

## Administrative Risks

### USE OF VOLUNTEERS

In many public entities, volunteers are used for community service projects, special events, or for some jobs previously held by employees. Traditionally, volunteers have served as firefighters and auxiliary police officers, and many volunteers serve on planning boards, school boards and other boards established by the Mayor or elected bodies. The volunteer personnel may save resources on payrolls but unless properly supervised and trained liability exposures for the membership may be expanded.

#### **What are the legal exposures?**

The Tennessee Governmental Tort Liability Act (TGTLA) governs claims of negligence against a governmental entity and its employees. Under the TGTLA, auxiliary police, volunteer firefighters, and board members are typically considered employees and therefore have some protection under the TGTLA. But some volunteers such as volunteer teacher aides, volunteers for special events and others are not considered employees and will not have the same protections. For this latter group, any legal action resulting from their negligence while acting as a volunteer could proceed as a civil action which might result in a judgment in excess of the protections found in the TGTLA.

In addition to providing immunity in some situations, the TGTLA also sets forth maximum allowable judgments in T.C.A. 29-20-403. Currently, the maximum judgment which can be made against a local governmental entity or employee is \$100,000 property damage/\$300,000 per individual/ and \$700,000 for all individuals from one accident. While these limits are subject to being increased by the Tennessee General Assembly, the bottom line is while there is a limit of liability for the public entity and employees, there may be no limit of liability for certain types of volunteers.

It is important to note that Public Entity Partners' Liability Agreement does provide liability coverage for all volunteers who are acting on behalf of and at the direction of an insured municipality. Tenn. Code Ann. § 29-20-310(e)(2) provides that a governmental entity *may* elect to provide insurance coverage for volunteers but only up to the amount of the caps in § 29-20-403 (\$100,000 property damage/\$300,000 per individual/ and \$700,000 for all individuals from one accident). If a judgment is rendered against a volunteer above those limits, the volunteer is personally liable for any excess judgment. This is because cities are not allowed to indemnify third parties above the city's own legal exposure. This exposure creates a stronger duty to the local government to have clear policies and training in place for the volunteer assignment.

#### **What Can the Entity Do to Protect the Volunteers and Themselves?**

Many have voiced the opinion that all volunteers should enjoy immunity for their actions while serving as an agent of the public entity. This is an issue that would have to be addressed by the legislature. The question each governmental entity must face is what can be done to minimize the individual's and the entity's exposure. To reduce all parties' exposure to loss, every volunteer should be screened and trained, and operate only under the written policies of the governmental entity.

### **Use Professional Selection Techniques**

The selection of the volunteer should be just as thorough as the selection of an employee. Both serve as agents of the city. Post job requirements and solicit applications from the volunteers just as you do other applicants. The application can provide valuable information such as interests, skills and previous duties which may be relevant to your needs. (A sample application is included for review and/or use.) As a minimum, ask for all relevant information which may include the following:

- a) Name, address, and phone number(s).
- b) Days available for work.
- c) Unique circumstance.
- d) Special accommodations that would be needed.
- e) Employment history.
- f) Volunteer history.
- g) Education.
- h) Background information including drivers' license number if operating vehicle in assignment.
- i) References.
- j) A certificate of auto liability insurance if the volunteer will use his/her own vehicle to transport participants in a program.

Provide the volunteer with a written description of duties and ask why they wish to perform a certain job. Conduct a personal interview to assure a good job match and to assist in identifying those who are not suited for the position. Make sure the agency meets all legal requirements. For example, Tennessee state law requires law enforcement reserve officers meet certain Peace Officer Standards and Training (POST) Commission selection and training requirements. In addition to the information you gain in the verbal interview, it is strongly recommended that specific background information is obtained on volunteers that will perform certain types of duties, for example:

- a) A criminal history check should be conducted for any volunteer that will work one on one with minors including teacher aides, playground leaders, facility monitors, school crossing guards or summer camp leaders, daycare workers etc. Backgrounds can be conducted by the Tennessee Bureau of Investigation by calling 1-615-744-4000. Your agency will have to complete a standard Tennessee Criminal History Information Request form with the TBI in order to have access to this information. Criminal history checks are also recommended for any volunteer in the police department including those that will assist with office duties.
- b) A motor vehicle records check should be conducted for any volunteers that will be driving the agency's vehicles or driving their own vehicle to transport participants of a public program. The driving history can be checked by submitting the volunteer's name, date of birth and driver's license number to the Tennessee Department of Safety, 1150 Foster Avenue, Nashville, Tennessee 37249-3000. There may be a nominal fee for each history provided. In accordance with the Federal Drivers Protection Act, this information may be released to local governments without the express consent of the person to whom the information pertains. Motor vehicle record checks can also be checked on-line but there is an additional charge.

### **An Orientation Program Provides a Good Start for Volunteer Service**

Provide an orientation of overall operations and training for the specific task that will be assigned. This should provide a clear understanding of what the volunteer is, and is not, authorized to do; and who to contact if questions or concerns arise. Failure to provide information may cause volunteers to improvise and this may result in misinformation being passed along to the public. Also, train the volunteer to look for and report any defective conditions or other situations that may create a liability exposure for the city. The orientation should include a written copy of rules and regulations, the specific duties of the job, reporting chain of command for concerns and issues, the hazards they may encounter, and legal implications of the volunteer work.

### **Define the Rights and Exposures of the Volunteers**

Volunteers (other than auxiliary police and volunteer firefighters) are **not** covered for any medical coverage if injured in the scope of the volunteer assignment. This should be made clear in the orientation, and it is recommended that a release is obtained which clarifies the volunteer understands there is no remedy or avenue of recovery (other than a tort action against the city or other persons) if they are injured while volunteering. While it is unlikely that volunteers will be named in a legal action against the entity, PE Partners does include volunteers as covered persons under its liability agreement. Furthermore, it should be made very clear to all volunteers that if they use their personal vehicle in a volunteer capacity that, generally, **the insurance follows the vehicle**. If anyone uses his/her own vehicle, his/her auto liability policy would be exhausted before the city's secondary coverage is accessible.

### **Train, Train, and then Train**

No matter how simple the assigned task is, the volunteer should be provided with training on how to perform it. Document the orientation, the work site rules and regulations, and provide a written copy of this information to the volunteer. The documentation is important evidence that the city has provided training and may be very important if a volunteer violates established rules or policy.

In addition to organizational rules, the city should provide job specific training which identifies the hazards associated with the job, how to do the job, and how to protect yourself and others while completing the assigned duties. It is recommended that all records of training are maintained on file. Public Entity Partners provides a variety of training materials to our members at no charge that may be helpful in training. The Risk Academy is an on-line training platform, BLR Safety Hero has printable training in addition to videos and PowerPoints and the DVD library is also accessible. Additional information can be found on our website [www.PEpartners.org](http://www.PEpartners.org).

### **After You Have Trained, Make Sure You Provide The Necessary Equipment**

Many volunteer jobs require personal protective devices, and these must be provided. Unlike employees, volunteers will not fall under the exclusive remedy provided in the workers' compensation act. If a volunteer is placed in a dangerous position or not provided the needed safety equipment, the entity and the supervisor may be vulnerable to legal action from the volunteer if the injury can be tied to failure to provide and protect.

Analyze each volunteer position to identify and define needed safety equipment. Issue the protective equipment, train on the proper use of the protective equipment, and document the provision. For example, reflective safety vests should be issued to volunteers that are directing traffic or pick-up refuse on the rights-of-way, and full turn-out gear must be made available to all volunteer firefighters.

### **Community Services Hours And Other Use Of Minors For Volunteer Work**

It is becoming more common for schools to require students to volunteer in the community as part of the school curriculum. These students and all minor volunteers should follow the same protocols of completing



an application, participating in orientation, and training. All minor volunteers should have a release of liability signed by both parents or the parent/guardian with sole legal custody.

**Follow-up and Motivation**

Meet regularly with volunteers to review their performance with them, solicit opinions on the operations of the city, and thank them for their help. They are in the unique position to be able to look at the organizational operation from a citizen's and a worker's perspective.



**Municipal Volunteer Program**

**Sample Agreement to be modified for application  
Statement of Understanding  
(for organizations)**

The City Entity of \_\_\_\_\_ is grateful to have \_\_\_\_\_  
become a part of the city's volunteer program. Your participation with this program will help

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In consideration of the mutual benefits to be derived, the parties agree to the following:

The City of \_\_\_\_\_, hereafter called the "City," will provide the following for the Organization: List and items or equipment that will be provided to complete the assignment.

For example, some provisions to assist the organization may be:

1. Safety training materials, -
2. If working in or around the street right of ways reflective safety vests or other necessary safety equipment - may be issued.
3. List -equipment and/or materials provided to do the job, as agreed upon prior to work.
4. If desired a Certificate of Appreciation can be issued at the end of the contract period.

The Organization agrees that it will do the following: List here any demands the city will place on the organization. Suggested standards follow but these should be modified to reflect the arrangement made between the city and the organization.

1. The Organization will designate a Coordinator and provide the City with the person's name, address, and phone number(s). The Coordinator will provide the City with a roster of the Organization's approved participants in the program.
2. The Coordinator will ensure that every participant working completes and signs (or has parents or guardians sign, if a minor) a "Release of Liability" provided by the City prior to working.
3. The Coordinator will hold a documented safety meeting with the volunteers prior to each work session and require that everyone working participates in the training session. The Coordinator will maintain documentation of the training provided and the participants in attendance.
4. The Organization will require workers working in or near the right-of-way to wear appropriate reflective safety vests provided and to work only after the appropriate traffic control and/or warning signs are in place.



5. The Organization ensures that it will return all training materials, safety vests, traffic control and/or warning signs, or any other equipment and materials provided to the Organization by the City.
6. The Organization ensures that it understands and has made each participant aware of the hazardous nature of the work to be performed. The Coordinator, or his/her designee, will remind the workers of the hazards prior to each work period.
7. The Organization assumes all responsibility and liability for, and shall defend and hold the city, its officers and employees harmless from, any actions at law or claims of any character brought for injuries or damages sustained by any person or property arising from any act or omission of the organization in performing or failing to perform pursuant to this agreement.
8. The Organization will require all participants and/or workers to be at least 12 years of age, and that those participants 17 years of age or younger will be adequately supervised by one or more adults.

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Authorized Signature from City (TITLE)

\_\_\_\_\_  
Authorized Signature from Organization (TITLE)

\_\_\_\_\_  
Date



Release of Liability for Participation

This Release is by and between the undersigned and the City of \_\_\_\_\_, Tennessee, its governing Board or Commission, its employees, volunteers and agents, herein collectively referred to as City of \_\_\_\_\_.

I, \_\_\_\_\_ (“Participant”), hereby acknowledge that I have elected to participate in an event described as \_\_\_\_\_ scheduled for the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Participation. I am aware of the general nature and scope of the event and I am aware of the physical requirements necessary for participation in the above-referenced event, and I certify that I possess all of the necessary physical abilities, experience, training and knowledge to participate in this event.

I understand that as with any event involving other individuals and physical activity, there is a risk of harm. I understand that by participating in this event I could sustain personal injuries, property damage or even death. I further understand and agree that any injury, illness, property damage, disability, or death that I may sustain by any means, including my own negligence or fault, is my sole responsibility and risk.

Release and Waiver of Liability. I, on behalf of myself, my family, my personal representatives, heirs, release, waive, and covenant not to sue the \_\_\_\_\_, its governing Board or Commission, employees and agents (herein referred to as “Releasees”) for any and all liability, including any and all claims, demands, causes of action (known or unknown), suits, or judgments of any and every kind (including attorneys’ fees), arising from any injury, property damage or death that I may suffer as a result of my participation in the above-described event. I further agree that the Releasees are not in any way responsible for any injury or damage that I sustain as a result of my own negligent acts.

Personal Medical Insurance. I acknowledge that while participating in this event medical insurance coverage is not being provided. I further acknowledge that I am responsible for the cost of any and all medical and health services I may require as a result of my participation in this event.

By my signature I represent that I am at least eighteen years of age or, if not, that I have secured below the signature of my parents or guardians as well as my own.

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Date

I certify that I have custody of Participant or I am the legal guardian of Participant by Court Order. I have read this Agreement and fully understand its terms.

\_\_\_\_\_  
Signature of Parents/Guardian  
for Participant under 18 years of age

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Parents/Guardian  
for Participant under 18 years of age

\_\_\_\_\_  
Date