

In evaluating the development of the statutory and case law in this area, it is necessary to examine the entire doctrine of sovereign immunity and the law which has evolved in this area. Recent decisions have whittled away at the doctrine of immunity, imposing more and more liability on a municipality for tortious conduct. In the *Nimlo Municipal Law Review*³⁷ the committee on tort liability reported that the general picture in the field of municipal tort liability continues to be one of attack upon the traditional doctrine of immunity. As in the immediately preceding years, several strongholds of immunity were taken by assault and the doctrine encroached upon. The report goes on to say that some of the cases continue in the traditional view that immunity is the rule and liability is the exception. However, the exceptions have become increasingly broad. Some of the cases make liability the rule subject to whatever immunity exceptions the legislature may thereafter restore; some cases take the view that liability ought to be the rule but it is up to the legislature to make it so. The trend continues, however, away from immunity.

The concurring opinion of Justice Rankin Gibson in the case of *Hack v. City of Salem*³⁸ is an explicit illustration of how the doctrine of sovereign immunity has been wittled away. Justice Gibson sets forth the arguments which have been expounded in many decisions of recent years abrogating much of the doctrine of governmental immunity and states there is no good reason why a municipal corporation should not be held liable for its negligent torts on the same basis as a private corporation:

"The municipal corporation is of no more legal concept than a private corporation. Both arise by operation of law, both necessarily act through agents and both necessarily are going to have agents who at times are negligent in the performance of their duties. The ordinary rules of liability applicable to private corporations should give municipalities all the protection they require against unreasonable claims. The defenses of contributory negligence and voluntary assumption of risks are available and are consistently upheld by the courts. Moreover, under the doctrine of respondeat superior, the liability of municipal corporations would be as limited as that of a private corporation by the requirement that the municipal employees act within the scope of their employment."

In recent years, opinions by the Supreme Court of Florida in *Hargrove v. Town of Cocoa Beach*,³⁹ the Supreme Court of Illinois in *Moliter v. Kaneland Community Unit District No. 302*,⁴⁰ the Supreme Court of Michigan in *Williams v. City of Detroit*,⁴¹ and California—as has been previously cited—in *Muskopf v. Corning Hospital District*⁴² have abrogated or whittled away at the broad doctrine of governmental sovereign immunity.

Using the experience in the entire field of tort law as a guide, if one were to attempt to determine what the future might hold with respect to municipal liability for damage caused by riots or mob violence, one might expect to see many more states follow the lead of the states mentioned in this article and enact statutes providing recovery for damage caused by mob violence. One might also expect that due to the increasing number of cases abrogating and whittling away the doctrine of sovereign immunity, it may not be too long before we have case decisions in the various states—even in the absence of statutory provision—holding that a municipality is liable for damage and injury caused by riots and mobs. This is especially conceivable in view of the fact that possibilities of mob action, mob violence, rioting, and tumultuous assemblage have again become an increasing danger and menace to the safety and welfare of the citizens of the community not only because of racial unrest and tension but also as a sociological condition of society. Therefore, one may find the courts more and more willing to hold that a municipality entrusted under the police power with the preservation of the safety, health and moral welfare of the community should be responsible for the failure to protect its citizens and their property through every available means.

The writers of this article therefore hazard a guess that the trend towards municipal liability for damage caused by riots and mob action will continue by the enactment of more statutes and by the evolution of more case law creating such liability even in the absence of statutes.

³⁷ 28 Nimlo Mun. Law Rev. 432 (1965 Ed.).

³⁸ 15 NEGLIGENCE CASES (2d) 623, 174 Ohio St. 383, 189 N. E. 2d 857 (1963).

³⁹ NEGLIGENCE CASES (2d) 145, 96 So. 2d 130 (Fla. 1957).

⁴⁰ 18 Ill. 2d 11, 163 N. E. (2d) 89 (1959).

⁴¹ 13 NEGLIGENCE CASES (2d) 487, 364 Mich. 231, 111 N. W. 2d 1 (1961).

⁴² Case cited at footnote 35.