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State and Local Liability for Social Services, Public Health, and Other Shared Responsibilities

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The North Carolina General Assembly requires state and local government to cooperatively fund and manage service and regulatory programs in public health, social services, mental health, and other areas.[1] One of the disadvantages of this system is dispute over which entity bears legal responsibility when a citizen is injured by the negligent act of a local government employee administering or providing services in such a program. Whether the state or local government bears responsibility determines if, how, and from where an injured citizen will receive compensation for injuries suffered.

The doctrine of sovereign immunity protects the state of North Carolina from liability for tortious conduct. However, the General Assembly partially waived sovereign immunity when it enacted the North Carolina Tort Claims Act. Under the Tort Claims Act, the North Carolina Industrial Commission hears tort claims against the state that arise as a result of the negligence of an employee or other agent of the state acting within the scope of his office or agency. Recovery for injuries or damage is limited to a cumulative total of $150,000 for all claims arising from an injury to a single person.[2]

A local government, by contrast, enjoys immunity for injuries arising from governmental activities, but not for those arising from proprietary activities.[3] A local government may waive governmental immunity by the purchase of insurance. Buying insurance allows a plaintiff to recover damages for injuries to the extent covered by the insurance policy.[4] Jurisdiction of claims arising out of the negligence of a local government is vested in the General Court of Justice of North Carolina.

State and local officials, whose responsibility it is to prevent injuries from happening and to protect the financial interests of the taxpayers, also need to know the circumstances under which the governments they work for may be liable for injuries arising out of these service and regulatory programs. Unfortunately, there is substantial confusion in the law governing the distribution of liability between state and local governments in these programs.

Two recent cases from the North Carolina Court of Appeals illustrate the difficulty involved in determining whether the state or a local government is responsible for injuries to a plaintiff. In *Coleman v. Cooper*[5] the plaintiff alleged that an employee of the Wake County Department of Social Services (DSS) was negligent in failing to properly protect a child from an abusive father. In the second case, *EEE-ZZZ Lay Drain Company v. North Carolina Department of Human Resources*,[6] the plaintiff alleged that the Transylvania County health director wrongfully failed to approve a new type of septic system for use in the county.

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[1] *See generally* STATE-LOCAL RELATIONS IN NORTH CAROLINA: THEIR EVOLUTION AND CURRENT STATUS (Charles D. Liner ed., 1985).

[2] N.C. GEN. STAT. Ch.143, § 291. (Hereinafter the General Statutes will be cited G.S.)

[3] *See* Michael R. Smith, *Civil Liability of the County and County Officials, in* COUNTY GOVERNMENT IN NORTH CAROLINA (A. Fleming Bell, II ed.; 3d ed. 1989).

[4] G.S. 153A-435(a),160A-485(a).

[5] 102 N.C. App. 650, 403 S.E.2d 577, *disc. rev. denied*, 329 N.C. 786, 408 S.E.2d 517 (1991).

[6] 108 N.C. App. 24, 422 S.E.2d 338 (1992).

Both of the programs involved in those cases—child protective services and on-site sewage disposal—are administered by the county under authority delegated by the state. The state has some control over the county's activities in both programs . The cases address two questions: first, was the state's right to control the programs sufficient to make the county the state's agent in running these programs and thereby expose the state to liability as the principal? Second, what are the effects on the county's liability of a finding that a state-local agency relationship exists?

Background: Vaughn v. North Carolina Department of Human Resources

In assessing *Coleman* and *EEE-ZZZ*, some background is necessary. The North Carolina Supreme Court addressed the issue of whether state control over a local program could render the state liable for the actions of a local employee in *Vaughn v. North Carolina Department of Human Resources*.[7] In *Vaughn* the Durham County Department of Social Services (DSS) placed a child infected with cytomegalo virus in the home of a foster parent, Linda Vaughn, whom DSS knew to be pregnant. Vaughn became infected with the virus and had an abortion because the virus created a high risk that a child born of the pregnancy would have severe birth defects. She sued the county alleging negligence. The trial court dismissed the case on grounds of governmental immunity (Durham County had no insurance).[8]

Vaughn then filed a claim in the Industrial Commission, under the state Tort Claims Act, against the North Carolina Department of Human Resources. The department moved to dismiss for lack of subject-matter jurisdiction. The commission determined it had jurisdiction and the defendants appealed. The case ultimately found its way to the North Carolina Supreme Court.

The question presented to the supreme court by *Vaughn* was whether DSS acted as an agent of the state when it made the foster-care placement decision. According to the court, the answer depended on whether the state retained the right to control and direct the details of the foster-care placement.[9]

In finding that the state had the right to such control, the court carefully examined the state's power to control county administration of the foster-care program. The court pointed out statutory provisions (1) referring to state supervision of local social service programs, (2) making the county DSS director the state's agent in carrying out work required by the state, and (3) allowing the state Social Services Commission to make appointments to the local board that hires and fires the county DSS director. The court also discussed the power of the Social Services Commission to make rules governing the local administration of this program and the commission's extensive regulation of the program. The court noted that the state licensed foster-care homes, limited the county's discretion in making placements, and required the county to report on such placements. Finally, the court emphasized that a "substantial percentage" of the money in the foster-care program is state money, and county reimbursement is dependent on the quality of services as determined through extensive reporting requirements.[10]

The *Vaughn* court expressly limited its finding that the department could be liable for a county employee's negligence to the program involved in that case.[11] The court clearly contemplated that a similarly detailed case-by-case analysis would take place whenever a state-local agency relationship was at issue.

Vaughn's Progeny in the Court of Appeals

In *Coleman v. Cooper*[12] the plaintiff sued Wake County in superior court because the county had waived its governmental immunity by purchasing insurance.[13] Notwithstanding this waiver, Wake County still managed to avoid liability. Relying on *Vaughn*, the county argued that it was an agent of the state when providing child protective services, and therefore it could not be sued in superior court.

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[7]296 N.C. 683, 252 S.E.2d 792 (1979).

[8]Vaughn v. County of Durham, 34 N.C. App. 416, 240 S.E.2d 456 (1977), *disc. rev. denied*, 294 N.C. 188, 241 S.E.2d 522 (1978).

[9]*Vaughn*, 296 N.C. 683, 686, 252 S.E.2d 792, 795 (1979) (emphasis added).

[10]*Id.* at 686–91, 252 S.E.2d at 795–98.

[11]*Id.* at 692, 252 S.E.2d at 798.

[12]Coleman v. Cooper, 102 N.C. App. 650, 654, 403 S.E.2d 577 (1991).

[13]G.S. 153A-435.

Wake County contended the proper defendant was the state and the proper forum was the Industrial Commission. The court of appeals dismissed the claim against the county, but the court's approach was not entirely consistent with *Vaughn*.

First, the analysis accompanying the court's finding that Wake County was the agent of the state in conducting the child protective services program was much more limited than the analysis in *Vaughn*. The court pointed to the same statutory provisions, which give the state supervisory power over local DSS programs, cited in *Vaughn*. The court also pointed to provisions requiring the DSS director to investigate alleged cases of child abuse and neglect and to report them to the state's central registry. The court did not discuss, however, the details of the Social Services Commission's or the Department of Human Resources' control over administration and funding in the child protective services program.[14]

More puzzling is the court's dismissal of the claims against Wake County on the grounds that "[a] cause of action originating under the Tort Claims Act *against Wake County as a subordinate division of the State*, must be brought before the Industrial Commission."[15] Taken at face value this statement announces a new rule of North Carolina law, which is that a county may be sued in the Industrial Commission under the Tort Claims Act when the county is acting as an agent of the state. There are a couple of reasons to believe the court meant what it said. First, it dismissed the claim against Wake County for want of subject-matter jurisdiction. Dismissal on that ground shows that the court believed exclusive jurisdiction over the claim against the county lay with the Industrial Commission.[16]

Second, this language, by providing that Wake County might be liable (albeit in a different forum), is consistent with ordinary agency principles, which would hold both the state and Wake County potentially liable to the plaintiff; the state as the principal in the matter and Wake County as the employer of the social worker.[17] (The plaintiff did not proceed against Wake County in this case, so we don't know how the Industrial Commission would view this question.)

The *Coleman* court's approach is puzzling because it seems inconsistent with the plain language of the Tort Claims Act. That act vests the Industrial Commission with jurisdiction over tort claims against "the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State."[18] Until *Coleman* language of this sort had not been read to include local governments. Local governments are typically described in the General Statutes by the phrase "local political subdivisions" or similar language that alludes to the fact that they possess a corporate existence independent of the state's.[19] The *Coleman* court seemed to think that because Wake County employed an agent of the state, Wake County became a state agency. There is no logical or legal reason why that should be so.[20]

In *EEE-ZZZ Lay Drain Company v. North Carolina Department of Human Resources*[21] the court of appeals was confronted with another purported agency relationship between state and local government. This time the dispute involved the

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[14] *Coleman*, 102 N.C. App. at 657–58, 403 S.E.2d at 581. *Coleman*'s holding that county social services departments are agents of the state when handling child abuse and neglect cases lead the plaintiff in Whitaker v. North Carolina Department of Human Resources, No. TA-12329 (N.C. Industrial Comm'n Nov. 2, 1994), to file a claim in the Industrial Commission against the Department of Human Resources for injuries that arose out of the alleged negligence of the Davie County Department of Social Services. The commission held that the decision in *Coleman* was not binding upon it, and that the county DSS was not the agent of the state.

[15] *Id.* at 658, 403 S.E.2d at 582 (emphasis added).

[16] Note that the two *Vaughn* decisions do not suggest this result. Durham County escaped liability because it had governmental immunity, not because the superior court lacked jurisdiction over it. *See also* G.S. 143-291; Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

[17] RESTATEMENT (SECOND) OF AGENCY § 358 (1958). *See* Haehn v. City of Hoisington, 702 F. Supp. 1526, 1532 (D. Kan. 1988). Note that these principles do not apply to claims under Section 1983 because that statute does not provide for *respondeat superior* liability against local governments. Monell v. Department of Social Serv., 436 U.S. 658 (1978).

[18] G.S. 143-291.

[19] *See, e.g.*, G.S. 131E-6(5); 143-596(1).

[20] *See* Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983); Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959); Vaughn v. County of Durham, 34 N.C. App. 416, 240 S.E.2d 456 (1977), *disc. rev. denied*, 294 N.C. 188, 241 S.E.2d 522 (1978); *but cf.* Robinette v. Barriger, 116 N.C. App. 197, 202, 447 S.E.2d 498, 502 (1994) ("the Alexander County Health Department is a state agency").

[21] 108 N.C. App. 24, 422 S.E.2d 338 (1992).

issuance of improvement permits, required before the installation of septic tanks or other systems for disposing of sewage on the site of the sewage generator.[22]

The *EEE-ZZZ* court's analysis of whether an agency relationship between the county and state existed is peculiar and inconsistent with *Vaughn* and *Coleman*. To support its conclusion that Transylvania County Health Department was the agent of the state in operating its on-site sewage program, the court found that (1) the general statutes require counties to operate health departments; (2) state statutes and regulations specify with particularity the duties and powers of the local health departments with regard to sewage treatment and disposal systems; and (3) local health departments have "a great deal of authority" in regulating sanitary sewage systems, including the power to issue, revoke, and place conditions on improvement permits.[23]

The state is liable as a principal under *Vaughn* and *Coleman* only if it has the right to exercise control over the county. That the county has "a great deal of authority" suggests that the state might lack such control. Yet the court does not engage in weighing the extent of the state's right to control the program against the authority invested in local health departments. This is unfortunate because, despite the scanty analysis, the result was correct. The state does, in fact, have substantial power to control this program.[24]

The consequence of finding that the county is the agent of the state in *EEE-ZZZ* is also different from that in *Coleman*. The court in *EEE-ZZZ* held that the agency relationship means the county is immune from suit and therefore entitled to summary judgment.[25] By definition, a county that acts as an agent of the state is performing a governmental function and is entitled to governmental immunity. Since Transylvania County had not waived its immunity by the purchase of insurance, the court's disposition of the case against the county was correct. It was not, however, consistent with the outcome in *Coleman*. *Coleman* requires dismissal for want of subject-matter jurisdiction.[26]

Ramifications of *Vaughn*, *Coleman*, and *EEE-ZZZ*

Vaughn and its progeny have several interesting consequences. For example, the legal relationship between state and local government affects local governments' liability under the federal Civil Rights Act of 1871, commonly known as Section 1983. Section 1983 provides: "Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."[27]

A local government is a person within the meaning of this provision, and under the proper circumstances a local government may be liable under Section 1983 for the conduct of one of its employees or agents.[28] The state, however, is not a person, and may not be sued under Section 1983 for the conduct of its employees or agents.[29] In addition, the Eleventh Amendment to the United States Constitution bars actions against states in federal court by residents of the defendant state.[30] Thus if a local government is sued for the conduct of one of its employees under Section 1983 and can show that the state, not it, was responsible for the employee's wrongful acts, both the local government and the state may escape liability under Section 1983. An action in federal court may be dismissed under the Eleventh Amendment, and an action in state court or

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[22]G.S. 130A-336 (1992).

[23]*EEE-ZZZ*, 108 N.C. App. at 28, 422 S.E.2d at 341.

[24]Houck & Sons, Inc. v. Transylvania County, 852 F. Supp. 442 (W.D.N.C. 1993), *aff'd*, 36 F.3d 1092 (4th Cir. 1994).

[25]*EEE-ZZZ*, 108 N.C. App. at 31, 422 S.E.2d at 343. The court also granted summary judgment on a claim against the Department of Human Resources. The court should have dismissed that claim for want of subject-matter jurisdiction. *See* Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 299 S.E.2d 618 (1983).

[26]*Accord* Robinette v. Barriger, 116 N.C. App. 197, 202, 447 S.E.2d 498, 502 (1994).

[27]42 U.S.C. § 1983 (1988) (emphasis added).

[28]Monell v. Department of Social Serv., 436 U.S. 658 (1978); *see generally* 1 Sheldon H. Nahmod, CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: THE LAW OF SECTION 1983 406-513 (3d ed. 1991).

[29]Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989); *see generally* 1 Nahmod, *supra* note 28, at 507–12.

[30]U.S. CONST. AMEND. XI; *see generally* 2 Nahmod, *supra* note 28, at 297.

federal court may be dismissed because the state is not a person. [31] *Vaughn*, *Coleman*, and *EEE-ZZZ* are important to local governments' efforts to avoid Section 1983 liability because the question of which government is the principal is decided by reference to state, not federal, law.[32]

Houck & Sons, Inc. v. Transylvania County[33] gives an example of how these rules work in practice. In *Houck* the plaintiff alleged in a Section 1983 action that Transylvania County and its current and former public health department directors (sued in their official capacities) violated the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by refusing to issue certificates of completion on three septic tank systems built by the plaintiff. After a trial in which the jury awarded substantial damages to the plaintiff, the health directors moved to set aside the verdict and dismiss the action against them. The directors claimed that the acts the plaintiff complained of had been taken in the course of enforcing state laws and rules governing septic systems and that the directors were, for that purpose, agents of the state. An official-capacity suit against state agents is an action against the state, and therefore, they argued, the Eleventh Amendment deprived the court of jurisdiction. Transylvania County, while not en-joying the protection of the Eleventh Amendment, asserted that since its liability was premised "solely on the actions of the official defendants," a finding that the directors were agents of the state eliminated the basis for the county's liability.[34]

Relying on *EEE-ZZZ* and *Vaughn*, the court held that the directors were agents of the state. To support that holding, the court found that (1) local health departments merely enforce the regulations promulgated by the state Commission for Health Services when issuing improvement permits and subsequent certificates of completion for septic systems; (2) the state regulations set forth very specific, detailed requirements that have to be met before a local department can issue an improvement permit, certificate of completion, or operational permit; (3) the state attorney general had agreed to represent the health directors; and (4) the state had assumed liability for any judgment rendered against the directors. The court was not persuaded by the fact that (1) the local health departments had authority to derive part of their own revenue themselves; and (2) no North Carolina statute provided that the local health department director acts as an agent of the state (as did a statute in *Vaughn*).[35]

Having found that the local health directors were agents of the state, the court found that the official-capacity actions against them were barred by the Eleventh Amendment. In addition, the court accepted Transylvania County's argument that it had no liability for the directors' acts taken as state agents.[36]

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[31]State employees, officials, and agents may be sued for prospective injunctive relief for violations of federal law in state or federal court under Section 1983. Thus, for example, the plaintiff in *Houck* could have maintained an action under Section 1983 that sought to require local health directors, as state agents, to enforce the sewage disposal law in accordance with the Fourteenth Amendment. For this limited purpose, the state agents sued in their official capacity are "persons" within the meaning of Section 1983. Furthermore, the eleventh Amendment does not bar such an action in federal court. Ex parte Young, 209 U.S. 123 (1908); Corum v. University of N.C., 330 N.C. 761, 413 S.E.2d 276 (1992); *see generally* 2 Nahmod, *supra* note 28, at 297–99.

[32]Mount Healthy City School Bd. of Educ. v. Doyle, 429 U.S. 274 (1977); *see generally* 2 Nahmod, *supra* note 31, at 301–04.

[33]852 F. Supp. 442 (W.D.N.C. 1993), *aff'd*, 36 F.3d 1092 (4th Cir. 1994).

[34]*Id.* at 447. This language is ambiguous. The county might be arguing that the plaintiff either failed to allege or prove a county policy or custom as is required for a Section 1983 claim under Monell v. Department of Social Serv., 436 U.S. 658 (1978). It might also have argued that the health directors could not, as state agents, make policy for the county, or possibly that the local health directors were not county employees at all.

[35]*See also* Gray v. Laws, No. 93-60-CIV-5-D (E.D.N.C. Jan. 20, 1994); Shell v. Wall, 808 F. Supp. 481 (W.D.N.C. 1992); Fracaro v. Priddy, 514 F. Supp. 191, 200 (M.D.N.C. 1981); *but see* Meares v. Brunswick County, 615 F. Supp. 14 (E.D.N.C. 1985).

[36]In so doing, the court relied upon Arnold v. McClain, 926 F.2d 963 (10th Cir. 1991), which was based in turn on Laidley v. McClain, 914 F.2d 1386 (10th Cir. 1990). These cases held that an Oklahoma district attorney is a state official, not an official of the counties that the district attorney represents. However, because Oklahoma district attorneys are paid by the state and treated as state employees for all other purposes, unlike North Carolina health directors who are plainly local employees, these cases are questionable authority for the court's holding. Clearer precedent is found in Fracaro v. Priddy, 514 F. Supp. 191, 200 (M.D.N.C. 1981), which holds

Thus *EEE-ZZZ* and *Vaughn* provided the key that allowed the county to escape Section 1983 liability.

Vaughn and its progeny also simultaneously expand and limit the availability of damages to injured parties. In *Vaughn* the plaintiff tried to get her claim before the Industrial Commission because Durham County had governmental immunity. Establishing that the Department of Human Resources might be liable before the commission was a victory for the plaintiff in *Vaughn.* In *Coleman* Wake County had insurance coverage far in excess of $100,000, and the plaintiff wanted to stay in superior court. The court's holding that the claim against the state (or maybe Wake County) had to be brought in the Industrial Commission was a defeat, because the maximum amount of damages was probably the $100,000 then available under the Tort Claims Act.[37]

These cases also have the potential to complicate the conduct of litigation against local governments in several ways. First, by increasing the number of claims that must be brought in the Industrial Commission, these cases increase the number of claims that must be litigated in two forums simultaneously. Plaintiffs must sue the individual defendants in district or superior court and must sue the state (or maybe, under *Coleman*, the local government) in the Industrial Commission. Defense of these lawsuits must be coordinated, if for no other reason than the possibility that the first action to proceed to judgment might prevent the assertion of claims or defenses in the other forum.[38]

Second, a decision must be made about who will defend or pay for the defense of the individual employee. The attorney general has the authority to defend agents of the state, including local employees, from lawsuits.[39] However, the attorney general need not do so and will refuse when he believes the state has no responsibility in the matter.[40] In *Coleman* the attorney general did not defend the social worker who was sued.[41] In *EEE-ZZZ*, by contrast, the state provided defense.

Similarly, a local government has the authority, but not the duty, to defend its employees, and this authority extends to situations in which the employee is serving as an agent of the state. Chapter 160A, section 167 of the North Carolina General Statutes (hereinafter G.S.) provides that a local government may defend an employee who is sued over conduct within "the scope and course of his employment or duty." Serving as an agent of the state does not mean a local employee is acting beyond the scope and course of employment; many local employees have jobs that require them to do nothing except serve as agents of the state. (This, for example, is true of many county environmental health specialists.) No court, however, has so held.

G.S. 160A-167 also permits a local government to purchase insurance to provide employees with legal defense in lawsuits. When a local government does so an employee typically enjoys a contractual right to defense from the insurer so long as the employee was acting in the scope and course of his employment. Whether the policy will cover local employees when acting as agents of the state depends on the language of the individual policy, but in most cases policies will be written so as to require the insurer to provide defense in these situations.[42]

In theory, at least, the entity providing and controlling the legal defense should be the entity that will ultimately be required to pay the judgment. Unfortunately, given the uncertainty surrounding these cases, who might be liable for the damages and under what circumstances can be difficult to tell. The Tort Claims Act limit applies to any combination of claims against the state and against individual employees. Thus no matter how many individual defendants there are, the state may only pay a total of $150,000 and it may pay nothing if it has already paid the maximum under the Tort Claims Act. If the claim is larger, individual defendants remain

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that a county is not liable for the actions of a local social services director acting as an agent of the state. According to the court, this is because while acting in that capacity the director does not make policy for the county so as to expose the county to Section 1983 liability under Monell v. Department of Social Serv., 436 U.S. 658 (1978). *See also* Dotson v. Chester, 937 F.2d 920 (4th Cir. 1991).

[37]*Coleman* did not actually address the question of whether the tort claims limit would apply to a claim against Wake County brought before the commission.

[38]North Carolina courts have not addressed the issue of collateral estoppel arising between related actions in the General Court of Justice and the Industrial Commission.

[39]G.S. 143-300.2–300.4.

[40]G.S. 143-300.4.

[41]*See also* Robinette v. Barriger, 116 N.C. App. 197, 202, 447 S.E.2d 498, 502 (1994).

[42]*But cf.* Gray v. Laws, No. 93-60-CIV-5-D (E.D.N.C. Jan. 20, 1994) (suggesting that a county's liability policy would not cover employees acting as agents of the state).

potentially liable for the rest.[43] (The state has a liability insurance policy for claims over the tort claims limit that covers some kinds of judgments in cases in which the attorney general provides defense.)

If the judgment in the claim is above the tort claims limit, the employee will ask the local government to step in. G.S. 160A-167 allows, but does not require, a local government to pay the judgment against one of its employees for liability arising out of "the scope and course of his employment of duty." This language is identical to the language giving local governments' the power to defend their employees and would permit them to cover damages beyond those paid by the state. A county may also purchase insurance to cover these judgments, and the insurance will ordinarily provide coverage when the employee is acting within the scope of employment.[44]

However, figuring out in these cases who may be liable for what amounts is far from clear at the outset of the litigation. Apart from the uncertainty concerning whether and how much the plaintiff will recover, there may well be uncertainty over who is and who is not an agent of the state. Other things further complicate the picture. First, the attorney general has substantial discretion to decline to represent individual defendants—discretion that extends even to situations in which it is clear that the local employee is acting as an agent of the state.[45] If the attorney general exercises that discretion and declines, it is the official position of the attorney general that the state cannot pay any damages that the agent may ultimately be found liable to pay.[46] Second, although the state has an obligation to pay damages (subject to the $150,000 limit) on behalf of an agent of the state found liable for acts committed within the scope of employment, that obligation does not attach until any other insurance that covers the claim has been exhausted.[47] The conflicting financial interests of the individual employee,[48] the state, the state's excess liability insurer, the local government, and any insurer for the local government creates a situation ripe for confusion, and perhaps, litigation.

[43] *See* Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

[44] *But cf.* Gray v. Laws, No. 93-60-CIV-5-D (E.D.N.C. Jan. 20, 1994) (suggesting that a county's liability policy would not cover employees acting as agents of the state).

[45] G.S. 143-300.4.

[46] 59 Op. N.C. Att'y Gen. 21 (1989).

[47] G.S. 143-300.6(c).

[48] Although it is not common, in some cases an employee will purchase individual insurance coverage for claims arising on the job. Public health nurses, for example, will sometimes carry personal malpractice coverage.

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