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Municipal Newsletter

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Government Liability for Dangerous Roads

A state senator's letter on file with the Pennsylvania Department of Transportation ("PennDOT") gave an injured motorcyclist a chance to recover damages against the state. State and local governments have very limited liability to parties who are injured as a result of dangerous road conditions. But where it can be proved that the state had written notice or actual knowledge of the dangerous condition, injured claimants may have a case.

In the case involving a motorcyclist, she was seriously injured when she hit a pothole on a state road in western Pennsylvania. Before the accident, a local state senator had written a letter to PennDOT, advising that the stretch of road was dangerous and that "patchwork has caused more problems than it has solved."

The senator's letter described the road as "in disrepair" and asked for immediate corrective action. A PennDOT representative acknowledged the letter in writing and advised that major improvements to the road were planned but that no funding was available to start the project.

Pennsylvania statutes provide that if a state agency has actual written notice of potholes or sinkholes or "other dangerous conditions" of state roads, the state is not immune from lawsuits for personal injuries. Similarly, Pennsylvania statutes hold local government agencies like townships and cities liable for road conditions which the agencies have "actual knowledge." Actual knowledge can be proved by the minutes of public meetings or by the statements of city or township officials.

PennDOT was successful in getting the motorcyclist's case dismissed at the trial level—the agency claimed that the senator's letter was too general to have given written notice of pothole problems, as it did not even use the word "pothole."

But on appeal, the Pennsylvania Commonwealth Court disagreed, noting that the letter was detailed, identi-

fied the road adequately, and mentioned that "patchwork" had created dangerous conditions. Because the letter had been sent in adequate time for PennDOT to investigate and repair the pothole, the court found that the motorcyclist was entitled to take her claim to against the state trial.

In a previous case, the Commonwealth Court had found that written notice to the state cannot consist of a telephone message taken down by a state employee, however detailed the message may have been. State and local governments cannot keep all roads in perfect condition at all times; but written or actual notice of particular dangerous conditions can make state and local government liable to injured parties.

Police Powers of Local Governments

States have certain powers to enact regulations governing the people and property contained within their borders. The use of these powers, however, is conditioned on certain restrictions. Among these stipulations:

1. Such powers cannot infringe upon or conflict with the powers of Congress in its regulations of commerce; and
2. Such powers cannot deny the rights secured by the United States Constitution.

Cities, boroughs and towns, as well as counties are political subdivisions and as such are considered extensions of the State through the legislation and home rules creating political subdivisions. As a result of their extension of the state, political subdivisions have the right to enact particular regulations governing people within the subdivision. Generally speaking, this power permits the various public entities to police the health, safety and welfare of its inhabitants. This police power includes, but is not limited to, the following:

1. Protection of property;

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2. Zoning of property;
 3. Regulations of buildings, signs, billboards, etc.;
 4. Fire prevention and protection;
 5. Animal use and keeping;
 6. Nuisance bans; and
 7. Garbage removal.

Municipal codes empower municipalities to exercise their police power not only according to certain allowances of authority, but also in accordance with a general welfare clause or a general grant of powers clause. The assignment of the police power to municipalities through a general welfare clause does not mean municipalities have unrestrained police power or even an equivalent degree of police power as the Commonwealth of Pennsylvania.

Like the states, from which they derive their police powers, local public entities have similar and different constraints. For instance, local governments need to take into account the substantive due process rights of its citizens when dealing with the life and property of the person in question. In Gamobone v. Commonwealth, 375 Pa. 547, 101 A.2d 634 (1954), the Pennsylvania Supreme Court found laws that were “unreasonable, unduly oppressive or patently beyond the necessities of the case” or that utilize methods lacking a “real and substantial relation to the ob-

ject sought to be attained” are prohibited by substantive due process. In addition, the issue in question must be something particularly relative to the general health, safety, morals or welfare of the public.

Moreover, the application of police powers to a matter is bound to the municipal function of the body so choosing to exercise its police powers. For example, the enactment and regulation of zoning ordinances within the borders of a municipality is restricted to the Zoning Board for that particular municipality. Likewise, the police powers are bound to the local interests and affairs of a particular political subdivision; even if there is a need for widespread application throughout the State, these are restricted to the State itself to enact.

Regardless of whether the government is local or state, police power is assumed to be in line with the Constitution. Thus, any challenger to the local government’s usage of police power has the burden of proving such a use was capricious, unreasonable and separate from the public safety, health, morals or general welfare. Basically, the courts will not analyze the prudence employed by the government in its decision-making of the rule, nor will the courts replace their judgment as to whether the best measures were taken in obtaining the preferred result. Therefore, the challenger must prove to the court that such a statute, ordinance or regulation was not effectuated for a valid police power concern and that such a rule is executed unreasonably and indiscriminately.
