### Municipal Immunities

#### WHAT THEY ARE, HOW THEY WORK, AND WHY THEY ARE IMPORTANT

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#### Our Presenters











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### A Brief Background

THE ORIGINATION OF IMMUNITIES

#### Origination of Municipal Immunities





- Municipalities are subdivisions of the state.
  - ▶ The default position is to treat municipalities as having the same privileges and immunities as the state.
- The state derives its immunity from the concept of 'sovereign' immunity.
  - 'Sovereign' immunity comes from England and is based on the classical concept of the sovereign as the ultimate authority.
- The 'law' derives from the sovereign.
  - ▶ A sovereign whether King or Republic is the origination of the laws of the land and, therefore, and cannot be subjected to the jurisdiction of another.
- "The King can do no wrong" Blackstone, Commentaries.





#### U.S. States Evolve Past Blackstone





Strict application of Blackstone's conception of sovereign immunity can create harsh results – such application prevents remedies for actions by the state and its actors that are widely seen as undesirable.



There has been a gradual, purposeful erosion of the concept of sovereign immunity across U.S. jurisdictions, largely over the past century.



In New Hampshire, we have seen the legislature enact certain immunities and the judiciary abolish, limit, and create immunities when the legislature has declined or been perceived as slow to act.







# Current Immunities

JUDICIALLY & LEGISLATIVELY CREATED

# N.H.'s Municipal Immunities: Brief Summary





N.H.'s municipal liability landscape is now primarily defined by <u>both</u> four judicially and ten legislatively created municipal immunities.



Immunity from Money Damages Claims



#### Judicially Created Municipal Immunities



Two seminal cases: Merrill v. Manchester, 114 N.H. 722 (1974) and Everitt v. Gen. Elec. Co., 156 N.H. 202 (2007).

In total, the N.H. Supreme Court established four immunities, and deferred to the Legislature for the creation of any additional immunities.



# Merrill Case Summary

- ► In Merrill, the N.H. Supreme Court abolished sovereign immunity, and determines that three forms of limited governmental immunity exist:
  - ▶ (1) judicial/quasi-judicial function;
  - ▶ (2) legislative function; and
  - ▶ (3) discretionary function immunity.
- ► However, the N.H. Supreme Court also deferred to the Legislature to determine scope/extent of government liability outside of these three particular types of immunity.



#### Everitt Case Summary



Prime

NH Public Risk Management Excha

NH Supreme Court established an additional immunity to the three already created in *Merrill*: official immunity.

This immunity serves, essentially, as a form of state law qualified immunity.



#### Legislatively Created Municipal Immunity: RSA 507-B



- Premises and Autos Limitation
- Damages Caps; Waiver of Caps to Limit of Commercial Policies
- Snow, Ice, Weather Hazards – Premises
- Skateboards,Rollerblades, Stunt Bikes
  - Premises





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Recreational Use Immunity (RSA 508:14; RSA 212:34)

Highways and Sidewalks (RSA 231:90-92-a)

Volunteer Immunity (RSA 508:17)

Fire/EMS Immunity (RSA 154:1-d; RSA 508:12-b)

Good Faith Immunity (RSA 31:104)

Emergency Management (RSA 21-P:41)







# Application & Importance of Immunities

HOW THEY WORK & AFFECT YOUR COMMUNITY



# Standard Rules for Application of Immunities

- Immunities have requisite elements that must be satisfied
- > In all cases:
  - Intentional or reckless (bad) acts don't qualify.
  - > Immunity can be waived.
- In any application, the court will decide whether the immunity applies.
  - Typically, this is bundled with a decision on whether to grant or deny a motion to end case.
  - Timing varies, and a decision can sometimes be deferred to a jury.





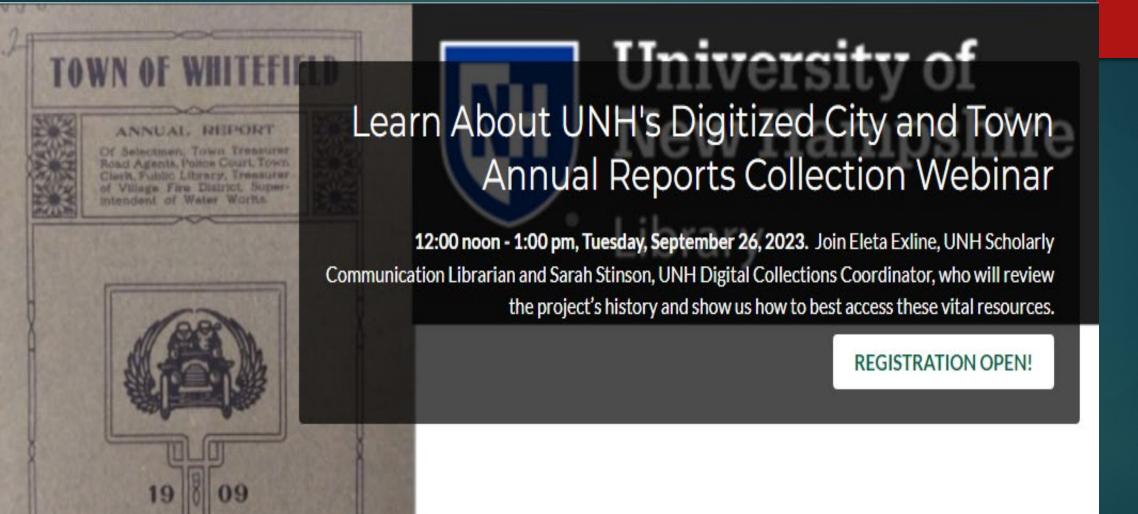
## Importance of Municipal Immunities

Allow	Allow local government entities to perform functions they otherwise would avoid due to liability risks and impacts of adverse rulings
Provide	Provide local government protection from suit for performing compulsory functions they cannot decline
Prevent	Prevent exponential liabilities seen in other jurisdictions, keeping insured and uninsured claim expenses reasonable for communities
Extricate	Extricate municipal defendants from litigation, minimizing undue interference with public service caused by claims, discovery and trials
Preserve	Preserve separation of powers by controlling judicial impacts on local government executive and governance functions



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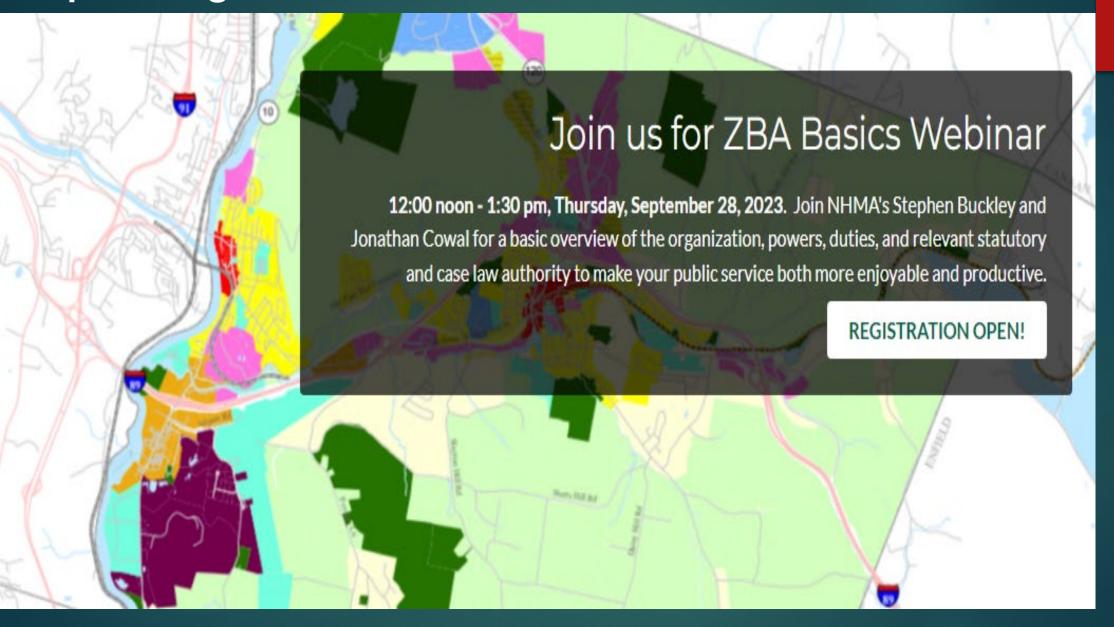


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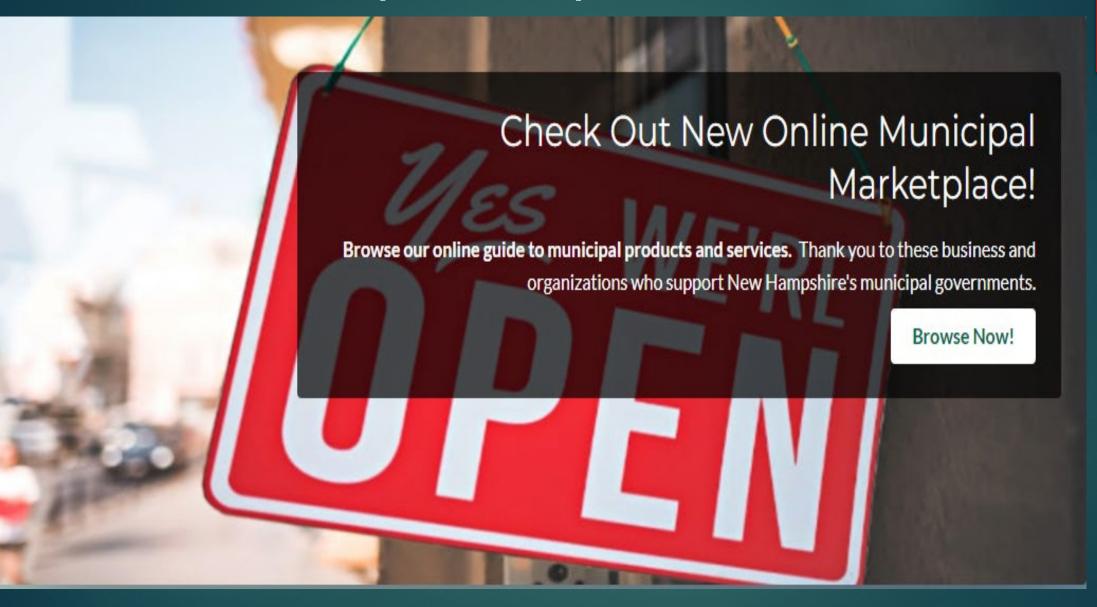
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