

SPORTS FACILITIES

How the law affects the sports facilities industry

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LAW

Governmental Immunity & College Basketball

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As the country has gone without collegiate sports for the past few months, many are feeling the loss. Some might say sports are significant to daily life but is it a stretch to call collegiate sports events an integral state function? A recent opinion out of Kentucky examines immunity when a state university hosts a college basketball game. In *Saunier v. Lexington Ctr. Corp.*, No. 2018-CA-001290-MR, 2020 Ky. App. Unpub. LEXIS 265 (Ct. App. Apr. 17, 2020), the Court of Appeals of Kentucky held the University of Kentucky (“UK”) and its employees could claim immunity when faced with negligence claims by a spectator injured at a UK basketball game. Plaintiff Mark Saunier fell on a electrical cable cover after descending a flight of steps at the school’s basketball arena. The university leased the arena for basketball games and agreed to provide “institutional control” of the arena, as noted in the lease. Plaintiff brought negligence claims against the lessor, the university and two (2) university fire marshals for a knee injury he claimed was caused by negligence. His wife initially brought a loss of consortium claim and the couple later amended the complaint to bring business and economic claims related to a family owned business. The university asserted sovereign immunity and university employees claimed governmental immunity as a defense to the tort claims.

The court noted that governmental immunity flows from sovereign immunity but is limited; whereas sovereign immunity is absolute. See *Furtula v. University of Kentucky*, 438 S.W.3d 303 (Ky. 2014). Governmental immunity also turns on the specific functions and duties of the state actor opposed to sovereign immunity which makes no such distinction. As a general matter, governmental immunity often turns on whether the state actor was engaged in discretionary or ministerial functions. The *Saunier* Court found the UK employees were engaged in discretionary functions because they were general supervisors who gave orders to subordinate employ-

ees to carry out their supervisory decisions. In Plaintiff’s case, any specific tasks related to the electrical cable cover (e.g. moving it, placing a warning, etc.) would have been assigned to those subordinate employees and are therefore considered ministerial tasks. The court held the UK employees were entitled to qualified immunity based on their discretionary tasks related to plaintiff’s claims. Regarding the university, the majority found it was immune because of its status as a state agency and a long-standing history of immunity in tort matters.

The concurrence, on the other hand, engaged in a deeper analysis to consider whether UK was engaging in an integral state government function or a proprietary function outside its role as an educational and research facility. Considering proprietary functions are “non-integral undertaking[s] of a sort private persons or businesses might engage in for profit,” state entities do not enjoy immunity for these proprietary functions. *Saunier*, 2020 Ky. App. Unpub. LEXIS 265 at *24. The concurrence considered the basketball game required paid admission, concessions were sold and amenities were offered to fans when evaluating whether collegiate sporting events were a governmental or proprietary function. Relying on a 2008 case (*Schwindel v. Meade County*, 113 S.W.3d 159 (Ky. 2008)) and noting the important and essential role that collegiate sports play in the higher education space, and arguably greater community, the concurrence found there was governmental immunity but requested additional guidance from the high court on collegiate sporting events considering the large fan base for university sports.

Just a month prior, a different panel of judges on the Court of Appeals of Kentucky engaged in a similar multi-step analysis in *Ky. State Univ. & Christopher Cribbs v. Mucker*, No. 2018-CA-001817-MR, 2020 Ky. App. Unpub. LEXIS 192 (Ct. App. Mar. 20, 2020). In *Cribbs*, a Kentucky State University student lived in campus housing and parked his car in a nearby campus parking lot. The student went to the parking lot and saw a campus police officer looking into his

vehicle. The student consented to a search of his vehicle which contained marijuana cigarettes, small bags of marijuana and a small scale. Pursuant to a student housing acknowledgment form, the student was suspended from the university for a month and a half. He later brought suit against the university and the university official who issued the suspension, the Assistant Vice-President for Student Affairs. The university and the Assistant Vice President moved for summary judgment asserting governmental and qualified immunity respectively. On appeal from denial of the summary judgment motions, the court found the university was a state agency as a matter of statute. The court further analyzed whether education, student safety and law enforcement were integral aspects of state government. The *Cribbs* court ultimately concluded that running an official residence hall for students is a function unique to a university and not a proprietary function. Lastly, the *Cribbs* court determined whether the function at issue was a matter of statewide concern and also held education was a traditional and necessary state function. The court reversed and remanded the matter, ordering the university and the Assistant Vice-President were entitled to immunity.

It seems that in Kentucky at least, conducting a college basketball game can be considered as much an integral state function as operating a residence hall. While *Saunier* turned on the specifics of Kentucky law, it justifies full exploration of any potential immunity defense everywhere whenever a governmental entity is involved in the operation of a spectator event. ●

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