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School Law Alert - Court Extends Government Immunities To Organizers Of Indiana Charter Schools

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In a first-of-its-kind opinion, the Indiana Court of Appeals concluded that Indiana's charter schools organizers are protected from lawsuits by the Indiana Tort Claims Act. The act limits the circumstances in which a government entity may be sued and this suit tested its applicability to charter schools organizers.

In *Flanner House of Indianapolis v. Flanner House Elementary School, et al.*, the Indiana Court of Appeals extended the act's protections to shield charter school organizers from lawsuits that fall within the scope of the act. The case is the first time the Indiana courts have applied the act to charter school organizers, which are often private non-profits.

The Indiana Tort Claims Act provides a series of immunities to government entities. For instance, the act protects governments from lawsuits stemming from the creation of a policy, the exercise of discretionary functions, injuries caused by temporary weather conditions, or the enforcement of laws. The act also requires a plaintiff to provide a detailed notice of a potential claim before bringing a lawsuit. Failure to comply with the notice requirement prevents a plaintiff from suing an entity shielded by the act.

The *Flanner House* case concerned whether these protections extended to a nonprofit's lawsuit against a charter school, the organizer, and the chartering government agencies. These claims alleged, among other things, that the organizer mismanaged the charter school.

The Indiana Tort Claims Act extends to charter schools. But the plaintiff in this case claimed that an organizer is distinct from the charter school itself. As the Court of Appeals put it, there was an open question about "whether our legislature intended to include the nonprofit organizer of a charter school in the meaning of that term for purposes of the Act."

The Court of Appeals concluded that the organizer is part and parcel with the charter school for purposes of the protections provided by the Indiana Tort Claims Act. It reached this conclusion because of the organizer's role in creating and maintaining the charter school. As the court explained, "the organizer determines the organization and management of the school, receives the charter for the charter school, is responsible for the implementation of the charter, is accountable for the financial and academic viability of the school, and insures compliance with federal and state laws and authorizer expectations. A charter school cannot exist without an organizer, and the organizer is required to have nonprofit status. Based upon our review of the relationship, responsibilities, duties, and authority of a charter school organizer as set out in these statutes,

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Heather D. Harris

Partner
Indianapolis

P 317-231-6448
F 317-231-7433
heather.harris@btlaw.com

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we conclude that an organizer of a charter school is not an entity separate from the charter school.”

This conclusion ensures that charter school organizers will have the protections of the act, which will shield them from many lawsuits that purely private entities would have to face.

The opinion also rejected a constitutional challenge against the application of the act to charter school organizers. The plaintiff claimed that extending the act to non-government entities violated the equal protection of Indiana’s constitution. The plaintiff claimed that the act provided unequal treatment by protecting charter school organizers, but not other nonprofit educational institutions. The Court of Appeals rejected this argument because of the role of organizers in creating and maintaining charter schools within the public education system. This role distinguishes them from other nonprofits and justified the extension of the act to them.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Heather Willey at 317-231-6448 or Heather.Willey@btlaw.com.

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