

With all the lawsuits these days, our town is having trouble filling vacancies on boards and finding people to run for open offices. What protection, if any, is afforded municipal officers and volunteers against personal liability for their public service?

The Vermont Legislature has afforded officers a degree of personal liability protection by requiring towns to pay the reasonable legal fees incurred by elected and appointed officers acting “in the performance of his duties and without malicious intent.” 24 V.S.A. §901. The situation, however, is slightly different in villages: a village has the option of defending a lawsuit against an appointed officer, and is only required to do so if the village so votes. 24 V.S.A. §1313. Where an individual is both a “municipal officer” under 24 V.S.A. §901(a) and a “duly appointed public officer” of a village under 24 V.S.A. §1313, then only §1313 applies. *Holmberg v. Brent*, 161 Vt. 153, 156 (Vt. 1993).

In 2003, the Legislature also afforded some personal liability protection for municipal volunteers. Generally, if a volunteer’s services are requested by the selectboard or by a municipal employee acting within his or her authority, and the volunteer is alleged to have caused property damage or personal injury, any lawsuit arising from the injury must be brought against the town and not against the volunteer individually. This protection would not apply if the volunteer’s acts were willful, intentional, or outside the volunteer’s authority. 24 V.S.A. §901a.

There are also certain immunities for quasi-judicial and legislative acts. Generally, officials are not personally liable for judgments or actions taken in a quasi-judicial capacity, so long as the officials are not negligent and they are acting in good faith. *Verrill v. Dewey*, 130 Vt. 627 (Vt. 1972). Also, in performing a legislative function, such as adopting a bylaw or ordinance, local officials may be immune from civil liability. *Brogan v. Scott-Harris*, 523 U.S. 44 (1998). Volunteers can also find some protection in the immunity afforded providers of emergency services, 12 V.S.A. §519 and 24 V.S.A. §2687, responders to hazardous material emergencies, 12 V.S.A. §5783, and fire personnel, 20 V.S.A. §2990.

There is no doubt that local government runs on volunteer service. Few offices in local government are paid, and the compensation for these positions is usually well below the value of the services provided. Unfortunately, it seems the specter of litigation lurks around every corner and the threat of liability will always deter some from public service. While the courts and the Vermont Legislature have placed numerous responsibilities upon local officials and volunteers, they have also afforded officials and volunteers some degree of protection against personal liability for their public service.

Though it may be cold comfort, one should also remember that lawsuits against towns and municipal officers are as old as the Vermont legal system itself. A brief review of the reported cases indicates that the subject of these suits has not changed much over the years. For example, in one of Vermont’s earliest reported cases, *Noyes v. Morristown*, 1 Vt. 353 (1828), Gilbert Noyes brought suit against Morristown for “the insufficiency and want of repair of a town bridge” after his horse fell from the bridge, “and was thereby destroyed.” Of course, the town fathers put on a vigorous defense with plenty of evidence to show that Mr. Noyes was not a very proficient wagon driver either!

- *Jim Barlow, Attorney, VLCT Municipal Assistance Center*