois indemnification statutes as mentioned in Answer #1 of this writing, the maximum amount that a governmental unit of Illinois would have to pay if a Federal court handed down a judgment against the law enforcement officer would be \$500,00.00?

Answer #9:

Of course not! The Indemnification statutes apply only to a lawsuit based on Illinois law. They would in no way restrict a lawsuit based on Federal law (e.g., the Constitution of the United States, or Title 42 Section 1983 of the United States Code).

Question #10:

In addition to civil liability (i.e., lawsuits) what other liability could occur for lack of police training?

Answer #10:

- A. Adverse publicity in the news media;
- B. Administrative prosecution (i.e., disciplinary proceedings in which a police officer could be suspended or fired);
- C. Lessening of the morale of the law enforcement agency, as well as the lessening of the self-esteem of the membership of the agency with a consequent lessening of the quality of work performance;
- D. Adverse political ramifications, *particularly* at election time;
- E. Criminal prosecution.

Question #11:

Doesn't mandatory basic training lessen exposure to liability for lack of police training?

Answer #11:

Of course it does, *but* it doesn't eliminate it. (See the aforementioned *Tapia* precedent). So, too, the periodic occurrence of specialized training (i.e., one-day to one-week seminars) lessens the vulnerability of liability. There is an old saying that the mark of a trained person is that the person realizes how much knowledge is needed. Ignorance is not bliss. Ignorance aids and abets wrongful conduct which leads to liability, be it civil (i.e., lawsuits), criminal (i.e., prosecutions), or administrative (i.e., discipline). Training is awareness of what is expected, allowed, and professional. The application of the training minimizes the occurrence of liability on the law enforcement officer, the superiors of the law enforcement officer (i.e., Chief/Sheriff) as well as the governmental unit through their elected and appointed office holders.

Conclusion:

This writing has been presented not to frighten, but to educate. There is an old saying - *penny wise and pound foolish*. Cutting back on and/or eliminating training may, for a time, be financially beneficial. However, in the long run, for the reasons stated in this writing, it may be disastrous!

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