

Family Child Care Task Force Legal Concerns

The high-level points are these:

- No statute affirmatively requires licensors to be personally liable for claims arising from family day care inspections
- Counties are exempt from liability for claims arising from family day care inspections, unless the county had actual awareness of the issue that led to injury. (Minn. Stat. 466.03, subd. 6d)
 - o The fact that counties are exempt from liability exposes licensors to potential personal liability, because an injured plaintiff may seek recovery from the individual licensor upon learning that the county is immune.
- Counties are generally liable for the torts of their workers, but liability is subject to limits on liability of \$500,000 per claim, and \$1,500,000 per incident. (Minn. Stat. 466.04)
 - o These limits also apply to claims against workers. (Minn. Stat. 466.04, subd. 1a)
- Counties are required to defend and indemnify employees against claims, so long as the employee was acting within the scope of their work duties, and the employee did not commit malfeasance, willful neglect of duty, or act in bad faith. (Minn. Stat. 466.07, subd. 1)
 - o In addition, the state may also have to indemnify the county, as statute requires counties to be treated as state "employees" when carrying out inspection and licensing duties under chapter 245A, which includes family day care. (Minn. Stat. 466.131, 466.132)
- **In conclusion, while it is true that a family day care licensor may be exposed to personal liability, their liability is capped by statute, and the county (and perhaps the state) is required defend and indemnify the licensor to the extent the licensor is found to be liable – provided that the licensor has not committed malfeasance, willful neglect, or bad faith.**

Current law is reportedly requiring county licensors to be personally liable on family child care licensing – to clarify, no statute *requires* licensors to be personally liable for claims relating to family child care licensing. As explained further below, the current statutes exempt counties from being held liable for claims arising from family day care inspections (provided the county did not have actual knowledge of the licensing failure that led to injury), which exposes licensors to *potential* personal liability. **However**, inspectors would remain protected by statutory caps on damages, and the statutory requirement that counties (and perhaps the state) **must** defend and indemnify inspectors against claims, so long as the inspector has not committed malfeasance, willful neglect, or bad faith. In effect, a licensor found personally liable for injuries relating to an inspection failure would be entitled to have that damages award paid by the county.

Is that a statute specific or interpretation? Please cite.

Pursuant to the exception in Minn. Stat. 466.03, subdivision 6d, counties are immune from liability for claims "based on the failure of a provider to meet the standards needed for a license to operate a day care facility under chapter 245A for children," unless the county had "actual knowledge of a failure to meet licensing standards that resulted in a dangerous condition that foreseeably threatened the plaintiff." This statute does not "require" county licensors to be personally liable on family child care licensing; rather, licensors would not be able to claim immunity as a county employee in a lawsuit that names them in their personal capacity, should a plaintiff choose to sue the individual licensor. Importantly, counties are required by statute (Minn. Stat. 466.07, subdivision 1) to defend and indemnify licensors against such claims, provided that the inspector's conduct occurred within the scope of their employment duties, and the inspector did not commit malfeasance, willfully neglect their duty,

or act in bad faith. (Arguably, the state may also be required to indemnify the county for damages arising out of the county's inspection duties, pursuant to Minn. Stat. 466.131 and 466.132, because the county is treated as a state employee when carrying out licensing and inspection duties under chapter 245A, which includes family day care licensing.)

Is there a statute with general liability? Generally speaking, pursuant to Minn. Stat. 466.02, municipalities (which includes counties) are liable for torts committed by employees acting within the scope of their work duties. There is no statute specifically establishing personal liability of county licensors relating to family day care licensing.

What is county liability? Where a county is not immune from liability, county liability is limited to the amounts listed in Minn. Stat. 466.04. Claims arising after July 1, 2009 are capped at \$500,000 per individual claim, and a total of \$1,500,000 for all claims arising from a single incident. Importantly, Minn. Stat. 466.04, subdivision 1a extends these limits on liability to county employees for acts or omissions occurring in the performance of their work duties. Thus, any licensor's personal liability could not exceed the statutory limits. **Additionally**, as mentioned above, it is important to note that counties (and perhaps the state) are **required** to defend and indemnify a licensor pursuant to Minn. Stat. 466.07, subdivision 1, unless the licensor has committed malfeasance, willful neglect of duty, or bad faith. Thus, even where a licensor is found liable, the licensor would be entitled to indemnification for any damages, and any damages award would be subject to the statutory limits.

NOTE: counties are free to carry liability insurance beyond the statutory damages limitations. Counties that do so waive the statutory limitations, but their insurance policy would presumably be sufficient to cover damage awards. See Minn. Stat. 466.06.

Why Special for licensors having personal liability. To answer why this exemption from county tort liability was enacted requires digging through the committee minutes, which will require additional time. As the exemption was first enacted in 1986, there are not recordings of any committee hearings at which the exemption may have been discussed. I will follow up with a subsequent email if and when I can find any explanation for enacting this exception.

Why? See above.

When put in place? The day care licensing exception in 466.03, subdivision 6d, was first enacted in 1986. See Laws 1986, ch. 395, sec. 14.

Other areas same? In theory, the same reasoning would apply for each of the exceptions to municipality liability in 466.03, subdivisions 3-25. Workers that cannot rely on county immunity against those claims would be exposed to personal liability, subject to the same limits on liability, and right to defense and indemnity from the county.

Is it a myth or statutory? Personal liability for licensors does not exist as an affirmative statute. Rather, it exists by operation of the statutes that exempt counties from liability for claims relating to licensing of day cares. Because counties are immune from such claims, it stands to reason that plaintiffs could sue licensors in their personal capacity.