

Discretionary Immunity

Are Your Policy Makers and City Counsel using it effectively in the Planning Process?

This appendix is based on discussions on risk management relative to highway safety liability. The general concept behind 'discretionary immunity' is that the governing body of a jurisdiction must decide the effective and equitable use of their resources to perform all the necessary activities for which they are responsible, be they social, safety, financial, educational, etc. They plan with aid of legal counsel to order, restrict or exclude activities from their budget and program to achieve jurisdictional objectives.

It may be that city councilors could legally, with the aid of counsel, set a policy to reduce the city's liability for serious safety hazards under "discretionary immunity" where resources are limited.

A county road department may be directed by the County Commission to leave some roads unplowed in the winter, or may be given a list of the priorities on which roads should be plowed and when, recognizing the resources available. The county road department should use its data and expertise to inform and guide the county commissioners to the most cost-effective and equitable program. However, if the final decision and plan resolution are enacted by the county commissioners with guidance from legal counsel, "discretionary immunity" might be claimed.

Another example where "discretionary immunity" might be employed is where there are numerous low volume unsignalized intersections that do not justify the expense of signing. The county commissioners, together with legal counsel, may consider a policy that certain intersections will not be controlled, even though intersection sight distance may be restricted at some times of the year by crops or snow. Stop signs placed at very low volume intersections are frequently violated, and their use is not cost effective at such sites. Consequently, the use of stop signs at these sites may not be in the public's best interest.

Note: For more information on this concept contact David L. Kramer, Attorney. 503-364-1117, david@kramerlaw.us.