



Virginia Local Government Law

Virginia Supreme Court Opinions Affecting Local Government Law: April 20, 2012

By: Andrew McRoberts. Friday, April 20th, 2012

Today, the Virginia Supreme Court issued several opinions affecting the practice of Virginia local government law.

The cases involve (1) the Gloucester County School Board and the Public Procurement Act, (2) Albemarle County and sovereign immunity, (3) a Spotsylvania County assistant high school superintendent and a claim of negligent and gross negligent failure to prevent an attack on another student, and (4) the City of Hampton and the standing of the plaintiff, a committee of petitioners authorized to act under the City Charter.

The following summaries come from [the Virginia Supreme Court website](#) (click on the case number to read the opinion):

110410 Professional Bldg. Maintenance Corp. v. School Board 04/20/2012 In a lawsuit asserting causes of action under the Virginia Public Procurement Act, Code § 2.2-4300 et seq., the plaintiff's allegations that it submitted the lowest bid in response to a contract solicitation by a county school board, which failed to either award it the contract or to determine that plaintiff was not "responsible" as required by the Act, and that certain scores given to its bid had no basis in fact and did not bear a rational relationship with the information provided, were not merely conclusory averments, and sufficiently state a cause of action under the Act. Thus the circuit court erred in sustaining the defendant's demurrer, and the action is remanded for further proceedings consistent with this opinion.

110733 Seabolt v. County of Albemarle 04/20/2012 The circuit court lacked subject matter jurisdiction to hear a tort claim against a county arising from the alleged failure to maintain a public park, and did not err in dismissing the complaint. Counties, as political subdivisions of the Commonwealth, enjoy the same tort immunity as does the sovereign and cannot be sued unless and until that right and liability are conferred by law. Neither the Virginia Tort Claims Act, nor the recreational facilities statute, Code § 15.2-1809, waives the immunity of Virginia counties from tort claims, and the presentment and appeal provisions in Code §§ 15.2-1243 et seq. also do not abrogate sovereign immunity of counties in tort. The judgment of the circuit court dismissing the complaint is affirmed.

110754 Burns v. Gagnon 04/20/2012 In a suit alleging negligence and gross negligence against an assistant high school principal for failure to prevent an attack upon the plaintiff by a fellow student, there was no evidence that this defendant knew or should have known that plaintiff was in danger of serious bodily injury or

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death, and no “special relationship” is found between principal and student. The principal had a duty to supervise and care for the plaintiff as a reasonably prudent person would under similar circumstances. The issue whether he undertook the duty to investigate a reported threat of an impending attack, and to notify security personnel, is a factual matter to be determined on remand, along with whether plaintiff can show the elements for liability set forth in the Restatement (Second) of Torts § 324A. While the principal does not have immunity under Code § 8.01-220.1:2, common law sovereign immunity applies because he was required to exercise judgment and discretion in responding to the reported threat of an attack. However, the common law immunity of the principal does not obviate claims for gross negligence, and the trial court erred in refusing to instruct the jury on that theory. Various statements admitted in the prior trial were either non-hearsay or admissible under an established hearsay exception, and thus it was not an abuse of discretion to admit them. The case is affirmed in part, reversed in part, and remanded for a new trial limited to the gross negligence claim against this defendant.

111144 Deerfield v. City of Hampton 04/20/2012 In a declaratory judgment proceeding against a city and a developer, brought by a committee of citizens initially constituted pursuant to a city charter provision to seek a referendum on repeal of an ordinance, the circuit court did not err in dismissing the action, albeit for the wrong reason. After the city council’s action repealing the ordinance, the citizens’ committee lacked standing to challenge the development. The judgment of the circuit court dismissing the committee’s complaint is affirmed.

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