

3/5/78

75-1914 Monro

(Notes for Special Conference 3/6)

Fr. The Cases exempting municipalities:

(1) Monroe - violation was contrary to state policy (law); not pursuant to it. ~~The~~ Monro Ernst ~~argued~~ argued for vicarious liability. Sherman amendment mentioned in a note. The Court, in effect, rejected vicarious liability.

2. Moore v County ofameda - reiterated the Monroe language as to immunity of municipalities.

Suit was brought under 1983 & 1988 for deprivation of civil rights: Deputy Sheriff fired a shot gun at demonstrators.

TTs did not challenge Monroe. They sought to avoid it by a theory that § 1988 imposed vicarious liability. Again this was rejected.

3. City of Kenosha did involve an alleged Const. injury by official action. (denial of renewal of liquor license). We relied on Monroe to deny both injunctive & ~~damages~~ relief.

damages
were not
sought in
City of
Kenosha

(2) Cases allowing 1983 suits

The Court did not explicitly pass on the viability of the damages claim in these cases.

Lo Hunt, Chertoff County School Bd., & Turkin (possibly Whandis - damages claimed)
Back pay & damages allowed.

Numerous suits vs School Bds
from Brown to Millsap II

Green specifically dismissed relief vs School Bd.

(3) Policy or General Considerations

Where the injury is caused by the municipal entity - as a policy choice or pursuant to ordinance or regulation - there is no Q of vicarious liability.

It ~~may be~~ seems irrational to ~~not~~ allow suit vs the individuals rather than the City or Board that authorized the conduct.

(3) Stare Decisis

Two lines of cases that cannot be reconciled.

We should make a choice - duty to harmonize.

Saying the individuals - who in turn are indemnified - is a fiction that should not be preserved.

When that Action is not required by the Eleventh Amendment.

Need not overrule Morral or Moore. Confine to facts.

Konassa would have to be overruled.

Result: Municipal entities would be liable for ~~the~~ court wrongs authorized.

There should be no vicarious liability. (A city should not indemnify officers who violated the law as in Morral)

Of course, drawing line will sometimes be difficult. But this is our business.