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Torts - Government Immunity under the New Mexico Tort Claims Act

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TORTS—GOVERNMENT IMMUNITY UNDER THE NEW MEXICO TORT CLAIMS ACT.

INTRODUCTION

The common law doctrine of sovereign immunity was abolished by the New Mexico Supreme Court in *Hicks v. State* as of July 1, 1976.¹ This doctrine had protected the State from tort liability under the judicial categories created by the New Mexico courts.² The *Hicks*³ court relied upon several public policy considerations in abandoning this ancient doctrine, which was intended primarily to protect the fiscal integrity of the state.⁴ The court held that the common law doctrine of sovereign immunity could no longer be interposed as a defense by the state or any of its political subdivisions in tort actions.⁵

The New Mexico Legislature responded to the *Hicks* decision by reinstating government immunity under the Tort Claims Act.⁶ The Act went into effect on July 1, 1976,⁷ thereby superseding the *Hicks* decision. Both the legislative statement of purpose and the design of the Act indicate that it is intended to protect the public treasury and the state from extensive tort liability. This is done by confining governmental tort liability to the restrictive terms of the Act.⁸

1. 88 N.M. 588, 544 P.2d 1153 (1975), *rehearing* 88 N.M. 593, 544 P.2d 1158 (1976).

2. See Kovnat, *Torts: Sovereign and Governmental Immunity in New Mexico*, 6 N.M.L. Rev. 249, 251-61 (1976) [hereinafter cited as Kovnat].

3. The *Hicks* court abolished the common law doctrine of sovereign immunity in order to provide individual citizens with a remedy against the state in tort actions. The court emphasized that the state could secure financial protection against harsh liability judgments by purchasing insurance and by distributing its losses to the populace, while individuals suffer manifest injustice in having to bear the entire financial burden alone. *Hicks v. State*, 88 N.M. at 590, 544 P.2d at 1155, *rehearing* 88 N.M. 593, 544 P.2d 1158 (1976).

4. Kovnat, *supra* note 2, at 250.

5. *Hicks v. State*, 88 N.M. at 592, 544 P.2d at 1157, *rehearing* 88 N.M. 593, 544 P.2d 1158 (1976).

6. N.M. Stat. Ann. § 41-4-1 to 26 (1978 and Supp. 1980).

7. See Kovnat, *supra* note 2, at 251.

8. The legislative declaration of purpose contained in N.M. Stat. Ann. § 41-4-2 (1978) reads as follows:

A. The legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of sovereign immunity. On the other hand, the legislature recognizes that while a private party may readily be held liable for his torts within the chosen ambit of his activity, the area within which the government has the power to act for the public good is almost without limit, and therefore government should not have the duty to do everything that might be done. Consequently, it is declared to be the public

The tensions between the legislative and judicial policies concerning the doctrine of sovereign immunity are apparent in several cases recently decided under the Act.⁹ In these cases, the New Mexico Supreme Court and Court of Appeals have repeatedly upheld claims arising under the restrictive language and design of the Tort Claims Act. The New Mexico judiciary also has indicated its reliance on the principles established in *Hicks* when construing the terms of the Act. This Note focuses on the conflict between the intended legislative purpose of the Act and the judicial construction of its terms.

ANALYSIS OF THE ACT

The legislative statement of purpose highlights the three major goals of the Tort Claims Act.¹⁰ The primary goal is to protect the public treasury by limiting the government's liability for its torts. Second, the Act protects governmental entities and public employees from extensive tort liability. The third purpose of the Act is to abolish common law categories so that liability is based upon a negligence standard of care. The statute is so designed, however, that only the first two goals are advanced.

Section 4 of the Act clothes the government with immunity from tort liability subject only to authorized exceptions.¹¹ Under these

policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act [41-4-1 to 41-4-25 NMSA 1978] and in accordance with the principles established in that act.

B. The Tort Claims Act shall be read as abolishing all judicially-created categories such as "governmental" or "proprietary" functions and "discretionary" or "ministerial" acts previously used to determine immunity or liability. Liability for acts or omissions under the Tort Claims Act shall be based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty. The Tort Claims Act in no way imposes a strict liability for injuries upon governmental entities or public employees. Determination of the standard of care required in any particular instance should be made with the knowledge that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities.

9. The cases discussed in this note include: *Holiday Management v. City of Santa Fe*, 94 N.M. 368, 610 P.2d 1197 (1980); *City of Albuquerque v. Redding*, 93 N.M. 757, 605 P.2d 1156 (1980); *Fireman's Fund Insurance Co. v. Tucker*, 95 N.M. 56, 618 P.2d 894 (1980); *Moore v. State*, 95 N.M. 300, 621 P.2d 517 (Ct. App. 1980); *Methola v. County of Eddy*, 20 N.M. St. Bar Bull. 138, 622 P.2d 234 (1980).

10. N.M. Stat. Ann. § 41-4-2 (1978). *See also* note 8 *supra*.

11. N.M. Stat. Ann. § 41-4-4 (1978). This section reads in part as follows:

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by Sections 41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 NMSA 1978.

categories, immunity from tort liability is waived when public employees are negligent in performing governmental activities which may also be performed by the private sector.¹² The Act generally retains immunity for public employees¹³ whose duties involve the determination and execution of fundamental government policy.¹⁴ All legislative, judicial, and administrative officers receive immunity as public employees while acting within the scope of their duties. Law enforcement officers¹⁵ are exempt from the general grant of

12. The Act waives governmental immunity under the following categories included within N.M. Stat. Ann. § 41-4-5 to 12 (1978 & Supp. 1980):

- Section 5 negligent operation of any motor vehicle, aircraft or watercraft;
- Section 6 negligent operation or maintenance of any building, public park, machinery, equipment or furnishings;
- Section 7 negligent operation of an airport unless the liability is due to a condition arising out of a compliance with a federal or state law or regulation governing the use and operation of airports;
- Section 8 negligent operation of utilities, specifically, gas, electricity, water, solid or liquid waste collection or disposal, heating and ground transportation, but not including damages caused either by a failure to provide an adequate supply or from polluting the land, air or water;
- Section 9 negligent operation of any hospital or outpatient health care facility;
- Section 10 negligent providing of health care services by public employees licensed by the state or permitted by law to provide these services;
- Section 11 negligent maintenance or operation of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area, but not including liability for any plan or design defect in any of the above;
- Section 12 enumerated torts caused by law enforcement officers, while acting within the scope of their duties.

Common law liability was imposed for activities previously categorized as proprietary, corporate or ministerial functions. See Kovnat, *supra* note 2, at 257-58, 263-64. See also, National League of Cities, *The New World of Municipal Liability* (1978); RESTATEMENT (SECOND) OF TORTS § 895B (1979); Leonard, *Municipal Tort Liability: A Legislative Solution to Balancing the Needs of Cities and Plaintiffs*, 16 Urban Law Ann. 305 (1979) and W. Prosser, *Law of Torts* § 131 (4th ed. 1971).

13. The term "public employee" is defined under N.M. Stat. Ann. § 41-4-3(E) (1978), as follows:

- E. "public employee" means any officer, employee or servant of a governmental entity, including elected or appointed officials, law enforcement officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation, but the term does not include an independent contractor.

14. See N.M. Stat. Ann. § 41-4-4 (Supp. 1980); See also note 11 *supra*.

15. The term "law enforcement officer" is defined under N.M. Stat. Ann. § 41-4-3(D) (1978), as follows:

- D. "law enforcement officer" means any full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor.

immunity if their actions fall within Section 12 of the Act,¹⁶ which waives immunity for injury or property damage resulting from the enumerated torts "caused by law enforcement officers while acting within the scope of their duties."¹⁷

The Act also includes several provisions which protect public funds by restricting the availability of tort claims brought against the government and the amount of damages awarded for those claims.¹⁸ Claimants must comply with strict notice requirements to maintain a claim against the government.¹⁹ Maximum limits on governmental tort liability are included under Section 19.²⁰ The maximum amount of recovery for all claims arising out of a single occurrence is limited to \$500,000.²¹ Further fiscal protection is afforded by allowing governmental entities to create a public liability fund²² which may be applied towards the purchase of insurance protection.²³ These provisions protect the state's fiscal integrity by limiting the amounts paid in government tort claims and by dictating the management and investment of public funds.

The Act directly incorporates the judicially-created categories it was meant to abolish,²⁴ thereby defeating the third legislative purpose. Because the statutory exceptions to governmental immunity are based on these common law categories, liability is determined under a negligence standard of care only if the tort committed falls within one of these categories. The legislature thus has preserved the common law doctrine of sovereign immunity along with the unfair and inequitable results which accompany its application.

16. N.M. Stat. Ann. § 41-4-12 (1978). See also text accompanying notes 57-80 *infra*.

17. N.M. Stat. Ann. § 41-4-12 (1978). See note 62 *infra*. The term "law enforcement officer" was narrowly defined in *Candelaria v. Robinson*, 93 N.M. 786, 606 P.2d 196 (Ct. App. 1980), as excluding all public employees who qualify as legislative, judicial and administrative officers. This term has not been defined by the New Mexico Supreme Court.

18. See, generally, N.M. Stat. Ann. §§ 41-4-13 to -26 (1978 and Supp. 1980).

19. N.M. Stat. Ann. § 41-4-16 (1978). Section 16(A) requires that persons claiming damages under the Act notify the designated public official in writing within 90 days of the date of the occurrence giving rise to the claim. Under Section 16(B), persons who are incapacitated due to injuries received have an additional 90 days to file notice. In wrongful death cases, Section 16(C) requires that notice be brought by a personal representative within six months after the date of the occurrence of the injury resulting in the death.

20. N.M. Stat. Ann. § 41-4-19 (1978).

21. *Id.* Claims for property damage arising from a single occurrence are limited to \$100,000. Personal injury and wrongful death claims are limited to \$300,000. Section 19(B) prohibits awards of exemplary or punitive damages or interest prior to judgment.

22. N.M. Stat. Ann. § 41-4-23 (Supp. 1980). The risk management division of the State Department of Finance operates the public liability fund for the purpose of covering all costs and expenses arising under the Tort Claims Act.

23. N.M. Stat. Ann. § 41-4-20 (Supp. 1980).

24. See note 12 and accompanying text *supra*.

The language and design of the Tort Claims Act are tailored to accomplish its primary and secondary purposes of protecting the public debt and limiting tort liability for public officials who perform discretionary governmental functions. The legislature's third purpose was defeated at the inception of the Act, which incorporates the judicially-created categories of sovereign immunity it was intended to abolish.

CASE LAW UNDER THE TORT CLAIMS ACT

The Judicial Construction of the Act

The decisions reached in the reported cases decided under the Tort Claims Act indicate that the courts will construe the Act in light of the principles established in *Hicks v. State*.²⁵ The rationale supporting these decisions illuminates the conflict between the policies underlying the Tort Claims Act and those which led to the abolition of sovereign immunity under *Hicks v. State*.

The *Hicks*²⁶ court recognized that the elimination of sovereign immunity could result in an intolerable financial burden being placed upon the state, but suggested that the purchase of adequate insurance would satisfactorily alleviate this burden.²⁷ The *Hicks* court held the government responsible for its own acts and stated that the government should be liable as a cost of doing business for the natural and proximate consequences of its misconduct.²⁸ Principles of humanitarianism and individual freedom support the holding of the *Hicks* court that those who enjoy the fruits of the enterprise, in this case the community as a whole, must also accept its risks and attendant responsibilities.²⁹

The New Mexico Supreme Court's stance on the issue of governmental immunity under the Act first became apparent in *City of Albuquerque v. Redding*.³⁰ The plaintiff in *Redding* sued for damages resulting from personal injuries she received when her bicycle tire slipped through a drain grate in a roadway designated as a bicycle path. The city asserted the defense of immunity under Section 11(B)³¹ of the Act, which exempts governmental entities from liability for dam-

25. 88 N.M. 588, 544 P.2d 1153 (1975), *rehearing* 88 N.M. 593, 544 P.2d 1158 (1976).

26. *Hicks v. State*, 88 N.M. at 590, 544 P.2d at 1155.

27. *Id.* Section 20 of the Act provides for the coverage of risks through purchasing insurance. See N.M. Stat. Ann. § 41-4-20 (Supp. 1980).

28. *Hicks v. State*, 88 N.M. at 592, 544 P.2d at 1157.

29. *Id.*

30. 93 N.M. 757, 605 P.2d 1156 (1980).

31. N.M. Stat. Ann. § 41-4-11 (1978).

ages caused by a defect in the plan or design of a roadway.³² The court found, however, that the waiver of immunity under Section 8 (A)³³ was applicable because the primary purpose of the grate was to provide for solid or liquid waste collection and disposal.³⁴ This "primary purpose test"³⁵ was used to bridge the gap between the plain language of the Act and the court's construction of its provisions. The test enabled the court to uphold the plaintiff's claim under the principles established in *Hicks* without relying expressly on that decision.

Conflicting Interpretations of the Act

*Holiday Management Co. v. City of Santa Fe*³⁶ presented the question of whether the city was liable for property damage caused by its employees' negligent operation of a public utility. This damage resulted from a sewage obstruction which caused water to back up and spill inside the plaintiff's motel. The court of appeals held that the city was immune from liability under Section 8(B)(1),³⁷ characterizing *Holiday Management's* claim as arising from the city's failure to provide an adequate service in liquid waste collection or disposal.³⁸ The supreme court, however, reversed this decision, resolving the issue under Section 8(A),³⁹ which waives immunity for damages caused by the negligence of public employees while acting within the

32. *Id.* This section reads in part as follows:

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

(1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;

33. N.M. Stat. Ann. § 41-4-8 (1978) stating that:

A. The immunity granted pursuant to Subsection A of Section 4 [41-4-4 NMSA 1978] of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following public utilities and services: gas; electricity; water; solid or liquid waste collection or disposal; heating; and ground transportation.

34. *City of Albuquerque v. Redding*, 93 N.M. at 759, 605 P.2d at 1158.

35. *Id.*

36. *Holiday Management Co. v. City of Santa Fe*, 94 N.M. 368, 610 P.2d 1197 (1980).

37. N.M. Stat. Ann. § 41-4-8 (1978), which provides:

B. The liability imposed pursuant to Subsection A of this section shall not include liability for damages resulting from bodily injury, wrongful death or property damage:

(1) caused by a failure to provide an adequate supply of gas, water, electricity or services as described in Subsection A of this section;

38. *Holiday Management Co. v. City of Santa Fe*, 19 N.M. St. Bar Bull. 66, 67 (Ct. App. January 21, 1980).

39. N.M. Stat. Ann. § 41-4-8 (1978). See note 33 *supra*.

scope of their duties in the operation of liquid waste collection or disposal services.⁴⁰

Various policy considerations governed the supreme court's decision to uphold the plaintiff's claim in *Holiday Management*. For the first time, the court expressly relied on the remedial purposes expressed in the *Hicks* decision in construing the terms of the Act.⁴¹ The court also stated that negligent damage to private property caused by the government's misuse of sewer maintenance funds was never intended to be "swept under a governmental immunity rug."⁴² The supreme court thus viewed the Tort Claims Act in light of *Hicks* and construed the statute accordingly.

Different public policies had governed the court of appeals' decision. Although the court's construction of Section 8 seems to contradict the language of the statute,⁴³ its decision appears consistent with the legislative purpose of limiting governmental tort liability. The court acknowledged that a municipality was liable for the negligent maintenance and operation of its sewer system under the prior common law, but stated that the Tort Claims Act reflected a legislative need to limit the potential liability of the sovereign after the *Hicks* decision.⁴⁴ The court also reasoned that the legislature intended to change the pre-existing law by enacting the statute after government immunity was judicially abolished in *Hicks*.⁴⁵

The direction taken by the supreme court in *Holiday Management* was followed by the court of appeals in *Fireman's Fund Ins. Co. v. Tucker*.⁴⁶ *Tucker* involved a suit arising out of two separate accidents which occurred when a motor vehicle collided with a cow on a public highway. The issue addressed was whether the State Highway Department was liable for negligence in breaching its statutory duty to maintain the fence through which the cow had passed.⁴⁷ The court held, under Section 11(A)⁴⁸ of the Act, that the highway department

40. *Holiday Management Co. v. City of Santa Fe*, 94 N.M. at 369, 610 P.2d at 1198.

41. *Id.*

42. *Id.*

43. See notes 37-40 and accompanying text *supra*.

44. *Holiday Management Co. v. City of Santa Fe*, 19 N.M. St. Bar Bull. at 67 (Ct. App. January 21, 1980).

45. *Id.*

46. 95 N.M. 56, 58, 618 P.2d 894, 896 (Ct. App. 1980). In its opinion, the court of appeals stated that "[t]he direction indicated by [the supreme court] in interpreting the Tort Claims Act has been toward a liberal, rather than a narrow, construction of the Act." [Citing *Holiday Management Co. v. City of Santa Fe* and *City of Albuquerque v. Redding*.]

47. This duty is imposed under N.M. Stat. Ann. § 30-8-13 (1978).

48. N.M. Stat. Ann. § 41-4-11 (1978). This section states that:

A. The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily in-

was liable for damages arising from its negligent construction and maintenance of fences along state highways. Although the court acknowledged that the word "fence" was not mentioned in this section, it applied the *Redding* "primary purpose test"⁴⁹ in finding that immunity was waived under the Act because the primary purpose of the highway fence is to keep the highway safe for the motoring public, and not to keep trespassers off of public land.⁵⁰ The court also noted its reliance on the position taken by the supreme court in *Redding* and *Holiday Management*, where the plaintiffs' claims against the government were upheld under the restrictive terms of the Tort Claims Act.⁵¹

In *Moore v. State*,⁵² the court of appeals relied upon Section 11 (A)⁵³ of the Act in upholding the plaintiff's claim for damages resulting from the negligent construction of a roadway where necessary guardrails were never installed. The court rejected the state's argument that immunity was not waived under Section 11(B),⁵⁴ which provides that liability will not be imposed for a defect in plan or design of, or for the failure to construct or reconstruct, any highway or roadway. Instead, the court found that a governmental entity does not enjoy immunity from liability if a claim is made that a highway which is in existence is defective.⁵⁵ The court upheld the plaintiff's claim by stating that the legislature did not intend to make an existing highway unsafe for the traveling public, but instead intended that a distinction be made between a highway in existence and one not in existence when the doctrines of immunity and waiver are applied.⁵⁶

The New Mexico Supreme Court's reliance on the principles established in *Hicks* is clearly indicated in *Methola v. County of Eddy*.⁵⁷

jury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the maintenance of or for the existence of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

49. See notes 33-35 and accompanying text, *supra*.

50. *Fireman's Fund Ins. Co. v. Tucker*, 95 N.M. at 59, 618 P.2d at 897.

51. *Id.*

52. 95 N.M. 300, 621 P.2d 517 (Ct. App. 1980).

53. N.M. Stat. Ann. § 41-4-11 (1978). See note 48 *supra*.

54. N.M. Stat. Ann. § 41-4-11 (1978), stating that:

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

(1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or

(2) the failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

55. 95 N.M. at 302, 621 P.2d at 519.

56. *Id.* The court implies that this provision was written by the legislature under the misguided assumption that the plan or design of a non-existent highway could be unsafe for the motoring public.

57. 20 N.M. St. Bar Bull. 138, 622 P.2d 234 (1980).

Three cases involving similar issues were consolidated in the *Methola* decision.^{5 8} The plaintiffs in *Doe-Hooton v. City of Albuquerque*^{5 9} and *Methola*,^{6 0} sued for damages resulting from personal injuries inflicted by other prisoners in the Bernalillo and Eddy County jails. Recovery had been permitted at the trial level in each of these cases.^{6 1} The question addressed on appeal was whether Section 12^{6 2} of the Tort Claims Act waives governmental immunity for the negligence of law enforcement officers acting within the scope of their duties. The court of appeals reversed the lower court decisions by holding that both the city^{6 3} and the county^{6 4} were immune from liability under the Act. The supreme court reversed the court of appeals and held that the named governmental entities and law enforcement officers were not immune from suit for personal or bodily injury caused by their negligence.^{6 5} The cases were remanded to the court of appeals for a separate determination of other issues presented on appeal.^{6 6} On remand, the court of appeals affirmed the trial court's decision in *Methola v. County of Eddy*,^{6 7} where the plaintiff was awarded damages of \$218,000, to cover the continuing costs of his custodial and medical care. The case was then remanded for a consideration of additional damages denied at trial and alleged by the plaintiff on appeal.^{6 8}

The inconsistent decisions reached by the supreme court and court of appeals concerning the issue of government immunity in the

58. See *Doe/Hooton v. City of Albuquerque*, 19 N.M. St. Bar Bull. 775 (Ct. App. August 14, 1980) and *Methola v. County of Eddy*, 19 N.M. St. Bar Bull. 696 (Ct. App. July 31, 1980).

59. 19 N.M. St. Bar Bull. at 775.

60. 19 N.M. St. Bar Bull. at 696.

61. The *Doe/Hooton* cases were consolidated at trial and a judgment was entered upon a jury verdict in favor of both plaintiffs. 19 N.M. St. Bar Bull. at 775. The *Methola* case was tried to the court without a jury, which entered judgment for the plaintiff. 19 N.M. St. Bar Bull. at 696.

62. N.M. Stat. Ann. § 41-4-12 (1978). The full text of this provision states that:

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. (Emphasis added).

63. 19 N.M. St. Bar Bull. at 777.

64. 19 N.M. St. Bar Bull. at 699.

65. 20 N.M. St. Bar Bull. at 143, 622 P.2d at 239.

66. *Id.*

67. 20 N.M. St. Bar Bull. 661 (Ct. App. June 25, 1981).

68. *Id.* Section 41-4-19 of the Act limits recovery for personal injuries to the sum of \$300,000. N.M. Stat. Ann. § 41-4-19 (1978). See note 21 *supra*.

*Methola*⁶⁹ and *Doe/Hooton*⁷⁰ cases, stemmed from conflicting judicial interpretations of the Act. Section 12⁷¹ states that the immunity granted under the Act:

does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from [the enumerated activities] . . . when *caused by* law enforcement officers while acting within the scope of their duties. (Emphasis added).

The court of appeals in *Methola*,⁷² refused to read the word "caused" under the technical definition applied in tort law to include negligent acts. The court reasoned that the legislature did not intend that Section 12 be read in a manner which would hold law enforcement officers liable for negligent acts committed within the scope of their duties. On this basis, the court found the government immune from suit under the policy and purpose of the Act which was to limit the liability of governmental entities and public employees.⁷³

The supreme court upheld the claims presented in *Methola* by finding that the legislature intended the words "caused by," as stated under the language of Section 12,⁷⁴ to include the enumerated acts which were caused by the negligence of law enforcement officers acting within the scope of their duties.⁷⁵ The court reasoned that since the Act derogated a claimant's common law rights to sue the government for negligence, it should be strictly construed insofar as it modifies the common law.⁷⁶ The court interpreted the declared policy of the Act⁷⁷ as indicating that the legislature authorized the filing of claims against governmental entities for all acts listed within the statute, except in a situation where the State was unable to act for a specific reason.⁷⁸ The court then found that the legislature intended to permit actions against law enforcement officers in negligence cases on the basis of the Act and its subsequent amendments, even though the basic concept in the original Act was to recreate the sovereign im-

69. 20 N.M. St. Bar Bull. 138, 622 P.2d 234 (1980); 19 N.M. St. Bar Bull. 696 (Ct. App. July 31, 1980).

70. 20 N.M. St. Bar Bull. 138, 622 P.2d 234 (1980); 19 N.M. St. Bar Bull. 696 (Ct. App. July 31, 1980).

71. N.M. Stat. Ann. § 41-4-12 (1978). See note 62 *supra*.

72. 19 N.M. St. Bar Bull. at 699. The court applied similar reasoning in support of its decision in *Doe/Hooton v. City of Albuquerque*, 19 N.M. St. Bar Bull. at 777.

73. 19 N.M. St. Bar Bull. at 699; 19 N.M. St. Bar Bull. at 777.

74. N.M. Stat. Ann. § 41-4-12 (1978). See note 62 *supra*.

75. 20 N.M. St. Bar Bull. at 142, 622 P.2d at 238.

76. *Id.*

77. See N.M. Stat. Ann. § 41-4-2 (1978). See note 8 *supra*, for the text of this provision.

78. 20 N.M. St. Bar Bull. at 142, 622 P.2d at 238.

munity abolished in *Hicks v. State*,⁷⁹ The decision reached by the court of appeals in its recent reconsideration of *Methola*,⁸⁰ supports the supreme court's position on claims arising under the New Mexico Tort Claims Act.

CONCLUSION

Recent decisions under the New Mexico Tort Claims Act indicate a definite preference towards construing the legislative exceptions to immunity in favor of those who have brought claims against the government. The New Mexico judiciary is obviously motivated by different policy considerations than those stated by the legislature under the Act. The analysis employed and the decision reached in the *Methola* case illustrate the New Mexico Supreme Court's intent to ignore the purpose, design and language of the Tort Claims Act when construing its terms. The supreme court's position has been adopted by the court of appeals in recent cases decided under the Act. Judicial reliance on the policies which led to the abolition of the common law doctrine of sovereign immunity has enabled New Mexico courts to uphold the *Hicks* decision in the face of superseding legislation. The state judiciary has thus mitigated the harsh effects of government immunity as it is imposed under the New Mexico Tort Claims Act, thereby defeating the legislative purposes which underlie its restrictive structure and design.

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79. *Id.*

80. 20 N.M. St. Bar Bull. 661 (Ct. App. June 25, 1981). See text accompanying notes 66-67 *supra*.