

COA Opinion: Proprietary function exception to governmental immunity

10. March 2010

On March 9, 2010, the Court of Appeals issued a *per curiam* opinion in [Dextrom v. Wexford County, No. 281020](#). Plaintiff property owners sued the county, alleging that contaminants from the county-operated landfill entered their groundwater. The Court of Appeals determined that the trial court correctly concluded that, contrary to certain plaintiffs' contention, a landfill that violates state licensing and environmental laws does not constitute an ultra vires activity.

Defendants asserted a governmental immunity defense. Generally, the defendants' operation of a landfill constitutes a governmental function, and is protected by governmental immunity. There are, however, exceptions to governmental immunity, including the proprietary function exception. An activity is deemed a proprietary function if (1) the activity is conducted primarily for the purpose of gaining a pecuniary profit, and (2) the activity cannot normally be supported by taxes or fees. To determine whether an agency's primary purpose is to produce a pecuniary profit, courts must consider "whether a profit is generated," and then "where the profit generated by the activity is deposited and how it is spent."

The Court of Appeals affirmed the trial court's denial of summary disposition. However, the Court of Appeals also remanded the case to the trial court to hold an evidentiary hearing to determine the threshold question of law of whether the defendants' operation of the landfill was subject to the proprietary function exception to governmental immunity.