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FIRST CIRCUIT
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IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
SMALL CLAIMS DIVISION
STATE OF HAWAI'I

VANESSA OTT, Plaintiff
2825 S KING ST, #2901, HONOLULU HI 96826
MsVOtt@gmail.com

v.

CHRISTINE K. ASUNCION, Defendant

Delivered to:
Deputy Attorneys General Michael R. S. Azuma,
Carter K. Siu
State of Hawai'i Department of the Attorney General
Education Division
235 S. Beretania Street, Rm. 304
Honolulu, HI 96813

In the matter of defamation.

Civil No. 1DSC-21-0000748

PLAINTIFF'S MEMO REGARDING HAWAI'I
REVISED STATUTES AND CASE NOTES
SUPPORTING PLAINTIFF'S MOTION TO
DISQUALIFY THE DEPARTMENT OF THE
ATTORNEY GENERAL FROM REPRESENTING
DEFENDANT, STATE EMPLOYEE CHRISTINE
K. ASUNCION, IN THE MATTER OF
DEFAMATION.

**Hawai'i Revised Statutes and Case Notes Supporting Plaintiff's Motion to Disqualify the
Department of the Attorney General From Representing Defendant, State Employee
Christine K. Asuncion, In the Matter of Defamation.**

**A. Plaintiff Acknowledges All Provisions of Hawai'i Statutes Giving Department of
Attorney General Authorization to Appear for the to Defend the State in Civil
Tort Cases.**

Plaintiff acknowledges that several Hawai'i Revised Statutes establish the Department of the Attorney General as legal representative for the State of Hawai'i which includes state employees who are exercising due care in the performance of one's daily operational job duties and discretionary functions that may be part of one's job duties.

Chapter 28 establishes the Department of the Attorney General.

CHAPTER 28
ATTORNEY GENERAL
PART I. DEPARTMENT, GENERALLY

§28-1 Appears for State.

The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like

manner appear in the district courts in such cases. [L 1866, p 16; RL 1925, §1486; RL 1935, §500; RL 1945, §1501; RL 1955, §30-1; HRS §28-1; am L 1969, c 175, §13; am L 1989, c 230, §1]

Chapter 662, STATE TORT LIABILITY ACT, and Chapter 663, TORT ACTIONS also undeniably have several references to the Department of the Attorney General’s jurisdiction in tortious actions against the State and its employees.

However, statutory exceptions as well as legal precedent barring application of Chapter 28 and 662 in this case exist and cannot be dismissed.

B. Deputy Attorneys General Claim That “HRS § 662-15 is Not Applicable”¹ is Absurd and Out of Context.

Deputy Attorney Generals Azuma and Siu made this assertion:

“B. HRS § 662-15 is Not Applicable

Plaintiff cites to HRS §§ 662-2 and 662-15 in her Motion but does not adduce any argument as to why they are relevant to the issue of disqualification. See Mot. at 1. Chapter 662 is the State Tort Liability Act, which allows the State to “waive its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances . . .” HRS § 662-2. In addition, HRS § 662-15 reads: “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;” HRS § 662-15(4). None of these provisions apply whatsoever to whether the Department of the Attorney General can or should be disqualified. Therefore, waiver of immunity by the State of Hawaii is not relevant and only HRS §662-16 controls.”

Deputy Attorneys General cannot claim that “only HRS §662-16 controls” because Hawai’i Statutes must be considered in their entirety when rendering a legal decision. One cannot pick and choose statutes that support one’s argument while simultaneously ignoring statutes that clearly contradict the argument. This provision is covered in Chapter 1 COMMON LAW; CONSTRUCTION OF LAWS HRS §1-15² Case Notes.

Context.

- **Language must be read in context of entire statute.** 53 H. 208, 490 P.2d 899.

Additionally, per HRS §1-15, the Court is bound by the plain language of the law, and where there is no ambiguity, there is no room for constructing an argument against a statute. HRS §662-15(4) is unambiguous that the State Tort Liability Act does not apply in cases of libel or slander (defamation). A glib comment that this statute is not applicable with no deeper explanation is not a reasonable argument to dismiss Plaintiff’s motion to disqualify the AG.

¹ Dkt. 29, Civil No. 1DSC-21-0000748; DEFENDANT CHRISTINE K. ASUNCION’S MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION TO DISQUALIFY THE STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL FROM REPRESENTING DEFENDANT

² See [Appendix](#) for full text of [HRS §1-15 and Case Notes](#).

HRS CHAPTER 1 [COMMON LAW; CONSTRUCTION OF LAWS] §1-15

§1-15 Construction of ambiguous context.

Where the words of a law are ambiguous:

... (2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.

(3) Every construction which leads to an absurdity shall be rejected.

Case Notes

Construction, generally.

- **Where no ambiguity, no room for construction.** 17 H. 389, 391; 22 H. 31, 33; 22 H. 557, 566; 30 H. 116, 121; 30 H. 685, 690, aff'd 36 F.2d 159; 33 H. 239, 242; 33 H. 915, 920; 35 H. 248, 251; 35 H. 429; 35 H. 788, 794; 40 H. 478; 41 H. 1.
- **No room for construction where there is no ambiguity in language of statute and literal application produces no absurd result.** 55 H. 610, 525 P.2d 586.

Absurdity.

- **Unless it would produce an absurd result, court is bound by plain language.** 60 H. 497, 591 P.2d 611.

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

(1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;

... (3) Any claim for which a remedy is provided elsewhere in the laws of the State;

(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;

Defamation, as defined in 28 USC § 4101 is inclusive of both libel and/or slander.

28 U.S. Code § 4101 - Definitions

In this chapter:

(1) DEFAMATION.—

The term "defamation" means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

The Deputy Attorneys General argument is absurd because it denies the common language of "does not apply to" as well as "defamation" as inclusive of libel and slander. Furthermore, the Attorneys General's argument does not conform to the reason and spirit of HRS §662-15 which is to clearly define where the Department of the Attorney General is **not** authorized to represent a state employee. In this instant case, that reason is the alleged defamation committed solely by an employee while she was working for the Department of Education, but the act of defamation

is *not* part of Defendant’s job functions. In fact, the incident arose because she was not performing her teacher’s duty to manage a classroom.

C. State Not Liable For Bad Acts Of Defamation By State Employees.

The plain language of HRS §662-15(4) should be sufficient to grant the motion to disqualify. However, lest there be any confusion about the State’s liability versus individual liability for tortious claims concerning bad acts of libel or slander by State employees, the following excerpt from the Supreme Court Discussion in *Costales v. Rosete* (2014) provides guidance for the court.

Costales v. Rosete, 133 Hawai’i 124 (2014)

324 P.3d 934

C. HRS § 662–10

[20] Rosete argues that HRS § 662–10 precludes a contemporaneous judgment against both the State of Hawai’i and Rosete in his individual capacity. It is true that HRS § 662–10 states, “The judgment in an action under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the State whose act or omission gave rise to the claim.” However, the provisions of Chapter 662, including HRS § 662–10’s judgment bar, does not apply to Costales’ claim of assault and battery against Rosete in his individual capacity. HRS § 662–15 (Supp.2004) states, “This chapter [Chapter 662] shall not apply to ... [a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. ...” Therefore, HRS § 662–10 does not apply to bar Costales’ intentional tort claim against Rosete in his individual capacity.¹⁰

****951 *141** In a case factually similar to the instant one, we held:

[W]here the plaintiff’s negligence claim seeks to hold the State liable for the conduct of state employees other than the alleged tortfeasor, pursuant to theories of negligent hiring, retention, supervision, or the like, the plaintiff’s claim does not necessarily “arise out of” the hired, retained, or supervised employee’s intentional tort. Rather, if the State knew, or reasonably should have anticipated, that one of its employees would commit an intentional tort against a person to whom the State owed a duty of care, the State is liable for the negligence of those employees who were in a position to take reasonable precautions against the anticipated harm.

Doe Parents No. 1 v. Dep’t of Educ., 100 Hawai’i 34, 68, 58 P.3d 545, 579 (2002) (emphasis added). Therefore, HRS § 662–10 does not bar Costales from obtaining contemporaneous judgments from Rosete in his individual capacity and from the State. To the extent that recovery against the State is predicated on the alleged negligence of Rosete’s superiors in hiring, supervising, training, and retaining him, such a claim does not involve “the same subject matter” as the intentional tort claims against Rosete.

It is clear from the above 2014 Supreme Court judgement that the State Department of Education is not liable for civil claims against an individual for any of the civil defenses listed in §662-15(4). If Plaintiff in the instant case is to receive any redress for being aggrieved by defamation committed by Defendant Asuncion, Hawai’i statutes and legal precedent require that Plaintiff seek judgement against Defendant Asuncion in Defendant’s individual capacity.

D. Chapter 28 Bars Attorneys General from Representing Individuals.

There are no legally allowable conditions that permit State Attorneys General from representing Defendant in the matter of defamation, and several legal prohibitions against it.

HRS §28-1 authorizes Attorneys General to appear for State, not individuals. As described in Section C. of this memo, in the matter of defamation, Defendant Asuncion is an individual, and Plaintiff must seek relief for defamation from the individual who committed the offense. Plaintiff has not accused The State of defamation, only one individual, Christine K. Asuncion. **HRS §28-2** mandates that Attorneys General shall be vigilant and active in detecting offenders against the laws of the State. **HRS §28-4** mandates that Attorneys General shall give advice and counsel to in all matters connected with their public duties. By virtue of the fact that Plaintiff has had to file this motion to disqualify the Department of the Attorney General from representing Defendant Asuncion, the Attorney General has failed to fulfill its mandated to give proper legal advice to Defendant Asuncion regarding her status as an individual tortfeasor, not subject to receive free legal representation from the Department of the Attorney General. The Attorney General has also failed to follow the law by attempting to represent Defendant in a matter involving defamation. If Defendant Asuncion were indigent, **HRS §28-5** could legally provide a means for the Department of the Attorney general to appear for Defendant, but she is not indigent. **HRS §28-10** prohibits the attorney general, first deputy, and other deputies from engaging in the private practice of law.

For all the legal reasons stated above, it is just and right that the court grant Plaintiff's motion to disqualify the Department of the Attorney General from representing Defendant Christine K. Asuncion in the matter of defamation in any legal proceeding, including but not limited to mediation, hearings, and providing general counsel.

E. Reason and Spirit of Hawai'i Legal Statute §662-15.

Concerning State of Hawai'i Common Law, HRS §1-15(2) states:

The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.

Why was HRS §662-15 enacted?

Plaintiff tried to find the answer at the State Law Library, but was unsuccessful. This law was enacted in 1957, but supplemental materials yielded little information. Defamation lawsuits date back to the 1800s, but there is no clear explanation for why this law exists.

In the absence of specific statements, Plaintiff will postulate the statute's purpose based on common sense and the general duties of Attorneys General in the U.S.A. In addition to Chapter 28 of the Hawai'i Revised Statutes, *The National Association of Attorneys General* describes the powers and duties of Attorneys General as follows.³

In most states, an attorney general's power and authority come from the common law (custom and judicial precedent) rather than statutes. Under common law precedent, attorneys general have the authority to represent, defend, and enforce the legal interests of both the state itself and of the public. The jurisdiction's constitution and statutes also establish the attorney general's authority in other areas.

Depending on the decisions of the state's courts, attorneys general may have common law authority to:

³ www.naag.org/issues/powers-and-duties

- *Protect the public interest.*
- *Control litigation and appeals on behalf of the state or territory.*
- *Appear for and defend the state or territory and its agencies.*
- *Determine the legal policy of the state or territory.*
- *Intervene in legal proceedings on behalf of the public interest.*
- *Prosecute criminal activity (in the absence of express legislative restrictions).*
- *Seek abatement of a public nuisance.*
- *Seek writs of prohibition against judicial actions.*
- *Enforce charitable trusts.*

Protecting the public interest is at the top of the above list. It is not in the public interest for State resources to be spent defending individuals who commit any of the following illegal offenses.

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> ▫ assault, ▫ battery, ▫ false imprisonment, ▫ false arrest, | <ul style="list-style-type: none"> ▫ malicious prosecution, ▫ abuse of process, ▫ libel, ▫ slander, | <ul style="list-style-type: none"> ▫ misrepresentation, ▫ deceit, or ▫ interference with contract rights. |
|--|---|--|


None of these offenses are *ever* part of a State agency’s broad public policy, which would involve discretionary decisions by the State, or part of *any* state employee’s job duties. Since neither condition is satisfied, State-funded legal assistance for the Defendant in Civil No. 1DSC-21-0000748 case is *not* the Attorneys General’s or taxpayer’s responsibility. 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.

The Deputy Attorney General’s attempt to ignore §662-15(4) erodes public trust in our legal system. This case has been, and continues to be, very costly to the Department of the AG, to Plaintiff, and to the Court, but not Defendant. Plaintiff has spent hundreds of hours just getting to this hearing and feels like the Government is abusing its power for the purposes of subverting justice.

All Plaintiff ever asked for was a written apology for what was clearly defamation (three witnesses other than Plaintiff verify the Defendant lied), but the Department of the Attorney General’s dismissal of statute, precedent, and the spirit of the law has turned this into an expensive lawsuit. Plaintiff strongly suspects that Defendant would have settled this issue long ago, given the indisputable, written evidence of three witnesses, if Defendant were not expecting to have free legal services to fend off Plaintiff’s struggle for justice and truth. All of this seems grossly unjust to Plaintiff, the person in this equation who would *never* knowingly defame someone, and who would certainly apologize if the error was discovered.

We ask that the Judiciary perform its most important Constitutional function of keeping such unprincipled and costly governmental activity in check, and serve the public interest by protecting all of our State resources and the court’s time as HRS §662-15(4) intended. That is the basis of Plaintiff’s motion to disqualify the Department of the Attorney General from representing Defendant Christine K. Asuncion in the matter of defamation Civil No. 1DSC-21-0000748.

Thank you Your Honor.



 Plaintiff: Vanessa Ott

December 4, 2021
 Date

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DIVISION 1. GOVERNMENT

TITLE 1. GENERAL PROVISIONS

CHAPTER 1 - COMMON LAW; CONSTRUCTION OF LAWS

§1-15 Construction of ambiguous context.

Where the words of a law are ambiguous:

(1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.

(2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.

(3) Every construction which leads to an absurdity shall be rejected. [CC 1859, §10; RL 1925, §10; RL 1935, §11; RL 1945, §10; am L 1955, c 57, §1(c); RL 1955, §1-18; HRS §1-15]

Case Notes

Construction, generally.

Where no ambiguity, no room for construction. 17 H. 389, 391; 22 H. 31, 33; 22 H. 557, 566; 30 H. 116, 121; 30 H. 685, 690, aff'd 36 F.2d 159; 33 H. 239, 242; 33 H. 915, 920; 35 H. 248, 251; 35 H. 429; 35 H. 788, 794; 40 H. 478; 41 H. 1. Intent shown by language used is primary consideration, and mischief sought to be remedied to be considered only where language ambiguous. 9 H. 106; 19 H. 83, 85. But where literal meaning would lead to injustice, repugnancy or absurdity, room for construction. 21 H. 6, 8; 23 H. 220, 222; 23 H. 541, 544; 40 H. 96; 40 H. 604, 612; 41 H. 89, 103; 50 H. 150, 433 P.2d 220; compare 1 H. 31; 1 H. 254; 17 H. 389, 391.

Effect of rule of strict construction on other rules. Even where strict construction called for, statute should be construed in harmony with its purpose. 44 H. 59, 67, 352 P.2d 335. Rule of strict construction of tax statutes does not have preferred status, being applicable only after consideration of other possible aids to construction. 45 H. 167, 193, 363 P.2d 990. Rule that penal statute cannot be extended beyond its express terms (22 H. 31; 22 H. 618, 625; 35 H. 248, 251; 42 H. 29) does not mean that penal statute must be susceptible of only one construction. 23 H. 133, 136; 40 H. 257, 260; 44 H. 665, 680, 361 P.2d 1044; 49 H. 624, 634, 425 P.2d 1014.

On legislative silence after judicial construction. 50 H. 603, 446 P.2d 171.

Rules of construction in tax cases. 50 H. 603, 446 P.2d 171.

Title may be resorted to for meaning of act. 51 H. 1, 449 P.2d 130.

Applied in construing public accountancy statute. 51 H. 80, 452 P.2d 94.

Court will not usurp legislative power and enter into legislative field. 51 H. 87, 93, 451 P.2d 809, 813; 51 H. 540, 465 P.2d 580.

Interpretation of law adopted from foreign jurisdiction with changes in words. 51 H. 540, 465 P.2d 580.

Where statute is plain and unambiguous, there is no occasion for construction. 52 H. 577, 482 P.2d 151. 54 H. 563, 512 P.2d 1.

Even in absence of ambiguity, departure from literal construction is justified when such construction produces absurd and unjust result and is clearly inconsistent with purposes of act. 53 H. 208, 490 P.2d 899.

Generally, statute should be so construed that no sentence, clause, or word is rendered superfluous. 54 H. 356, 507 P.2d 169.

No room for construction where there is no ambiguity in language of statute and literal application produces no absurd result. 55 H. 610, 525 P.2d 586.

Rules of construction in tax cases. 56 H. 321, 536 P.2d 91.
Court is bound by plain, clear, unambiguous language of act. 56 H. 404, 537 P.2d 1190.

Where language is plain and unambiguous, court is bound to give effect to the law according to its plain and obvious meaning. 61 H. 572, 608 P.2d 383.

Court is bound to plain language of statutes. 61 H. 596, 607 P.2d 415.

Where there is no ambiguity, there is no room for construction. 62 H. 159, 612 P.2d 1168.

Rule of strict construction of tax statutes should be resorted to only after other possible aids to construction have been considered. 63 H. 199, 624 P.2d 1346.

Absurdity.

It is presumed legislature did not intend absurdity. 7 H. 505. Construction rejected as absurd. 9 H. 171, 176; 11 H. 370; 20 H. 114; 41 H. 527, 551-2; 50 H. 150, 433 P.2d 220; see 4 U.S.D.C. Haw. 664, 666.

Even in absence of ambiguity, departure from literal construction is justified when such construction produces absurd and unjust result and is clearly inconsistent with purposes of act. 53 H. 208, 490 P.2d 899.

Usual meaning should be rejected if it results in absurdity. 55 H. 55, 515 P.2d 621.

Departure from literal construction justified if such construction produces absurdity. 57 H. 557, 560 P.2d 490.

Unless it would produce an absurd result, court is bound by plain language. 60 H. 497, 591 P.2d 611.

There is ambiguity if literal interpretation would lead to unreasonable, unjust or absurd consequences. 61 H. 385, 605 P.2d 496.

Literal application of language rejected as leading to unreasonable and absurd consequences. 63 H. 222, 624 P.2d 1353.

Cited: 3 H. 90, 97; 3 H. 223, 229; 11 H. 221, 225; 17 H. 428, 437; 17 H. 539, 544; 19 H. 214, 217; 40 H. 96, 105; 40 H. 257, 260; 41 H. 89, 103.

Context.

Words or phrases in a statute cannot be given a meaning foreign to their context. 44 H. 665, 673-74, 361 P.2d 1044. Statute should be so construed as to make it consistent in all its parts and so that effect may be given to every section, clause or part of it. 17 H. 142, 145; 22 H. 557, 564. Word "applicant" read as "appellant" after considering context. 15 H. 590.

"Noscitur a sociis". 236 F.2d 622, 626; 9 H. 64, 66; 17 H. 135, 139; 23 H. 387, 393; 43 H. 154, 161; 49 H. 624, 636, 425 P.2d 1014; 55 H. 572, 524 P.2d 890.

"Ejusdem generis". 236 F.2d 622, 626; 260 F.2d 744; 10 H. 278; 23 H. 1; 23 H. 387, 393; 42 H. 184, 187; 44 H. 370, 376, 355 P.2d 25; 44 H. 665, 671, 361 P.2d 1044; 55 H. 531, 523 P.2d 299.

Title or preamble as an aid to construction. 160 F. 842, 845; 15 H. 325, 331; 20 H. 600, 604-5, modified 20 H. 675; 43 H. 103, 112; 43 H. 154, 165; 49 H. 651, 652, 426 P.2d 626.

Language must be read in context of entire statute. 53 H. 208, 490 P.2d 899.

Cited: 5 H. 73, 74; 17 H. 428, 439.

Reason and spirit.

Policy and objects of legislature as guide to construction. 1 H. 31; 1 H. 165 (291); 4 H. 427; 5 H. 73; 8 H. 227, 229; 18 H. 221, 239; 20 H. 669, 672; 23 H. 220, 222; 25 H. 644; 40 H. 96; 40 H. 257, 260; 40 H. 485, 490; 40 H. 523, 538; 41 H. 89, 103; 44 H. 220, 225, 352 P.2d 846; 44 H. 665, 674, 361 P.2d 1044; 46 H. 261, 377 P.2d 703; 49 H. 624, 636, 425 P.2d 1014; 49 H. 651, 656, 426 P.2d 626; 50 H. 150, 433 P.2d 220; 50 H. 212, 437 P.2d 99.

Circumstances at time of enactment may be considered. 23 H. 387, 395.

Statute should be construed in light of problem intended to be dealt with, and not always literally. 52 H. 395, 477 P.2d 780.

Legislative studies by non-legislators do not have probative value of committee reports or debates. 52 H. 577, 482 P.2d 151; 54 H. 578, 513 P.2d 156.

In case of incompleteness or ambiguity of expression the reason and spirit of the statute should be considered. 58 H. 53, 564 P.2d 436.

Cited: 3 H. 223, 229; 5 H. 73, 74; 17 H. 428, 437; 20 H. 114, 119; 34 H. 150, 158; 4 U.S.D.C. Haw. 664, 666.

CHAPTER 28

ATTORNEY GENERAL

PART I. DEPARTMENT, GENERALLY

§28-1 Appears for State.

The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases. [L 1866, p 16; RL 1925, §1486; RL 1935, §500; RL 1945, §1501; RL 1955, §30-1; HRS §28-1; am L 1969, c 175, §13; am L 1989, c 230, §1]

§28-2 Prosecutes offenders, enforces bonds.

The attorney general shall be vigilant and active in detecting offenders against the laws of the State, and shall prosecute the

same with diligence. The attorney general shall also enforce all bonds and other obligations in favor of the State that may be placed in the attorney general's hands for that purpose, by any person having the lawful custody of the papers; and the attorney general shall likewise be diligent in prosecuting all persons who may obstruct any street, channel, harbor, wharf, or other highway, or any stream or public watercourse, or commit any trespass, or waste on any portion of the public domain, or other public property. [L 1866, p 17; RL 1925, §1487; RL 1935, §501; RL 1945, §1502; RL 1955, §30-2; HRS §28-2; gen ch 1993]

§28-4 Advises public officers.

The attorney general shall, without charge, at all times when called upon, give advice and counsel to the heads of departments, district judges, and other public officers, in all matters connected with their public duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully. [L 1866, p 17; RL 1925, §1489; RL 1935, §503; RL 1945, §1504; RL 1955, §30-4; am L 1963, c 85, §3; HRS §28-4; am L 1970, c 188, §39; gen ch 1993]

§28-5 Aids poor.

The attorney general shall give counsel and aid to poor and oppressed citizens of the State and assist them in obtaining their just rights without charge; provided that the attorney general shall not be obliged to render such aid, counsel, and assistance, unless requested so to do by the governor, or by some one of the heads of departments. [L 1866, p 17; RL 1925, §1490; RL 1935, §504; RL 1945, §1505; RL 1955, §30-5; HRS §28-5; gen ch 1993]

§28-10 Prohibition on private practice of law by the attorney general, first deputy, and other deputies.

The attorney general, the attorney general's first deputy, and other deputies shall devote their entire time and attention to the duties of their respective offices. They shall not engage in the private practice of law, nor accept any fees or emoluments other than their official salaries for any legal services. This section shall not apply to any special deputy employed on a part-time basis for a limited period. [L 1953, c 105, §9; RL 1955, §30-10; am L 1957, c 180, §2; HRS §28-10; am L 1982, c 68, §2; gen ch 1985]

CHAPTER 662

STATE TORT LIABILITY ACT

§662-7 Attorney general.

The State shall be represented by the attorney general of the State in all actions under this chapter. [L 1957, c 312, pt of §1; Supp, §245A-7; HRS §662-7]

§662-15 Exceptions.

This chapter shall not apply to:

(1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;

(2) Any claim arising in respect of the assessment or collection of any tax, or the detention of any goods or merchandise by law enforcement officers;

(3) Any claim for which a remedy is provided elsewhere in the laws of the State;

(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;

(5) Any claim arising out of the combatant activities of the Hawaii National Guard and Hawaii state defense force during time of war, or during the times the Hawaii National Guard is engaged in federal service pursuant to section 316, 502, 503, 504, 505, or 709 of title 32 of the United States Code;

(6) Any claim arising in a foreign country; or

(7) Any claim arising out of the acts or omissions of any boating enforcement officer. [L 1957, c 312, pt of §1; Supp, §245A-15; HRS §662-15; am L 1972, c 164, §2(e); am L 1979, c 195, §2; am L 1986, c 173, §1; am L 1987, c 192, §1; am L 1988, c 135, §1; am L 1991, c 272, §15; am L 1998, c 213, §2; am L 1999, c 115, §§4, 11; am L 2004, c 10, §10]

Cross References

Claim against the ferry system, see §§268-11 to 268-15.

Law Journals and Reviews

Rogers v. State: The Limits of State Tort Liability. 8 HBJ, no. 3, at 89 (1971).

A Self-Executing Article XI, Section 9--The Door For a Bivens Action for Environmental Rights? 34 UH L. Rev. 187 (2012).

Case Notes

Section was not applied retroactively. 832 F.2d 1116 (1987).

Discretionary function exception discussed. 51 H. 150, 454 P.2d 112 (1969).

Acts done on operational level are not within discretionary function exception. 51 H. 293, 459 P.2d 378 (1969); 52 H. 156, 472 P.2d 509 (1970).

Distinction between governmental activity and private activity is not valid basis for determining liability. 51 H. 293, 459 P.2d 378 (1969).

Discretionary function exception discussed re highway design. 57 H. 656, 562 P.2d 436 (1977).

Claim for negligent and/or intentional infliction of emotional distress against Hawaii civil rights commission not barred under paragraph (1), as acts of investigating complaint, instituting suit based on finding of reasonable cause, and sending demand letter were part of routine operations of commission and did not involve broad policy considerations encompassed within the discretionary function exception. 88 H. 85, 962 P.2d 344 (1998).

The discretionary function exception in paragraph (1) is limited to situations in which a government agent is engaged in the effectuation of "broad public policy"; the investigation of a complaint by the Hawaii civil rights commission, in and of itself, does not involve such considerations; thus, a counterclaim for negligence in the performance of an investigation is not barred by sovereign immunity. 88 H. 85, 962 P.2d 344 (1998).

Decision not to improve guardrail, at time of highway resurfacing project, constituted an operational level decision

that did not fall within the discretionary function exception of paragraph (1). 91 H. 60, 979 P.2d 1086 (1999).

To the extent that the plaintiffs predicated their negligence and negligent infliction of emotional distress claims upon the department of education's (DOE) negligent retention and supervision of teacher, paragraph (4) did not insulate the DOE from liability; given that plaintiffs had alleged that the DOE reasonably should have anticipated that teacher would molest the girl students, their negligent retention and supervision claims did not "arise out" of teacher's acts of molestation. 100 H. 34, 58 P.3d 545 (2002).

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. 100 H. 34, 58 P.3d 545 (2002).

As §40-35 applied to plaintiff's ocean recreation management area permit fee dispute, all of plaintiff's tort claims were barred under paragraph (3), which unambiguously provides that chapter 662 is inapplicable to "any claim for which a remedy is provided elsewhere in the laws of the State"; trial court thus did not err in determining that paragraph (3) barred all of plaintiff's tort claims. 113 H. 184, 150 P.3d 833 (2006).

Assuming defendants' claims for "unreasonable failure to consent" and "negligent claims handling" fell within the interference with contract rights exception of paragraph (4), it could not be said that the State improperly interfered with the alleged settlement agreement because, pursuant to §386-8, the State was a necessary party to such agreement. 114 H. 202, 159 P.3d 814 (2007).

Where Hawaii employer-union health benefits trust fund trustees' decision to adopt a two-tier rate structure for health benefit plans was not a routine, everyday matter, but involved the evaluation of broad policy factors, it fell within the discretionary function exception of paragraph (1). 115 H. 126, 165 P.3d 1027 (2007).

State has not waived its immunity in defamation actions. 1 H. App. 517, 620 P.2d 771 (1980).

Cited: 133 H. 453, 331 P.3d 431 (2014).