

Is the language of §662-15(4) Exceptions to State Tort Liability Act clear enough to secure intent of the law?

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Aloha Senators of the Judiciary Committee,

I think there is some confusion about the following statute. What does, "***This chapter shall not apply to...***," really mean?

§662-15 Exceptions. This chapter shall not apply to:

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

Doesn't this mean that...

- If a state employee is sued in civil court for any of the above actions, the Department of the Attorney General is not permitted to represent this individual in court?
- Even though HRS Chapter 28 (Attorney General) and Chapter 662 (State Tort Liability Act) authorize the Department of the Attorney General to represent the State and its employees when sued for actions made during the course of employment, it seems like HRS §662-15(4) means that the Department of the AG and the Hawaii taxpayers are not supposed to foot the bill for attorneys to represent employees sued for committing the above specific actions, *even if* they are working when they commit these actions.
- None of the illegal, tortious offenses listed in §662-15(4) are *ever* part of a State agency's broad public policy, which would involve discretionary decisions by State employees, nor allowable actions as part of any state employee's job duties. Therefore, the State of Hawaii should not be defending individual in claims arising about of the above exceptions?

What else could HRS §662-15(4) possibly mean?

Please help me understand the intent and reason for HRS §662-15 Exceptions.

HERE IS WHY I ASK

I have spent a lot of time and tried very hard to research this on my own at the State Law Library, but I've been unsuccessful. This issue arose because a State Department of Education teacher committed defamation a year ago, and I want an apology and compensation for the damages. I gave the teacher plenty of opportunity to correct her error based on three other witness statements that contradicted her libelous statements, but she remained silent. So, I filed a claim in 1st Circuit Small Claims Court this past August against this individual in the matter of defamation. Then, the Department of the Attorney General steps in to represent her based on this statute:

§662-16 Defense of state employees; county lifeguards. (a) The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury, including death,

resulting from the act or omission of any state employee while acting within the scope of the employee's employment.

I made a motion in small claims court to disqualify the Department of the Attorney General from representing the Defendant based on §662-15(4). A friend of mine, a Hawaii attorney, said my reasoning was solid, and either the judge would grant the motion or be breaking the law. Perhaps my friend and I both have misinterpreted HRS §662-15(4), or perhaps the language is ambiguous and needs revision by our legislature.

Yesterday, the judge denied my motion based on HRS §662-16. He refused to explain why the [§662-15](#) Exceptions did not apply to [§662-16](#) and what, "This chapter shall not apply..." actually means. That's why I'm asking the Senate Judiciary Committee what this law really means with respect to the Department of the Attorney General's representation of individuals sued in any of the matters listed in HRS §662-15(4). Nobody else is going to tell me what that means.

Here's what I think. I think HRS §662-15(4) exists because it is not in the public interest for Hawai'i tax revenues to be squandered paying legal fees for state employees who break the law and commit illegal, individually tortious acts. This is common sense. When a state employee breaks the law and opens themselves to a possible legal tort, they need to pay for their own attorney, or expeditiously and graciously resolve the problem themselves. Why are the people of Hawaii giving free legal services to people who commit these illegal acts? For example, are the people of Hawaii supposed to foot the legal bill to defend an employee sued for knocking out the front teeth of a parent during an argument that occurred during the school work day, and the argument was about something related to school? That's absurd, don't you agree?

If the exceptions of HRS §662-15(4) don't override HRS §662-16, then doesn't that create an automatic free license for all state employees to commit defamation because the State has not waived its immunity in defamation actions? Case Notes for HRS §662-15 say, "*State has not waived its immunity in defamation actions,*" and, "*Where a plaintiff's negligence claim against the State seeks to hold the State vicariously liable for a state employee's assault, battery, false imprisonment, etc. under the doctrine of respondeat superior, the State is, pursuant to paragraph (4), immune from the plaintiff's claims.*"

CAN YOU FIX THE STATUTE TO MAKE IT CLEARER?

I am not asking you to override any judge's decision, of course. I'm going to move my case to circuit court, so the small claims judge's decision will be moot.

However, here's the legislative problem.

- A citizen can't hold the State liable for defamation, but if one tries to sue the individual, the State Attorneys General steps in. Isn't that a contradiction?
- The State hasn't waived its immunity in defamation cases. So, does that mean State employees are immune to defamation claims?

- So, If one tries to sue an individual for defamation, that person is immune to liability simply by virtue of the fact that they are a state employee. Seems a bit unfair to the rest of the citizens.
- Under the current language, state employees are allowed, by this Catch-22, to commit defamation, and there's nothing the victims can do. The Attorneys General will protect them, and the victims have to fend for themselves (while paying the taxes to support the State Attorneys who are protecting the abusers).
- Doesn't this open up the possibility for a lot of unchecked governmental corruption if state employees get unlimited, free legal services to defend themselves against civil torts initiated by victims of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, or deceit?

Is this really what HRS §662-16 intended, or does HRS §662-15 need revision to make it clearer for citizens like me, my attorney friend, state employees and the judges that the people of Hawaii are not liable for certain, specific bad acts by its employees? There has been a lot of common law precedent established over the years if you read the Case Notes for [§662-15 Exceptions](#). It seems like it's time to make this better.

In addition to explaining what, "This chapter shall not apply," actually means with regard to the representation by the State Attorney General for the exceptions listed, I respectfully ask the Judiciary Committee to consider that revision and clarification of this law is warranted.

Mahalo,
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