

## **Civil Rights Update**

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# **To Be Or Not To Be: A State Entity Intergovernmental Police Task Force is Entitled to Eleventh Amendment Immunity**

The Seventh Circuit Court of Appeals in *Tucker v. Williams*, 682 F.3d 654 (2012), affirmed a district court’s determination that an intergovernmental police organization is a “state agency” subject to Eleventh Amendment immunity. This decision is an important one for civil rights lawyers defending a variety of governmental agencies against constitutional claims seeking money damages. The opinion provides defense counsel with criteria for assessing whether a particular intergovernmental agency qualifies as a state agency or is merely a “local public entity” as defined by the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-206.

### **Background**

This suit arose from the warrantless seizure of a backhoe from the property of the plaintiff, Kendall Tucker, in rural Fulton County by members of the West Central Illinois Task Force (the “Task Force”). *Tucker*, 682 F.3d at 657. The Task Force was an Illinois Intergovernmental Agency formed by an Interagency Agreement between the Illinois State Police and a number of local law enforcement agencies, including the Fulton County Sheriff’s Department. *Id.*

Fulton County Sheriff’s Deputy Karl Williams was assigned to the Task Force. *Id.* at 656-57. During a routine narcotics investigation, the deputy was told by an informant — the plaintiff’s estranged brother-in-law — that the plaintiff possessed a stolen backhoe. *Id.* at 657. The deputy, in his capacity as a Task Force officer, traveled to the plaintiff’s property and observed the backhoe parked on the driveway. *Id.* The deputy confronted the plaintiff about the backhoe, and the plaintiff claimed that he and a friend purchased it six or seven years ago for a “real good price” because the seller was getting a divorce. *Id.* The plaintiff admitted that he never knew the name of the seller and never received a bill of sale or any other ownership documentation with the backhoe. *Id.* The plaintiff advised the defendant that if it was stolen he should “go ahead and take it.” *Id.* Rather than take the backhoe at that time, the deputy recorded its serial number in an effort to determine whether it had been reported stolen. *Id.* The deputy was unable to locate such a report, but advised the plaintiff not to move the machine while he continued his investigation. *Id.*

Approximately three weeks later, the deputy returned to the plaintiff’s house. The backhoe was missing. The deputy located the plaintiff, who explained that he allowed a friend to borrow the backhoe. *Id.* Suspicious of the plaintiff’s actions, the deputy requested that the plaintiff meet him for an interview. The plaintiff

complied. During the interview, the plaintiff again told the deputy that he should just “come and get” the backhoe if he believed it to be stolen. *Id.* The deputy continued investigating. Through tracking the backhoe’s serial numbers, he learned that the machine had once been sold to Illinois Contracting Materials Company (“ICMC”), a Chicago-area construction firm. *Id.* ICMC produced an extended warranty demonstrating its purchase of the backhoe, and confirmed that it had been missing from ICMC’s inventory for approximately five years. *Id.* Armed with this additional information, the deputy conferred with the Fulton County State’s Attorney. The deputy and other members of the Task Force then traveled to the friend’s property and seized the backhoe without a warrant. The plaintiff’s friend immediately notified the plaintiff of the Task Force’s actions. *Id.* The backhoe was retrieved from Fulton County by ICMC several weeks later. *Id.*

The plaintiff’s sole reaction to the seizure was the filing of a civil rights lawsuit in federal court. At no time after receiving his friend’s call did the plaintiff contact the Task Force or the State’s Attorney to assert ownership of the backhoe, object to its seizure, or request a post-derivation hearing. *Id.* The plaintiff’s suit alleged that the deputy violated his Fourth Amendment and due process rights, and also alleged various pendent state law claims. In addition, the plaintiff named the Task Force and Fulton County as indemnitors, and listed the Fulton County Sheriff on a *respondeat superior* theory. *Id.* at 657-58.

All of the defendants successfully moved the district court for summary judgment. The Task Force successfully argued that it was a state agency and that, consequently, the plaintiff’s suit against it was barred as a matter of law by the Eleventh Amendment. The Eleventh Amendment provides states with immunity from lawsuits in federal court unless the state consents to such suits or Congress passes a law specifically abrogating that immunity. *Id.* at 658 (citing *Seminole Tribe v. Florida*, 517 U.S. 44, 54, 116 S. Ct. 1114 (1996)). State agencies, as “arms of the state,” are entitled to the same immunity as the state itself. *Id.* (citing *Davidson v. Bd. of Govs.*, 920 F.2d 441, 442 (7th Cir. 1990)). The Illinois State Police, as the state’s law enforcement agency, is protected by Eleventh Amendment immunity. *Id.* at 659.

The plaintiff argued on appeal that the Task Force was not an arm of the state, but a “local public entity” as defined by the Tort Immunity Act. *Id.* at 658; 745 ILCS 10/1-206. The Seventh Circuit examined the Interagency Agreement that formed the Task Force and noted that it provided for legal representation and indemnification of Task Force members by the State Employee Indemnification Act. *Id.*; 5 ILCS 350/1. The Indemnification Act specifically *excludes* local public entities from its definition of “the State.” *Id.* This provision alerted the court to the fallacy of the plaintiff’s argument, which the court addressed as follows:

Were we to accept Tucker’s argument that the Task Force is a local public entity, the Interagency Agreement would provide for representation and indemnification of Task Force personnel but, at the same time, refer to a statute that would prevent coverage.

Tucker’s argument assumes that, if an entity is an intergovernmental agency, it cannot *also* be a state agency. That is not the case. The definition of “local public entities” does include intergovernmental agencies; but, at the same time, it specifically excludes an “agency of the state.” *See* 745 ILCS 10/1-206. So if the Task Force is a state agency, the mere fact that it is also an intergovernmental agency does not mean that it is a “local public entity” for purposes of the Illinois Tort Immunity Act.

*Id.* at 658 (emphasis in original).

Having determined that intergovernmental agencies are not, by definition, local public entities, the court further examined the Interagency Agreement to determine whether the district court correctly identified the Task Force as an arm of the state. *Id.* at 659. The court noted that the Agreement required the Illinois State Police to approve all official funds and supervise all Task Force operations. *Id.* The Agreement further specified that Task Force members were to be appointed by the Director of the Illinois State Police, and that those individuals were to be considered state employees while performing their Task Force duties. *Id.*

Finally, the Agreement provided that all facilities, training, and specialized equipment used by the Task Force were to be provided by the Illinois State Police. *Id.* With these facts in mind, the court held that the Task Force was “an extension of the Illinois State Police” and thus entitled to Eleventh Amendment immunity. The court affirmed summary judgment on behalf of the Task Force. *Id.* As for the deputy, the court agreed that his conduct did not violate the plaintiff’s Fourth Amendment or procedural due process rights, and thus affirmed summary judgment on his behalf. *Id.* at 660-61.

### **What Is A State Entity?**

The Seventh Circuit in *Tucker* provided a valuable test for determining whether an entity is a state agency, i.e., an arm of the state. The court looks to: (1) the extent of the entity’s financial autonomy from the state; and (2) the “general legal status” of the entity. *Id.* (quoting *Kashani v. Purdue Univ.*, 813 F.2d 843, 845-47 (7th Cir. 1987)). The entity’s financial autonomy is, by far, the most important factor of the two. *Id.* (quoting *Peirick v. Indiana Univ.-Purdue Univ. Indianapolis Athletics Dept.*, 510 F.3d 681, 695 (7th Cir. 2007)). In evaluating a particular entity’s financial autonomy, the court will consider “the extent of state funding, the state’s oversight and control of the entity’s fiscal affairs, the entity’s ability to raise funds independently, whether the state taxes the entity, and whether a judgment against the entity would result in the state increasing its appropriations to the entity.” *Id.* (citing *Kashani*, 813 F.2d at 845). The vulnerability of the state’s treasury is thus the most significant factor in the Eleventh Amendment determination. *Id.*

The *Tucker* ruling is an important one because it provides a basis for defense counsel to assert Eleventh Amendment immunity for intergovernmental agencies. Counsel for other Illinois multijurisdictional law enforcement agencies, in particular, should definitely take note of this opinion.

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