

PUBLIC ENTITIES ARE STATUTORILY IMMUNE FROM LIABILITY FOR FELONIES COMMITTED BY PUBLIC EMPLOYEES UNLESS THE ENTITY HAD ACTUAL KNOWLEDGE OF THE EMPLOYEE’S PROPENSITY FOR THE CRIME

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Tucson Unified Sch. Dist. v. Borek
Arizona Ct. Appeals, Div. Two, March 11, 2014

Authored by the [JSH Appellate Team](#)

The parents of a developmentally challenged girl sued the Tucson Unified School District (“TUSD”) and its employee alleging that the employee had sexually abused their daughter at a TUSD school. The parents claimed TUSD was vicariously liable for the employee’s conduct and had been negligent in investigating his employment background before hiring him.

TUSD moved for summary judgment, arguing that A.R.S. § 12-820.05(B) immunized public entities from vicarious liability for criminal felonies committed by their employees “unless the public entity knew of the public employee’s propensity for that action.” The trial court denied the summary judgment motion, holding that TUSD “should have known under the circumstances” that the employee’s previous conduct indicated a propensity for sexual abuse.

TUSD filed a special action, arguing that the immunity statute’s propensity exception applies only when a public entity has actual knowledge of the employee’s propensity, not merely constructive knowledge, and that there was no evidence TUSD had such knowledge. The court of appeals accepted jurisdiction and granted relief, holding that the statute means exactly what it says—that immunity applies unless the public entity actually knew of the employee’s propensity for the crime. Because there was no evidence that TUSD had actual knowledge, the immunity provided in A.R.S. § 12-820.05(B) applied to the parents’ claims.