

Engineering firms in Minnesota that contract with a municipality to serve as the city engineer recently received a significant victory in the Minnesota Supreme Court. In its decision in *Kariniemi v. City of Rockford*, A14-0796, __ N.W.2d __ (Minn. July 27, 2016), the supreme court ruled that private engineering firms that serve as city engineer for a municipality qualify as a “public official,” and therefore, may be entitled to common-law official immunity for discretionary conduct relating to the feasibility, design, and progress of public works projects. The court likewise ruled that the municipality contracting with the private engineering firm to serve as city engineer may be entitled to vicarious official immunity for the alleged negligent acts of its “non-employee City Engineer.”

In reaching its decision, the court noted that engineering determinations on public works projects are precisely the types of discretionary governmental acts that the court has long deemed worthy of official immunity. In the eyes of the court, the city engineer’s design of storm water drainage system was a governmental function that required the exercise of judgment and discretion that is often carried out by public officials. Given the function performed and special relationship between the city and a private engineering firm contracted to serve as city engineer, the court concluded that the private engineering firm qualified as a “public official” eligible for official immunity. The supreme court, however, did recognize the possibility that official immunity might not apply where the tasks performed by a private engineering firm serving as city engineer were merely “ministerial.”

Significant to the court’s analysis was the fact that the city did not have employees who fulfilled functions similar to the private engineering firm. The court was mindful that the city chose to contract with a private engineering firm to provide engineering services instead of employing a traditional city engineer. According to the court, cities should be free to deploy engineering resources in whatever manner best suits the needs of the community. Thus, official immunity should apply equally to a city engineer retained by contract rather than through a traditional employment relationship.

Because the activity in the case that allegedly caused the nuisance – the design and construction of a storm water system – is activity that official immunity covers, the supreme court ruled the city was entitled to vicarious official immunity as to plaintiffs’ nuisance claim because the claim was based on the same underlying conduct covered by official immunity. It refused to penalize the city by categorically denying vicarious immunity simply because the city believed its limited resources, as a smaller municipality, were better utilized by retaining its engineering help on a part-time contractual, rather than a full-time employment, basis.

The decision in *Kariniemi* will likely have a significant impact on engineering firms throughout Minnesota that contract with municipalities to serve as city engineer. To learn more about the decision in *Kariniemi* and its potential impact on engineering firms throughout Minnesota, please feel free to contact Steve Buterin of our Design Professional Practice Group. He can be reached at 952.841.2500, or by email at: sbuterin@heleyduncan.com.

