In the
Missouri Court of Appeals
Western District

STATE ex rel. BLUE SPRINGS SCHOOL DISTRICT,	)	
	)	**WD81197**
Relator,	)	
	)	**OPINION FILED: May 1, 2018**
v.	)	
	)	
THE HONORABLE JACK R. GRATE,	)	
	)	
Respondent.	)	

ORIGINAL PROCEEDING IN PROHIBITION

Before Writ Division: Cynthia L. Martin, Presiding Judge, Karen King Mitchell, Judge and Anthony Rex Gabbert, Judge

The Blue Springs School District ("School District") seeks a writ of prohibition directing the circuit court ("Respondent") to take no action other than to grant the School District's motion for summary judgment. Because the posture of this case does not support the issuance of an extraordinary writ on the issue of whether sovereign immunity has been abrogated for discrimination in public accommodation pursuant to section 213.065,[1] this

[1]All statutory references are to RSMo 2000, as supplemented through November 24, 2015, the date the Underlying Lawsuit was filed, unless otherwise specified.

court's preliminary writ of prohibition is quashed with respect to that claim asserted in this case. Because the School District did not waive sovereign immunity for common law torts by acquiring liability insurance, this court's preliminary writ of prohibition is made permanent as to the common law tort claims asserted in this case.

Factual and Procedural Background

On November 24, 2015, plaintiff ("B.Z.") initiated a lawsuit in the Circuit Court of Jackson County ("Underlying Lawsuit")[2] against the School District and three individuals employed by the School District ("Individual Defendants").[3] B.Z. alleged that while she was a kindergartner, she was sexually harassed and assaulted by other students at her elementary school. Count I of B.Z.'s petition alleged discrimination in public accommodation pursuant to section 213.065 of the Missouri Human Rights Act ("MHRA").[4] Count II of the petition alleged the tort of negligent supervision/breach of ministerial duties. Count III of the petition alleged the tort of breach of fiduciary duty/confidential relationship. All three Counts named the School District and the Individual Defendants as defendants.

B.Z.'s petition alleged that "Defendants have purchased liability insurance covering the type of claims made herein."[5] The School District's answer alleged that the petition

[2]The Underlying Lawsuit is styled *Jane Doe BZ b/n/f Jane Doe BA v. Blue Springs School District, et al.*, Docket Number 1516-CV25324, pending in the Circuit Court of Jackson County, Missouri.

[3]The Individual Defendants are a teacher, an assistant principal, and the principal of the elementary school attended by B.Z. The Individual Defendants are not parties to this writ proceeding.

[4]Section 213.010 *et seq.*

[5]As we discuss in greater detail, *infra*, the School District is a governmental entity entitled to sovereign immunity except to the extent waived. However, "'[s]overeign immunity is not an affirmative defense, but is part of the plaintiff's *prima facie* case.'" *Newsome v. Kansas City, Mo. Sch. Dist.*, 520 S.W.3d 769, 776 (Mo. banc 2017) (quoting *St. John's Clinic, Inc. v. Pulaski Cnty. Ambulance Dist.*, 422 S.W.3d 469, 471 (Mo. App. S.D. 2014)). As such, B.Z. had the burden to prove that the School District waived its sovereign immunity, and B.Z. was required to

failed to state a claim for public accommodation discrimination, and that the School District had not waived sovereign immunity by acquiring insurance.[6]

The School District filed a motion for summary judgment. The School District alleged that Count I of B.Z.'s petition failed to state a claim because political subdivisions are not "persons" who can be liable for public accommodation discrimination pursuant to section 213.065. The School District's motion also alleged that its sovereign immunity for the common law torts alleged in Counts II and III of the petition was not waived by the acquisition of liability insurance.[7] Though it is uncontroverted that the School District was insured by Missouri Public Entity Risk Management Fund ("MOPERM") when the acts and omissions giving rise to B.Z.'s petition are alleged to have occurred,[8] the parties dispute whether that policy afforded the School District coverage for the claims alleged against it in Counts II and III of the petition.

Respondent denied the School District's motion for summary judgment on October 12, 2017.[9] On November 1, 2017, the School District filed a petition for writ of

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allege specific facts in her petition to establish waiver. *Id.* at 775-76; *Richardson v. City of St. Louis*, 293 S.W.3d 133, 137 (Mo. App. E.D. 2009). The purchase of liability insurance may function as a waiver of sovereign immunity. Section 537.610.1.

[6]The Individual Defendants also answered the petition, and asserted immunity pursuant to the public duty doctrine and official immunity. The Individual Defendants' immunity claims are not at issue in this writ proceeding.

[7]The School District's acquisition of liability insurance is irrelevant to determining whether Count I of B.Z.'s petition states a claim against the School District. The School District's potential liability pursuant to section 213.065 turns on whether sovereign immunity for a claim of discrimination in public accommodation has been expressly waived by statute.

[8]One MOPERM policy was in place from July 1, 2013, to January 1, 2014, and a second policy was in place from January 1, 2014, to January 1, 2015. Though the policies are not identical, the variations between them are minor, and are immaterial to determining whether the policies afforded coverage to the School District for the claims alleged in Counts II and III of B.Z.'s petition. The policies are thus collectively referred to in this opinion as "policy."

[9]Respondent granted partial summary judgment for the Individual Defendants on Count I of the petition as the Individual Defendants were not been named in B.Z.'s complaint filed with the Missouri Commission on Human Rights ("MCHR"). As a result of the Respondent's summary judgment rulings, the School District is the sole

prohibition alleging that section 213.065 of the MHRA does not authorize a cause of action for discrimination in public accommodation against political subdivisions of the state, and that sovereign immunity was not waived for the common law tort claims alleged in Counts II and III of the petition by the acquisition of insurance. After requesting suggestions from the Respondent, this court issued a preliminary writ of prohibition directing that Respondent take no further action as to the School District in the Underlying Lawsuit.[10]

Standard Applicable to Writs of Prohibition

"This [c]ourt has discretion to issue and determine original remedial writs." *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 230 (Mo. banc 2017). "'The extraordinary remedy of a writ of prohibition is available: (1) to prevent the usurpation of judicial power when the trial court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.'" *Id.* (quoting *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 45 (Mo. banc 2017)). "'Prohibition is particularly appropriate when the trial court, in a case where the [pertinent] facts are uncontested, wrongly decides a matter of law thereby depriving a party of an absolute defense.'" *State ex rel. Div. of Motor Carrier & R.R. Safety v. Russell*, 91 S.W.3d 612, 616 (Mo. banc 2002) (quoting *State ex rel. City of Marston v. Mann*, 921 S.W.2d 100, 102 (Mo. App. S.D. 1996)).

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remaining defendant under Count I of the petition, and the School District and the Individual Defendants remain defendants under Counts II and III of the petition.

[10]The order issuing a preliminary writ of prohibition also ordered a stay of the Underlying Lawsuit until further order of this Court.

"Normally, we are reluctant to utilize the writ [of prohibition] for the purposes of reviewing a denial of summary judgment or to correct trial court error." *State ex rel. O'Blennis v. Adolf*, 691 S.W.2d 498, 500 (Mo. App. E.D. 1985). However, "[p]rohibition is generally the appropriate remedy to forestall unwarranted and useless litigation." *Id.* (citing *State ex rel. New Liberty Hosp. Dist. v. Pratt*, 687 S.W.2d 184, 187 (Mo. banc 1985)). "Forcing upon a defendant the expense and burdens of trial when the claim is clearly barred is unjust and should be prevented." *State ex rel. Howenstine v. Roper*, 155 S.W.3d 747, 749 (Mo. banc 2005) (citing *O'Blennis*, 691 S.W.2d at 500), *abrogated on unrelated grounds by Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008). Because there is no right of appeal from the denial of a motion for summary judgment, the refusal to utilize a writ where the issues before the court are solely matters of law would compel a defendant to defend "unwarranted and useless litigation at great expense and burden." *O'Blennis*, 691 S.W.2d at 500; *see also State ex rel. New Liberty Hosp. Dist.*, 687 S.W.2d at 187 (holding that where "appeal fails to afford adequate relief, prohibition is the appropriate remedy to forbear patently unwarranted and expensive litigation, inconvenience and waste of time and talent"). Thus, prohibition is an appropriate remedy when "a defendant is clearly entitled to immunity." *State ex rel. Bd. of Trs. of City of North Kansas City Mem'l Hosp. v. Russell*, 843 S.W.2d 353, 355 (Mo. banc 1992). And prohibition is an appropriate remedy where a petition fails to state a viable theory of recovery, entitling the relator to be dismissed. *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. banc 2009); *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 81-82 (Mo. banc 2008). However, "[a] writ of prohibition does not issue as a matter of right.

Whether a writ should issue in a particular case is a question left to the sound discretion of the court to which application has been made." *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. banc 1985) (internal citation omitted).

Analysis

This writ proceeding requires us to resolve two issues: (i) whether the School District, a political subdivision, is a "person" subject to liability for public accommodation discrimination pursuant to section 213.065; and (ii) whether the School District's MOPERM policy waived sovereign immunity for the common law torts alleged in Counts II and III of B.Z.'s petition by affording the School District coverage. The first issue requires us to construe a statute, a question of law. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995). The second issue requires us to construe an insurance policy, also a question of law. *Seeck v. Geico General Ins. Co*., 212 S.W.3d 129, 132 (Mo. banc 2007). We review questions of law *de novo*. *Mantia v. Mo. Dep't of Transp.*, 529 S.W.3d 804, 808 (Mo. banc 2017).

I.

Whether the School District is subject to liability for discrimination in public accommodation pursuant to section 213.065

(i) The School District is a political subdivision and is immune from statutory liability unless sovereign immunity has been waived

Count I of B.Z.'s petition alleges discrimination pursuant to the MHRA, and specifically, discrimination in public accommodation pursuant to section 213.065. B.Z.

alleges that the School District[11] directly or indirectly discriminated against her use of a public elementary school[12] on the grounds of sex.

Section 213.065.2 describes the statutory claim for discrimination in public accommodation:

> It is an unlawful discriminatory practice ***for any person***, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, as defined in section 213.010 and this section, or to segregate or discriminate against any such person in the use thereof on the grounds of race, color, religion, national origin, sex, ancestry, or disability.

(Emphasis added.) Although discrimination claims pursuant to the MHRA are of statutory origin, they sound in tort. *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 87-88 (Mo. banc 2003) (holding that a claim under the MHRA is analogous to a tort claim for purposes of the right to trial by jury); *Soto v. Costco Wholesale Corp*., 502 S.W.3d 38, 57-58 (Mo. App. W.D. 2016) (holding that MHRA claims sound in tort for purposes of determining the statutory rate of post-judgment interest) (citing *Bowolak v. Mercy E. Comtys.*, 452 S.W.3d 688, 704 (Mo. App. E.D. 2014)).

[11]As previously explained, Count I of the petition also named the Individual Defendants. However, the Individual Defendants were granted summary judgment on Count I of the petition because they were not named in the administrative complaint B.Z. filed with the MCHR. As a result, the School District is the only remaining defendant under Count I.

[12]Missouri courts have concluded that a public school is a place of public accommodation as defined in section 213.010(15). *Doe ex rel. Subia v. Kansas City, Mo. Sch. Dist*., 372 S.W.3d 43, 48-50 (Mo. App. W.D. 2012).

Section 213.065.2 limits those who can be liable for discrimination in public accommodation to "any person." Under the MHRA, the term "person" is statutorily defined as follows:

> [I]ncludes one or more individuals, corporations, partnerships, associations, organizations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized groups of persons.

Section 213.010(14). The School District alleges that it is a political subdivision, and that political subdivisions are not included in the statutory definition of "person." As such, the School District alleges it is not a "person" subject to liability for discrimination in public accommodation pursuant to section 213.065.2. This issue of statutory construction is one of first impression in Missouri.[13]

To determine whether the School District is a "person" subject to liability pursuant to section 213.065.2, we must "ascertain the intent of the legislature from the language used and [] consider the words used in their ordinary meaning." *Macon Cty. Emergency Servs. Bd. v. Macon Cty. Comm'n*, 485 S.W.3d 353, 355 (Mo. banc 2016). Relevant to ascertaining legislative intent, however, is the settled principle "'that the state, by reason of

[13]In *Doe ex rel. Subia v. Kansas City, Missouri School Dist*., 372 S.W.3d 43 (Mo. App. W.D. 2012), we reversed a trial court decision dismissing a case for failure to state a claim for discrimination in public accommodation. At that procedural stage, we concluded that the plaintiff, who alleged sexual harassment at school, had alleged sufficient facts to permit the case to proceed. *Id.* at 56. We did not address or resolve, however, whether a school district is a "person" who can be sued for discrimination in public accommodation because that issue was not raised in the defendant school district's motion to dismiss, and could not, therefore, be considered by this court as a basis for affirming dismissal of the case for failure to state a claim. *Id.* at 56 n.5. In *R.M.A. by Appleberry v. Blue Springs R-IV School District*, we affirmed a trial court's dismissal of a petition asserting discrimination in public accommodation for failure to state a claim. WD80005, 2017 WL 3026757 *9 (Mo. App. W.D. July 18, 2017), *transfer granted*, SC 96683 (Mo. banc Jan. 23, 2018). We did not reach the issue of whether a school district is a "person" for purposes of section 213.065 because, although that claim was raised in the school district's motion to dismiss, we affirmed dismissal of the petition on an alternative ground raised in the motion to dismiss. *Id.* at *2, 3, 9.

its sovereign immunity, is immune from suit and cannot be sued in its own courts without its consent.'" *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 921 (Mo. banc 2016) (quoting *State ex rel. Eagleton v. Hall*, 389 S.W.2d 798, 801 (Mo. banc 1965)). "In other words, sovereign immunity applies to the government and its political subdivisions unless waived or abrogated or the sovereign consents to suit." *Id.* (citing *Bush v. State Hwy. Comm'n*, 46 S.W.2d 854, 857 (Mo. 1932) ("The proposition that the state is not subject to tort liability without its consent is too familiar to deserve extended citations")). "School districts are political subdivisions of the state . . . ." *Hughes v. Civil Serv. Comm'n*, 537 S.W.2d 814, 815 (Mo. App. 1976) (citing section 70.210(2), RSMo 1969;[14] *State ex inf. McKittrick v. Whittle*, 63 S.W.2d 100, 102 (Mo. banc 1933) (other citations omitted)). "A school district, or a district board of education or of school trustees, or other local school organization, is a subordinate agency, subdivision, or instrumentality of the state, performing the duties of the state in the conduct and maintenance of the public schools." *State ex inf. McKittrick*, 63 S.W.2d at 102; *see also Byrd v. Bd. of Curators of Lincoln Univ.*, 863 S.W.2d 873, 876 (Mo. banc 1993) (superseded on other grounds by statute); *P.L.S. ex rel. Shelton v. Koster*, 360 S.W.3d 805, 813 (Mo. App. W.D. 2011, modified Jan. 31, 2012).

"[I]n the absence of an express statutory exception to sovereign immunity, or a recognized common law exception such as the proprietary function and consent exceptions, sovereign immunity is the rule and applies to all suits against public entities . . . ." *Metro.*

[14]The definition of "political subdivision," once housed at section 70.210(2), is now found at section 70.210(3), RSMo. 2016.

St. Louis Sewer Dist., 476 S.W.3d at 921-22. Here, the only exception to sovereign immunity argued by B.Z. is that the word "person" as used in section 213.065.2 and defined in section 213.010(14) includes the state and its political subdivisions.[15] "[S]tatutory provisions that [are alleged] to waive sovereign immunity must be strictly construed." *Id.* at 921; *see also Bartley v. Special Sch. Dist.*, 649 S.W.2d 864, 868 (Mo. banc 1983) (holding that "we are bound to hold that statutory provisions that waive sovereign immunity must be strictly construed") (superseded on other grounds by statute). "'[S]trict construction of a statute presumes nothing that is not expressed.'" *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 381 (Mo. banc 2014) (quoting *Robinson v. Hooker*, 323 S.W.3d 418, 423 (Mo. App. W.D. 2010)).

Thus, in resolving whether political subdivisions like the School District are a "person" who can be sued for discrimination in public accommodation pursuant to section 213.065.2, we necessarily begin with the proposition that the state and its political subdivisions enjoy sovereign immunity from liability for discrimination in public accommodation ***unless*** sections 213.010(14) and section 213.065.2 expressly waive sovereign immunity.[16] *Metro. St. Louis Sewer Dist.*, 476 S.W.3d at 921-22.

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[15]The burden is on B.Z. to demonstrate that sovereign immunity for claims of discrimination in public accommodation has been abrogated. "Because the liability of a public entity for torts is the exception to the general rule of sovereign immunity, a plaintiff must ***specifically*** . . . demonstrate[e] that [a] claim is within an exception to sovereign immunity." *Hummel v. St. Charles City R-3 School Dist*., 114 S.W.3d 282, 284 (Mo. App. E.D. 2003) (emphasis added). The only argument B.Z. has ever advanced in an attempt to specifically demonstrate that sovereign immunity has been abrogated for claims of discrimination in public accommodation is that the School District is a "person" (either expressly or by necessary implication) as that term is used in section 213.065.2.

[16]We would begin with this proposition even if the MHRA was not considered to be a statute sounding in tort. The settled principle that the state cannot be sued in its own courts without its consent extends beyond immunity from tort liability and includes, broadly, the immunity from suit. *See Jones v. State Highway Comm'n*, 557 S.W.2d 225, 230 n.15 (Mo. banc 1977) (superseded on other grounds by statute).

(ii) The statutory definition of "person" set forth in section 213.010(14) does not include the state and its political subdivisions within its scope

Section 213.065.2 limits the imposition of liability for discrimination in public accommodation to "any person" who directly or indirectly engages in one of the described discriminatory practices. Unless the word "person" includes the state and its political subdivisions within its scope, section 213.065.2 does not expressly abrogate sovereign immunity for discrimination in public accommodation.

As noted, the word "person" is statutorily defined in section 213.010(14). "'The statutory definition [of a word] should be followed in the interpretation of the statute to which it relates and is intended to apply and supersedes the commonly accepted dictionary or judicial definition and is binding on the courts.'" *State v. Myers*, 386 S.W.3d 786, 794 (Mo. App. S.D. 2012) (quoting *State v. Harris*, 156 S.W.3d 817, 822 (Mo. App. W.D. 2005)).

The statutory definition of "person" does not mention the state or its political subdivisions. The statutory definition of "person" does not expressly abrogate sovereign immunity.

Respondent counters that the statutory definition of "person" includes "one or more individuals" and "corporations," and argues that the School District would qualify as either. Respondent's argument ignores, however, that the School District is a political subdivision that enjoys sovereign immunity unless that liability is expressly waived. The question we

must answer, therefore, is not whether the School District, viewed without regard to its status as a political subdivision, is made up of "one or more individuals" or is a "corporation," but is instead whether general terms like "one or more individuals" and "corporation" can be permissibly construed to include the state and its political subdivisions within their scope, particularly when the effect of doing so would be to abrogate sovereign immunity.

Missouri courts have consistently refused to conclude that the state and its political subdivisions are included within the scope of general, nonspecific terms used in a statute. For example, in *St. Joseph Light & Power Co. v. Nodaway Worth Electric Cooperative, Inc.*, a statute prohibited an electric power supplier from providing power to "any person" already receiving power from another electrical power supplier. 822 S.W.2d 574, 576 (Mo. App. W.D. 1992). The issue was whether a school district was a "person" pursuant to the statute, and thus a customer prohibited from switching electric power suppliers. *Id.* at 576. Section 394.315.1(1) defined "person" as "a natural person, cooperative or private corporation, association, firm, partnership, receiver, trustee, agency, or business trust." *Id.* at 575. We concluded that school districts do not fall within this definition. *Id.* at 577. Specifically, we held that school districts "are not within the common definition of agency." *Id.* at 576. We concluded that the definition of "person" set forth in section 394.315.1, having not expressly included the state and its political subdivisions and agencies, could not be read to have done so through use of the general term "agency." *Id.* at 576-77.

The same result has been reached with respect to the general term "corporation." "Our Constitution and statutes consistently recognize the difference between private business corporations and municipal corporations."[17] *Hunt v. St. Louis Hous. Auth.*, 573 S.W.2d 728, 730 (Mo. App. 1978) (holding that a municipal corporation is not a "corporation" when that term is used in a statute).

> "In definition and legal classification and terminology a well-settled distinction exists, and is recognized generally, between a 'corporation' and a 'municipal corporation.' Each term has a distinct and commonly accepted meaning. . . . [] Reverting to statutory language in this state, the term 'corporation' is used and refers to private and business corporations . . . . Likewise where the term 'corporation' is used in our Constitution it uniformly refers to private or business organizations of individuals. . . . [T]he meaning commonly ascribed to the word 'corporation' both in popular usage and legal nomenclature and absence of language indicating a legislative intent to use it in a different sense we must assume it was used in its ordinary and commonly understood meaning and the assumption legitimately follows that had the Legislature intended to include a municipality in the act it would have done so by specific language to that effect."

Id. at 731 (quoting *City of Webster Groves v. Smith*, 102 S.W.2d 618, 619-20 (Mo. 1937)). This principle was reaffirmed in *State ex rel. Ormerod v. Hamilton*, where our Supreme Court held that "[u]nless otherwise specified, where the term 'corporation' is used in our statutes and Constitution it uniformly refers to private or business organizations, not to public corporations." 130 S.W.3d 571, 572 (Mo. banc 2004) (citing *City of Webster Groves*, 102 S.W.2d at 619; *Cas. Reciprocal Exch. v. Mo. Emp'rs Mut. Ins. Co.*, 956 S.W.2d

[17] "'Municipality . . . has a broader meaning that 'city' or 'town', and presently includes bodies public or essentially governmental in character and function. . . .'" *Hunt v. St. Louis Hous. Auth.*, 573 S.W.2d 728, 730 (Mo. App. 1978) (quoting *St. Louis Hous. Auth. v. City of St. Louis*, 239 S.W.2d 289, 294 (Mo. banc 1951)). "[A] municipal corporation . . . is simply a branch or department of the local government which created it." *Id.*

249, 253 (Mo. banc 1997))[18]; *see also Haggard v. Div. of Emp't Sec.*, 238 S.W.3d 151, 154-55 (Mo. banc 2007) (holding that the Division of Employment Security is a state agency, and thus not a "corporation, partnership or other business entity authorized by law" for purposes of Rule 5.29(c)).

We thus reject Respondent's contention that general phrases such as "one or more individuals" or "corporations" included in the statutory definition of "person" can be permissibly construed to include the state and its political subdivisions within their scope, particularly as the effect of doing so would be to abrogate sovereign immunity when no such intent is expressed.

Respondent next argues that the School District is a "person" because the statutory definition includes a catchall for "other organized groups of persons." Respondent argues that because the definition of "person" includes "individuals," and the School District is an organized group of individuals, we must conclude that the School District is a "person." Respondent's argument disregards the discussion above, that a statutory waiver of sovereign immunity must be express, and that general terms and phrases are not subject to a construction that includes the state and its political subdivisions, particularly where a statute is alleged to waive sovereign immunity. Moreover, Respondent's argument is

[18]*Lockhart v. Kansas City* found that a municipality was a "corporation" for purposes of liability under the Occupational Disease Act, but did so because the municipality was "furnishing public utility services in its ***private corporate*** capacity." 175 S.W.2d 814, 819 (Mo. 1943) (emphasis added). *Lockhart* thus consistently held that the general term "corporation" used in a statute means ***private*** corporation, but found the municipality to be a "corporation" because it was acting as a private corporation by providing proprietary services. The holding in *Lockhart* implicates the common law proprietary function means by which sovereign immunity can be waived. *Id.* at 818 (distinguishing cases involving the provision of governmental functions as opposed to proprietary functions). *Lockhart* does not stand for the proposition that the word "corporation" should be construed to include public corporations simply because a statute is designed to afford public protection.

logically and legally flawed. The phrase "organized group of persons" uses the defined term "person." The scope of the catchall phrase is thus limited to an organized group of those who otherwise qualify as a "person" under the statutory definition. The School District, a political subdivision, is not "one or more individuals" or a "corporation," as we have explained. If the School District is not otherwise a "person" pursuant to section 213.010(14), it cannot become a "person" by being an "organized group of persons."

Finally, Respondent argues that because the MHRA is a remedial statute, the term "person" "should be construed liberally to include those cases which are within the spirit of the law," and that "all reasonable doubts should be construed in favor of applicability to the case." *Mo. Comm'n on Human Rights v. Red Dragon Rest., Inc.*, 991 S.W.2d 161, 166-67 (Mo. App. W.D. 1999). Respondent's argument is in direct opposition, however, to the settled requirement that a statute purporting to abrogate sovereign immunity must do so expressly, and must be strictly construed. "This Court 'cannot add statutory language' [to waive sovereign immunity] where it does not exist.'" *Newsome v. Kansas City, Mo. Sch. Dist.*, 520 S.W.3d 769, 781 (Mo. banc 2017) (quoting *Peters v. Wady Indus., Inc*. 489 S.W.3d 784, 792 (Mo. banc 2016)) (addressing the waiver of sovereign immunity by statute).

In summary, the statutory definition of "person" set forth in section 213.010(14) does not include the state or its political subdivisions. The School District, a political

subdivision, is not a "person" as that term is statutorily defined who can be liable for discrimination in public accommodation pursuant to section 213.065.2.[19]

(iii) Section 213.065 does not otherwise impose liability on the state and its political subdivisions by necessary implication

The Respondent alternatively contends that even if the state and its political subdivisions are not expressly included within the statutory definition of "person," we should nonetheless conclude that they are "persons" subject to liability for discrimination in public accommodation pursuant to section 213.065.2 by necessary implication. We disagree.

As a general proposition, "[i]t is well-established in this state that '[t]he state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication.'" *Carpenter v. King*, 679 S.W.2d 866, 868 (Mo. banc 1984) (quoting *Hayes v. City of Kansas City*, 241 S.W.2d 888, 892 (Mo. 1951)). The general principle permitting construction of a statute to include the state within its scope by implication must yield, however, to the more specific principle applicable to the subset of statutes which purport

[19]Analogously, the United States Supreme Court has concluded that abrogation of the States' Eleventh Amendment rights cannot be presumed and must be express, and that as a result, "neither a State nor its officials acting in their official capacities are 'persons' under section 1983." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). "'[I]n common usage, the term 'person' does not include the sovereign, [and] statutes employing the [word] are ordinarily construed to exclude it.'" *Id.* at 64 (quoting *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979).

to abrogate sovereign immunity. *See Hayes*, 241 S.W.2d at 892 (holding that though general rule permits inclusion of state and its subdivisions within scope of a statue by implication, no liability could be imposed on city for damages caused by its motor vehicles when the statute at issue did not expressly apply to the state and its political subdivisions). Statutes which purport to abrogate sovereign immunity must ***expressly*** waive immunity. *Metro. St. Louis Sewer Dist.*, 476 S.W.3d at 921. "This Court cannot read into [a] statute an exception to sovereign immunity or imply waivers not explicitly created in the statute." *Id.* (citing *Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 923 (Mo. banc 1995); *State ex rel. Cass Med. Ctr. v. Mason*, 796 S.W.2d 621, 623-24 (Mo. banc 1990)). "[I]n the absence of an ***express*** statutory exception to sovereign immunity . . . sovereign immunity is the rule and applies to all suits against public entities . . . ." *Id.* at 921-22 (emphasis added).

Even were we permitted to employ "necessary implication" analysis to determine whether a statute abrogates sovereign immunity (which we are not), we would not conclude that the state and its political subdivisions are subject to liability pursuant to section 213.065.2 by necessary implication.

Respondent correctly notes that "places of public accommodation" is defined to include: "[a]ny public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any ***public corporation***; and any such facility supported in whole or in part by public funds." Section 213.010(15)(e) (emphasis added). Respondent argues that the General Assembly would not have defined "public accommodation" to include facilities owned, operated, or managed by the state or its

political subdivisions unless the General Assembly intended the sovereign to be liable for discrimination in the use of those facilities. We disagree.

Respondent's argument ignores that the statutory definition of "public accommodation" expressly refers to ***public*** corporations, underscoring the General Assembly's recognition that the word "corporation" in a statute "uniformly refers to private or business organizations, not to public corporations." *State ex rel. Ormerod*, 130 S.W.3d at 572. "[T]he General Assembly is presumed to know the law, including this Court's prior decisions, in enacting statutes." *State ex rel. Heartland Title Servs., Inc. v. Harrell*, 500 S.W.3d 239, 243 (Mo. banc 2016) (citing *State ex rel. Howard Elec. Co-op. v. Riney*, 490 S.W.2d 1, 9 (Mo. 1973)). The General Assembly's use of the phrase "public corporation" to describe ***where*** discrimination in public accommodation can occur, as compared to its use of the word "corporation" to describe ***who*** can be liable for discrimination in public accommodation, reflects a deliberate decision ***not*** to abrogate sovereign immunity.

In this respect, a claim of discrimination in public accommodation is no different than the plethora of other claims sounding in tort where an employee of the sovereign (acting in other than an official capacity)[20] may be liable while the sovereign is not. *Southers v. City of Farmington*, 263 S.W.3d 603, 610 (Mo. banc 2008) ("[S]overeign immunity is a tort protection for government entities, not their employees . . . ."). In fact, it is the narrow exception, and not the rule, that the sovereign can be liable in tort for the acts or omissions of its employees or its contractors. *See* section 537.600.1 (expressing

[20]Sovereign immunity extends to suits against employees in their official capacities, "as such suits are essentially direct claims against the state." *State ex rel. Cravens v. Nixon*, 234 S.W.3d 442, 449 (Mo. App. W.D. 2007).

that "sovereign or governmental tort immunity as existed at common law . . . except to the extent waived, abrogated or modified by statutes . . . shall remain in full force and effect").

It is not necessary, therefore, to include the state and its political subdivisions within the scope of section 213.065.2 by implication in order to give meaning to the rights afforded by the statute. As the facts in this case demonstrate, discrimination in public accommodations owned, operated, or managed by the sovereign is susceptible to remediation by suit against the "persons" directly or indirectly responsible for the discriminatory practice.[21] Given the statutory definition of "person," liability could be imposed on individuals or corporations employed by or under contract with, the sovereign. Though actionable discrimination in public accommodation can occur at a facility owned, operated or managed by the sovereign, that does not require us to imply that sovereign immunity has been abrogated.[22] "This Court will not infer or imply that a waiver of

[21]As noted, the Individual Defendants were named by B.Z. in Count I of her petition. Though summary judgment was granted to the Individual Defendants on Count I, that was because B.Z. failed to name the Individual Defendants in the administrative complaint filed with the MCHR.

[22]Though based on application of the Eleventh Amendment, it is noteworthy that the United States Supreme Court has similarly concluded that States are immune from suit under the Age Discrimination in Employment Act, and from suits seeking monetary damages under Title I of the Americans with Disabilities Act ("ADA"). *See Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000); *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001). Since *Garrett*, a number of courts, including the Eighth Circuit, have concluded that states are immune from suits seeking monetary damages under Title II of the ADA. *See, e.g.*, *Klingler v. Dir., Dep't of Revenue, State of Mo*., 455 F.3d 888 (8th Cir. 2006); *Alsbrook v. City of Maumelle*, 184 F.3d 999 (8th Cir. 1999). The United States Supreme Court subsequently decided that Title II of the ADA validly abrogates sovereign immunity but only if the conduct involved violates the Fourteenth Amendment. *United States v. Georgia*, 546 U.S. 151 (2006). Title II of the ADA prohibits discrimination on the basis of disability in connection with services, programs, and activities provided to the public ***by state and local governments***, underscoring that a statute which prohibits discrimination with respect to services provided by the state does not imply by necessity that the state and its agencies are liable for discriminatory practices.

These federal holdings are not controlling here. They nonetheless persuasively demonstrate that the application of sovereign immunity to shield states and their political subdivisions from liability for certain statutory discriminatory practices is not novel.

sovereign immunity extends to remedies that are not essential to enforce the right in question." *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 923.

Our refusal to imply an unexpressed waiver of sovereign immunity into the plain language of section 213.065.2 is reinforced by the fact that "in construing a statute, it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed." *St. Joseph Light & Power Co.*, 822 S.W.2d at 576 (citing *Citizens Elec. Corp. v. Dir. of Dep't of Revenue*, 766 S.W.2d 450, 452 (Mo. banc 1989)). Another provision of the MHRA, specifically section 213.055, demonstrates that when the General Assembly has intended to abrogate sovereign immunity as to particular acts of discrimination, it knows how to do so expressly.

Section 213.055 addresses unlawful employment practices. Unlike section 213.065.2, which limits those who can be liable for discrimination in public accommodation to "any person," section 213.055.1(1) provides that "[i]t shall be an unlawful employment practice . . . [f]or an ***employer***" to engage in the conduct thereinafter enumerated. (Emphasis added.) Section 213.010(7) defines "employer" in pertinent part as follows:

> [I]includes the state, or any political or civil subdivision thereof, or any person employing six or more persons within the state . . . .

Unlike the statutory definition of "person," which makes no reference to the state or its political subdivisions, the statutory definition of "employer" ***expressly*** includes the state and its political subdivisions. And by use of the phrase "***or*** any person," the statutory

definition of "employer" differentiates between the state and its political subdivisions and the separately defined term "person," consistent with our conclusion that the definition of "person" does not include the state and its political subdivisions. "The variations in the language employed within [section 213.055 and 213.065.2] are indicative that the legislature did not intend to include state or political subdivisions or agencies thereof, or bodies politic within the definition of person under [section 213.010(14)]." *St. Joseph Light & Power Co*., 822 S.W.2d at 577 (holding that where "person" was defined without mention to the state or its political subdivisions in section 394.315.1(1), but was defined to expressly include the state or political subdivisions in section 394.020(2), the court was bound to find that the reference to "person" in section 394.315 did not include the state or its politic subdivisions).

We conclude that section 213.065.2 limits liability to "any person," and that "person" does not include the state and its political subdivisions. Because the School District is a political subdivision of the state, it is not a "person" who can be liable for discrimination in public accommodation pursuant to section 213.065.2. Stated another way, the sovereign immunity enjoyed by the state and its political subdivisions has not been expressly waived by section 213.065.2 as it relates to discrimination in public accommodation, and we will not imply an unexpressed abrogation of sovereign immunity into section 213.065.2.

(iv) Though the School District is not a "person" for purposes of section 213.065.2, we decline to exercise our discretion to make our preliminary writ permanent with respect to B.Z.'s claim of discrimination in public accommodation

The School District has established with respect to the discrete legal issue raised in its motion for summary judgment that it is not a "person" as that term is used in section 213.065.2, and as a result, that section 213.065.2 does not expressly abrogate sovereign immunity. However, it does not necessarily follow that the School District is entitled to a permanent writ of prohibition directing the trial court to take no further action other than to enter judgment in the School District's favor on Count I of B.Z.'s petition. '"The key to summary judgment is the undisputed right to judgment as a matter of law.'" *The Lamar Co., LLC v. City of Columbia*, 512 S.W.3d 774, 792 (Mo. App. W.D. 2016) (quoting *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. banc 1993)). "Because [the] extraordinary legal remedy [of a permanent writ of prohibition] provides litigants with abundant opportunity to circumvent the normal appellate process, we are mindful that courts should employ the writ judiciously and with great restraint." *Derfelt*, 692 S.W.2d at 301. "A court should only exercise its discretionary authority to issue this extraordinary remedy when the facts and circumstances of the particular case demonstrate unequivocally that there exists an extreme necessity for preventive action. Absent such condition, the court should decline to act." *Id.*

The circumstances in this case lead us to conclude that making our preliminary writ of prohibition permanent as to B.Z.'s claim of discrimination in public accommodation "would be an unwarranted and injudicious exercise of discretionary authority." *Id.* We reach that conclusion because neither party has addressed section 213.070(3). The version of section 213.070(3) in effect at the time of the acts giving rise to B.Z.'s petition provided that: "It shall be an unlawful discriminatory practice: . . . (3) For the state or any political

subdivision of this state to discriminate on the basis of race, color, religion, national origin, sex, ancestry, age, as it relates to employment, disability, or familial status as it relates to housing." Whether this statute constitutes an express abrogation of sovereign immunity for discrimination in public accommodation has not been raised by either party, and has not been addressed by any case in Missouri.

We recognize that B.Z. bears the burden of demonstrating that sovereign immunity for her claim of discrimination in public accommodation has been abrogated. And we recognize that the only argument B.Z. has advanced to defend the School District's claim of sovereign immunity is that the School District is expressly or impliedly a "person" pursuant to section 213.065.2, a claim we have discredited. However, the School District bears the burden of establishing that a permanent writ of prohibition is unequivocally required following the denial of summary judgment because B.Z.'s claim of discrimination in public accommodation is clearly and unequivocally barred. These competing burdens create tension which we conclude should be resolved in favor of refusing to exercise our discretion to make permanent the preliminary writ we issued with respect to Count I of B.Z.'s petition.[23]

While we recognize that the meaning of section 213.070(3) and its effect on claims of discrimination in public accommodation asserted against the state and its political

[23]We would be inclined to conclude otherwise were this case before us on direct appeal, or following the grant of a motion to dismiss or for summary judgment, where the specter of final disposition of a case by the issuance of a discretionary extraordinary writ was not present. *See, e.g., Hummel*, 114 S.W.3d at 284 (holding that in light of the plaintiff's burden to demonstrate the abrogation of sovereign immunity, a plaintiff must timely raise all potential bases for establishing abrogation or waiver of sovereign immunity in proceedings before the trial court, and is not entitled to a "second bite" to do so based on new arguments raised on appeal).

subdivisions is a question of law, we will not *sua sponte* address an issue of such magnitude in a writ proceeding, when that issue has neither been raised nor briefed.

The preliminary writ of prohibition we issued directing that Respondent take no further action as to the School District in the Underlying Lawsuit is quashed with respect to Count I of B.Z.'s petition.

II.

Whether the School District's MOPERM policy waives sovereign immunity by affording coverage for the School District for the common law tort claims alleged in Counts II and III of the plaintiff's petition

The School District argues that it enjoys sovereign immunity for the common law torts alleged in Counts II and III of B.Z.'s petition. Respondent argues that the School District's sovereign immunity for common law torts was waived by the acquisition of liability insurance.

Section 537.600.1 codifies sovereign immunity for tort liability as existed at common law, except to the extent waived, abrogated or modified by statutes in effect prior to September 12, 1977,[24] and except for injuries resulting from a public employees' operation of a motor vehicle in the course of their employment, or injuries caused by the

[24]*Jones v. State Highway Comm'n*, was decided on September 12, 1977, and abrogated sovereign immunity for tort liability. 557 S.W.2d at 230 n.15. Section 537.600 abrogated that decision.

condition of a public entity's property. Section 537.600.1(1), (2). These statutory exceptions to sovereign immunity are not at issue in this case.

Section 537.610.1 also addresses waiver of sovereign immunity and provides, in relevant part:

> [T]he governing body of ***each political subdivision*** of this state, notwithstanding any other provision of law, ***may purchase liability insurance for tort claims, made against . . . the political subdivision***, but the maximum amount of such coverage shall not exceed two million dollars for all claims arising out of a single occurrence and shall not exceed three hundred thousand dollars for any one person in a single accident or occurrence, . . . and no amount in excess of the above limits shall be awarded or settled upon. ***Sovereign immunity . . . is waived only to the maximum amount of and only for the purposes covered by such policy of insurance*** purchased pursuant to the provisions of this section . . . .

(Emphasis added.) By its plain terms, section 537.610.1 provides for the waiver of sovereign immunity if a political subdivision purchases liability insurance for tort claims made against the political subdivision. "[W]hen a public entity purchases liability insurance, [section] 537.610.1 provides that immunity is waived as to torts other than those set out in [section] 537.600 to the extent of and for the specific purposes covered by the insurance purchased." *Brennan By & Through Brennan v. Curators of the Univ. of Mo.*, 942 S.W.2d 432, 434 (Mo. App. W.D. 1997).

"The plaintiff shoulders the burden of proving the existence of an insurance policy, and that the terms of the policy cover the claims asserted by the plaintiff against the [political subdivision]." *Topps v. City of Country Club Hills*, 272 S.W.3d 409, 415 (Mo. App. E.D. 2008). Here, it is uncontroverted that the School District purchased a MOPERM policy. The parties dispute, however, the extent to which the policy provides coverage "for

tort claims, made against . . . the [School District]." Section 537.610.1. Whether the School District's MOPERM policy waives sovereign immunity "is expressly dictated, and limited, by the terms of the insurance policy." *Topps*, 272 S.W.3d at 415. In making this determination, "we are guided by the policy language alone." *Id*.

Section I of the MOPERM policy is entitled "WHAT MOPERM PAYS." Section I, subparagraph A is entitled "COVERAGE." Coverage is afforded to the School District for claims made against the School District by two provisions: subparagraph A.1 and subparagraph A.2.

> Subparagraph A.1 provides, in part:
>
> Coverage for the Member Agency[25] for claims on causes of action established by Missouri Law. For claims of causes of action established by Missouri Law, MOPERM will pay on behalf of the Member Agency the ultimate net loss the Member Agency shall become legally obligated to pay by reason of liability arising out of:
>
> a. Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motorized vehicles within the course of their employment;
>
> b. Injuries caused by the condition of a public entity's property . . . .

Section I, subparagraph A.1 of the policy thus provides the School District "with coverage [for claims against it] for the two express exceptions to [section] 537.600, negligent operation of motor vehicles and injuries caused by the condition of a public entity's

[25]The School District is identified as the "Member Agency" on the policy's Declaration Page.

property." *Moses v. County of Jefferson*, 910 S.W.2d 735, 736 (Mo. App. E.D. 1995). As these statutory exceptions to sovereign immunity are not at issue in this case, Section I, subparagraph A.1 of the MOPERM policy is not relevant to the Respondent's contention that the School District waived sovereign immunity by acquiring insurance.

Section I, subparagraph A.2 provides:

> ***Coverage for Member Agency for claims on causes of action other than those established by Missouri Law***; and coverage for public officials and employees. ***For claims against the Member Agency on causes of action other than those established by Missouri Law*** and for claims against public officials and employees, ***MOPERM will pay the ultimate net loss which the Covered Party shall become legally obligated to pay*** by reason of liability for damages because of:
>
> COVERAGE A - BODILY INJURY LIABILITY
> COVERAGE B - PROPERTY DAMAGE LIABILITY
> COVERAGE C - PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY
> COVERAGE D - PERSONAL INJURY LIABILITY
>
> to which this memorandum applies, caused by or arising out of an occurrence.

(Emphasis added.) The bold and italicized text in Section I, subparagraph A.2 provides coverage for the School District for "claims on causes of action other than those established by Missouri Law," and as to this narrow category of covered claims, agrees to pay losses the School District is legally obligated to pay. "[C]laims on causes of action other than those established by Missouri Law" has a settled meaning, and "provide[s] protection . . . against claims under federal statutes, as in *Owen v. City of Independence*, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980), or for claims against the [School District] for injuries occurring in another state pursuant to *California v. Nevada*, 447 U.S. 125, 100

S.Ct. 2064, 65 L.Ed.2d 1 (1980)." *Moses*, 910 S.W.2d at 736. Counts II and III of B.Z.'s petition are not claims on causes of action "other than those established by Missouri law." Consistent with this fact, Respondent does not rely on the bold and italicized text in Section I, subparagraph A.2 to contend that the School District waived sovereign immunity by acquiring insurance.

Instead, Respondent relies solely on the underlined text in Section I, subparagraph A.2 to argue that the School District acquired insurance which waived sovereign immunity. The underlined text in Section I, subparagraph A.2 provides coverage "for public officials and employees." Unlike the coverage afforded the School District by subparagraph A.2, the coverage afforded to public officials and employees by subparagraph A.2 is *not* limited to particular claims. Rather, subparagraph A.2 "provides coverage 'for public officials and employees on all claims,'" *Moses*, 910 S.W.2d at 737, and with respect to "all claims" against public officials and employees, the policy obligates MOPERM to pay for damages within Coverages A through D.[26] Respondent reasons that the coverage for public officials and employees for "all claims" constitutes the acquisition of coverage by the School District for "all claims" because the School District is liable for the negligent acts and omissions of its employees pursuant to the doctrine of *respondeat superior*.

Respondent's argument is without merit. The argument disregards that "[r]espondeat superior is not a cause of action but rather a theory under which an employer

[26]Damages sought in Count II and III of B.Z.'s petition fall within Coverage C for Public Officials Errors and Omissions (defined by the policy to include "any and all breaches of duty . . . arising from negligent action or inaction, mistake, misstatement, error, neglect, inadvertence or omission . . . in the discharge of duties with the Member Agency"), and Coverage D for Personal Injury Liability (defined by the policy to include "discrimination prohibited by law").

is held responsible for the misconduct of a [sic] employee where that employee is acting within the course of scope of his employment." *Dibrill v. Normandy Assocs., Inc.*, 383 S.W.3d 77, 89 n.6 (Mo. App. E.D. 2012). Because political subdivisions act through their employees, recovery against a political subdivision in tort is almost universally pursuant to the doctrine of *respondeat superior*. *See Southers*, 263 S.W.3d at 609 (concluding the same for actions to recover damages pursuant to the motor vehicle sovereign immunity waiver found in section 537.600.1(1)). By its very essence, therefore, sovereign immunity protects the state and its political subdivisions from liability, including *respondeat superior* liability, ***unless*** sovereign immunity for the political subdivision is expressly waived. The MOPERM policy's express extension of coverage to public officials and employees for their *personal* liability does not constitute an express extension of coverage for the School District's *respondeat superior* liability. "It is often possible to sue a public official or an employee on a claim against which the public agency is protected by sovereign immunity, and one can well understand why [a political subdivision] might want to protect its functionaries against individual liability." *Moses*, 910 S.W.2d at 737. However, "[t]his provision [in a policy] does not [operate to] waive the [political subdivision's sovereign] immunity. *Id.*

Thus, the MOPERM policy does not provide the School District with coverage for *respondeat superior* liability as to all common law tort claims merely because it provides coverage to public officials and employees for such claims. As such, the School District has not waived sovereign immunity for the common law torts asserted in Counts II and III of B.Z.'s petition. Were we to conclude to the contrary, then the provisions in Section I,

subparagraphs A.1 and A.2 expressly limiting the coverage afforded the School District would be rendered superfluous. "[W]e aim to give a reasonable meaning to every provision [of an insurance policy] and to avoid an interpretation that renders some provisions trivial or superfluous." *Nooter Corp. v. Allianz Underwriters Ins. Co.*, 536 S.W.3d 251, 264 (Mo. App. E.D. 2017).

Consistent with our conclusion, the MOPERM policy explicitly disclaims coverage for the School District beyond that expressly provided by the policy. "'Insurance policies are read as a whole, and the risk insured against is made up of both the general insuring agreement as well as the exclusions and definitions.'" *Owners Ins. Co. v. Craig*, 514 S.W.3d 614, 617 (Mo. banc 2017) (quoting *Dutton v. Am. Family Mut. Ins. Co.*, 454 S.W.3d 319, 323-24 (Mo. banc 2015)). The MOPERM policy disclaimer states:

> Nothing contained in this section, or the balance of this document, shall be construed to broaden the liability of the [School District] beyond the provisions of Sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense at law which might otherwise be available to the [School District] or its officers and employees.

A nearly identical disclaimer provision was at issue in *Topps v. City of Country Club Hills*, where it was held that:

> Because a number of courts have held that "a public entity retains its full sovereign immunity when the insurance policy contains a disclaimer stating that the entity's procurement of the policy was not meant to constitute a waiver of sovereign immunity," the disclaimer provision in the City's [insurance] policy acts to retain the City's sovereign immunity.

272 S.W.3d at 418 (quoting *Parish v. Novus Equities Co.*, 231 S.W.3d 236, 246 (Mo. App. E.D. 2007)). The *Topps* court added that the disclaimer's references to sections 537.600 and 537.610 clearly indicated an intent to disclaim any waiver of sovereign immunity. *Id.*

The disclaimer provision in the MOPERM policy reinforces that coverage is afforded to the School District, but only for claims made against the School District (including on a theory of *respondeat superior* liability): (1) for causes of action arising out of Missouri law, limited to injuries directly resulting from the negligent operation of motor vehicles and injuries caused by a dangerous property condition (Section I, subparagraph A.1); and (2) for causes of action not arising out of Missouri law, construed as claims arising under federal law, or from injuries occurring in another state (Section I, subparagraph A.2). The MOPERM policy does not afford the School District coverage for *respondeat superior* liability for any other claims. As plainly stated in section 537.610.1, sovereign immunity is waived by the acquisition of liability insurance "only for the purposes covered by such policy of insurance." The School District's sovereign immunity for the common law tort claims alleged in Counts II and III of B.Z.'s petition was not waived by the acquisition of liability insurance pursuant to section 537.610.1.

Conclusion

The preliminary writ of prohibition we issued directing that Respondent take no further action as to the School District in the Underlying Lawsuit is quashed with respect to Count I of B.Z.'s petition. The preliminary writ of prohibition we issued directing that Respondent take no further action as to the School District in the Underlying Lawsuit is made permanent with respect to Counts II and III of B.Z.'s petition.

This matter is remanded to the trial court with instructions to enter summary judgment in favor of the School District in the Underlying Lawsuit on Counts II and III of

B.Z.'s petition. In all other respects, this Court's general stay of proceedings in the Underlying Lawsuit is lifted.

Cynthia L. Martin, Judge

All concur