

Selected Examples of Actions Against Municipalities

Municipalities have been delegated the authority to sue and be sued. The right of action against a municipality, to a large degree, is within the discretion of the Legislature and may be withheld, granted absolutely or granted on condition. This article provides a brief description of some common legal actions private citizens may bring against municipalities or municipal officials and employees.

Equity Actions in General. Under proper circumstances, an injunction will lie to restrain a municipality from acts inflicting irreparable damage to private rights or private property.¹ For example, an equity action may be brought against a municipality for maintaining a nuisance on private property.² On the other hand, a municipality may not be enjoined from enacting an ordinance unless doing so is beyond the scope of its power and would, in itself, cause an irreparable injury.³ Also, an injunction will not lie for enforcement of ordinances.⁴ Taxpayers may bring injunction actions against public officials to restrain them from wrongfully expending public funds.⁵ Generally, any injunction against public officials must involve illegal acts that are detrimental to the municipality and so imminent and substantial as to make it proper that the taxpayers be protected.⁶

There exist several other equity actions that may be brought against municipalities, such as specific performance and quiet title actions, but a discussion of the many possible equity actions is beyond the general scope of this section.

Quo Warranto. This is a legal action brought against a public official, not the municipality itself. Established in Pennsylvania as the only method of challenging a public official's right to hold office, a quo warranto action must be brought by the county district attorney or the Attorney General. The only exception to this rule is where a private party solicits the Attorney General or district attorney, and these officials refuse to bring the action. In these cases, the private party may bring an equity action seeking removal of the official or bring a mandamus action (see below) petitioning the court to issue a writ compelling the Attorney General or district attorney to bring

¹ See *Penn Iron Co. v. Lancaster*, 25 Pa. Super. 478 (1904); see also *Price v. Grencavage*, 531 A.2d 108 (Pa. Cmwlth. 1987).

² See *Miller v. Borough of New Oxford*, 165 A. 766 (Pa. Super. 1933).

³ See 17 *McQuillin Mun. Corp.* § 49:60 (3rd ed.).

⁴ *Reed v. Harrisburg City Council*, 927 A.2d 698 (Pa. Cmwlth. 2007).

⁵ *Theil v. Philadelphia*, 245 Pa. 406 (1914).

⁶ Another option exists pursuant to the Declaratory Judgment Act (42 Pa.C.S. § 7531 et seq.), whereby any person with a real and substantial or imminent interest may bring an action to have an ordinance examined for validity. The act of rendering a declaratory judgment is within the discretion of the court.

a quo warranto action. Only a private party with a special right or interest distinguishable from a right or interest of the public generally may bring such an action.⁷

Mandamus. This is an action brought against a municipality or public official requesting the court to compel the municipality or official to take a specific action. It is defined as "a writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act."⁸ One seeking a writ of mandamus against a municipality or public official has a heavy burden. Although generally considered a legal action, it is similar to other equity actions against municipalities in that the plaintiff must establish a clear right to relief,⁹ the lack of any other adequate remedy at law,¹⁰ and that the plaintiff has demanded performance of the duty and the defendant has refused to so perform.¹¹ A private plaintiff who seeks to enforce a public duty must also establish "an individual and beneficial interest in the litigation independent of that which is held by the public at large."¹² Ordinarily, a court will not compel a discretionary act, but where an action is taken, a court "will review the exercise of the actor's discretion where it is arbitrarily or fraudulently exercised or is based on a mistaken view of the law."¹³

Taxpayer Suits. A taxpayers' suit is technically a representative or class suit, whereby a private party brings an action against a municipality for illegal acts injurious to their interests as taxpayers through misuse, disuse or spoliation of public funds or property. In Pennsylvania, a taxpayer bringing such an action must have a "substantial, direct and immediate" interest in the alleged wrongdoing of the municipality that "surpasses the common interest of all citizens in procuring obedience to the law."¹⁴ The only exception to this "special interest" rule is where: 1. governmental action would go otherwise unchallenged; 2. those directly affected are beneficially affected; 3. judicial relief is appropriate; 4. redress through other channels is not available; and 5. no one else is better positioned to assert the claim.¹⁵

Municipal Liability for Torts. As discussed in another section of this publication, except as permitted by statute, no local agency is liable for any damages on account of any injury to a person

⁷ See *Coghlan v. Borough of Darby*, 844 A.2d 624 (Pa. Cmwlth. 2004); *In re 100 or More Electors of Clairton*, 546 Pa. 126 (1996).

⁸ Bryan A. Garner (ed.), *Black's Law Dictionary*, 11th ed., West Group, St. Paul, Minn., 2019.

⁹ *Madden v. Jeffes*, 482 A.2d 1162, 1165 (Pa. Cmwlth. 1984).

¹⁰ Pa.R.C.P. 1095.

¹¹ *Id.*

¹² *Carino v. Board of Commissioners of Armstrong County*, 468 A.2d 1201,1205 (Pa. Cmwlth.1983), quoting *Dombrowski v. Philadelphia*, 431 Pa. 199, 204 (1968).

¹³ *County of Allegheny v. Commonwealth of PA*, 518 Pa. 556, 560 (1988) (citing *County of Allegheny v. Commonwealth of PA*, 507 Pa. 360, 375 (1985)).

¹⁴ *In re Application of Beister*, 487 Pa. 438 (1979). quoting *Wm. Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 192, 1975.

¹⁵ *Id.* at 445-446.

or property caused by any action of a local agency or any employee thereof or any other person.¹⁶ This immunity extends to almost any type of injury, including physical, mental, reputational or economic, unless the act or omission giving rise to liability falls under one of the statutory exceptions.¹⁷

Federal Actions. Among other types of actions that may be brought by citizens against municipalities are Sections 1981 and 1983 claims authorized by federal law.¹⁸ To establish a claim under Section 1981, a plaintiff must allege facts in support of certain requisite elements, including that the plaintiff is a member of a racial minority, and there exists intent to discriminate on the basis of race by the defendant. The two essential elements necessary to establish a Section 1983 claim are: (1) that the conduct complained of was committed by a person acting under color of state law, and (2) that the conduct deprived the plaintiff of rights, privileges or immunities secured by the United States Constitution or other laws of the United States.

¹⁶ See 42 Pa.C.S. § 8541 et seq. (relating to governmental immunity).

¹⁷ See the *Deskbook* article entitled “Governmental Immunity & Municipal Liability.”

¹⁸ 42 U.S.C. §§ 1981, 1983.