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THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR

Council Agenda
Item No. VIII. L. 1&2.
2/25/92

TO: Mayor and Council

FROM: James G. Hamill
Municipal Counselor

Denied
RE: James L. Allsman
11801 N. Victoria Drive
Oklahoma City, Ok 73120
Ward 5
\$1,235.00
Recommended for DENIAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above referenced claimant wherein it is alleged that claimant's property was damaged at 11801 N. Victoria Drive on August 28, 1991 due to flooding from a water line break. Claimant alleges damages of \$1,235.00 for painting several outside areas of his property. The amount is supported by proper documentation.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: (1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 714 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. Id. Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." Id. (Citations omitted) "Proximate cause" is also a synonym for "legal cause." Black's Law Dictionary, 804 (5th Ed. 1979). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." Gaines v. Providence Apartments, 750 P.2d 125, 126-27 (Okla. 1987) (Citations omitted).

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As a general rule a municipality is liable for damages resulting from defects in the water lines or appurtenances thereto, if, after notice of the same, such defects are not corrected within a reasonable time, and damages result to the claimant during the interim period. City of Muskogee v. Turner 98 P.2d 1095.

This office is in receipt of a report from Mike Meeh of the Water and Wastewater Department. The report indicates that a water main break did occur at the subject location. The subject location was flooded due to the break.

This office is also in receipt of a report from Randy Harris of the Water and Wastewater Department. The report indicates that there was no prior notice of any defects in the water main serving claimant's property.

It appears from the above information and applicable law that there was insufficient notice of prior problems with the subject line to establish The City's liability. Without prior notice, The City cannot assume liability for the claimant's damages. Therefore, it is the opinion of this office that this claim should be denied, and we so recommend.

CR

0229
4291

Denied

Carl Carbin
1009 N.E. 34th, #1242
Oklahoma City, Ok 73111
Ward 7
\$150.00
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-named claimant which alleges that claimant's hot water heaters in the basement of a house at 1009 N.E. 21st were damaged on September 10, 1991, at 10:00 p.m., due to a sewer backup. Claimant seeks recovery of \$150.00 for costs of repairing and cleaning the hot water heaters. This amount is supported by proper documentation.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

For the tort of negligence (where the wrong is not willful or intentional) the essential elements necessary for recovery are (1) the existence of a duty on the part of the defendant to protect the plaintiff from injury, (2) the failure to perform that duty, and (3) an injury to the plaintiff resulting proximately from such failure. Connelly v. Jennings, 252 P.2d 133, 136 (Okla. 1952), cert. denied, 345 U.S. 921.

In order for a party to be liable for a negligent act, the plaintiff has to prove that it was "more probable that the injury came in whole or in part from the defendant's negligence than from any other cause." Croissant v. Horner, 378 P.2d 760, 761 (Okla. 1963).

This office received a report from Randy Harris of the Water and Wastewater Utilities Division which states:

"Records indicate there was not a confirmed sewer backup as alleged by the claimant."

Claimant alleges that the damage was caused by a sewer backup due to heavy rains. Yet, weather reports from the National Weather Service give no evidence of any rainfall for either September 9th or 10th.

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The Supreme Court of Oklahoma has stated that "when the evidence is conflicting, and different minds might reasonably draw different conclusions therefrom the question of preliminary negligence must be determined by [the jury]." Kansas City Southern Ry. Co. v. Marrow, 326 P.2d 817, 820 (Okla. 1958).

It appears from the above facts and applicable law that there is conflicting evidence, from which different persons might draw different conclusions from the disputed facts. If the Council believes, as a matter of fact, that The City negligently damaged claimant's property then the Council should approve this claim. However, in accordance with Croisant v. Horner and Kansas City Ry. Co. v. Marrow, it is the recommendation of this office that this claim be denied, and we so recommend.

JF

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Def. 3/17/92

Fred Jones Lincoln Mercury
c/o Dennis Box, Attorney at Law
525 Colcord Drive
OKC, OK 73102
Ward 6 (Location of Damage)
\$2,081.40
Recommended for DENIAL

AGENDA CLAIM # c

This claim was deferred from the Council docket of February 11, 1992. This office is in receipt of a claim from the above-named claimant, wherein it is alleged that on or about the morning of September 16, 1991, following a heavy rain, at the location of 501 North Walker, claimant discovered a manhole cover inside claimant's showroom facility amidst broken glass. Claimant alleges that the manhole cover came from the street in front of the building and that the damage was caused by the impact of the cover with the window. The claimant indicates that The City was negligent in its performance of its proprietary function of street maintenance. Damages are alleged in the amount of \$2,081.40, which covers the cost of replacing the window. This amount is supported by proper documentation.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

Okla. Stat. Tit. 51, §153 (1981 and Supp. 1989).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: (1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 714 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. Id. Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." Id. (Citations omitted) "Proximate cause" is also a synonym for "legal cause." Black's Law Dictionary, 804 (5th Ed. 1979).

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To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." Gaines v. Providence Apartments, 750 P.2d 125, 126-27 (Okla. 1987) (Citations omitted).

A municipality has a duty to maintain its streets, sidewalks, and areas adjacent thereto in a reasonably safe condition for travel by those using them in a proper manner. Evans v. City of Eufaula, 527 P.2d 329 (Okla. 1974).

Specifically, the Supreme Court of Oklahoma has held that:

A municipal corporation has the duty to use ordinary care in keeping its streets in a reasonably safe condition for ordinary mode of travel, and if it fails to do so, it is guilty of negligence rendering it liable for resulting injury to one exercising due care to avoid injury.

A city need not have actual notice of the condition of its streets in order to be liable for injuries resulting from defective condition of its streets, but it is sufficient that the defective condition has existed for such a period of time that the city, by use of ordinary care, could have discovered it. City of Tulsa v. Macura, 100 P.2d 269, 270 (Okla. 1940). Also see Walker v. Reeves, 233 P.2d 307, 308 (Okla. 1951), and Rider v. City of Norman, 476 P.2d 312 (Okla. 1970).

There is no established rule as to the precise length of time a defect must have continued to impart notice to the City. Several factors should be considered.

The following factors are considered in determining what length of time will impute notice: the place where the defect is, that is, whether in a business or resident section or whether in a thickly settled or sparsely populated district; the nature of the defect, that is, whether patent or latent; and the apparent danger, whether very dangerous as apparent to everyone or merely a possible but not probable cause of danger. E. MCQUILLIN, The Law of Municipal Corporations, 3d ed., §54.110.

Thus, the determination of the length of time a defect must exist to impute notice to a municipality is governed by the circumstances of each case.

This office has received reports from both Water and Wastewater Utilities and Street Maintenance regarding this incident. Neither department had prior notice of a problem at this location.

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It appears from the facts that The City had no notice of the circumstances upon which claimant bases their allegations. Based on the law as set forth in City of Tulsa v. Macura, Walker v. Reeves, and Rider v. City of Norman, it is the opinion of this office that this claim should be denied, and we so recommend.

MHS

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Denial

Betty Lomheim
12512 S.W. 27
Yukon, OK 73099
Ward 6 (Location of Occurrence)
\$1,457.49
Recommended for DENIAL

AGENDA CLAIM # d

This claim was deferred from the Council docket of 2-11-92. This office acknowledges receipt of a claim from the above-referenced claimant, wherein it is alleged that claimant's vehicle was damaged when claimant ran over a curb on August 28, 1991, at the 1300 block of Linwood. Claimant alleges that the curb was improperly located without warning. Claimant alleges that the pavement was painted white but that no warning signs were placed. Claimant alleges damages in the amount of \$1,457.49 for damage to the vehicle. The amount is supported by proper documentation.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

Okla. Stat. Tit. 51, §153 (1981 and Supp. 1989).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: (1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 714 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. Id. Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." Id. (Citations omitted) "Proximate cause" is also a synonym for "legal cause." Black's Law Dictionary, 804 (5th Ed. 1979). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." Gaines v. Providence Apartments, 750 P.2d 125, 126-27 (Okla. 1987) (Citations omitted).

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Section 155(15) of the Governmental Tort Claims Act provides:

The state or a political subdivision shall not be liable if a loss or claim results from:

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

Okla. Stat. Tit. 51, §155(15) (1981 & Supp. 1989) (Emphasis added).

This office is in receipt of a report from Marty Tucker of Traffic Management. The report indicates he received a call from a woman who stated that she had an accident at the subject location. Tucker estimates that he received this call during the first week of September, 1991. After investigating the site, Tucker issued a work order.

This office is in receipt of a report from Jerry Stair of Traffic Operations. The report indicates that a warning sign and chevrons were installed on September 11, 1991. The subject location involves a fork in the road.

This office is in receipt of a report from the Oklahoma City Police Department Records Division. The report indicates that the Oklahoma City Police Department has no record of the subject occurrence.

Based upon the above facts and the applicable Oklahoma law, specifically, the Governmental Tort Claims exemption regarding the initial placement of warning signs and reasonable time within which to repair, it is the opinion of this office that this claim be denied, and we so recommend.

CR

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Denied
Judy Purvis
1212 N.W. 105 Terrace
Oklahoma City, OK 73114
Ward 8
\$24.00
Recommended for DENIAL

AGENDA CLAIM # e

This office is in receipt of a claim from the above-referenced claimant wherein it is alleged that on June 25, 1991 at 1212 N.W. 105 Terrace, City Sanitation workers damaged claimant's trash cans. Claimant alleges damages in the amount of \$24.00 to replace the containers. This amount is supported by proper documentation.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

Okla. Stat. Tit. 51, §153 (1981 and Supp. 1989).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: (1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 714 P.2d 467, 470 (Okla. 1987) (citations omitted).

In order for a party to be liable for a negligent act, the plaintiff has to prove that it was "more probable that the injury came in whole or in part from the defendant's negligence than from any other cause." Croissant v. Horner, 378 P.2d 760, 761 (Okla. 1963).

This office is in receipt of a report from Joe Chappell of the Sanitation Division. The report indicates that research of the Division's records and call-in complaints and interviews with the crew revealed no information on the subject claim.

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The Supreme Court of Oklahoma has stated that "when evidence is conflicting and different minds might easily draw different conclusions therefrom the question of preliminary negligent must be determined by [the jury]." Kansas City Southern Railway v. Marrow, 326 P.2d 817, 820 (Okla. 1958).

It appears from the above facts and applicable law it appears that there is conflicting evidence, from which different persons might draw different conclusions from the disputed facts. If the Council believes, as a matter of fact, that the City employees negligently damaged claimant's property then the Council should approve this claim. However, in accordance with Kansas City Ry. Co. v. Marrow, it is the recommendation of this office that this claim be denied, and we so recommend.

CR

0229
4330

Denied
Thelma Rex
8324 S. Langley
Chicago, ILL 60619
Ward 7 (Location of Damage)
\$27,350
Recommended for DENIAL

AGENDA CLAIM # f

This claim was deferred from the Council docket of February 11, 1992. This office is in receipt of a claim from the above-referenced claimant, wherein it is alleged that The City wrongfully demolished claimant's property located at 1117 N.E. 38th Street, on October 8, 1991. Claimant is alleging damages in the amount of \$27,350 for the cost of replacing the structure and contents. The amount is not supported by the proper documentation.

Title 11, Section 22-112 of the Oklahoma Statutes provides:

A municipal governing body may cause dilapidated buildings within the municipal limits to be torn down and removed in accordance with the provisions of this section.

1. At least fifteen (15) days' notice that a building is to be torn down or removed shall be given to the owner of the property before the governing body holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition, a copy of said notice shall be sent by certified mail with return receipt requested to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. However, if neither the property owner nor mortgage holder can be located, notice may given by publication, as defined in Section 1-102 of this title. Such notice may be published once not less than ten (10) days prior to any hearing or action by the municipality pursuant to the provisions of this section, or in the alternative, notice may be given by first-class mail to the property owner and mortgage holder.

2. A hearing may be held by the governing body to determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if said property creates a fire hazard which is dangerous to other property.

3. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefitted by the removal of such conditions, the governing body may cause the dilapidated building to be torn down and removed. The governing body shall fix reasonable dates for the commencement and completion of the work. The municipal clerk shall immediately file a notice of lien with the county clerk describing the property, the findings of the municipality at the hearing, and stating that the municipality claims a lien on said property for the destruction and removal costs.

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The agents of the municipality are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the municipality if the work is not performed by the property owner within dates fixed by the governing body.

4. The governing body shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings, including the cost of notice and mailing. The municipal clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment of such costs, by certified mail with return receipt requested to the property owner. In addition, a copy of said statement shall be mailed to any mortgage holder at the address provided for in paragraph 1 of this section. If a municipality dismantles or removes any dilapidated buildings, the cost to the property owner shall not exceed the actual cost of the labor, maintenance, and equipment required for the dismantling and removal of the dilapidated buildings. If dismantling and removal of the dilapidated buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder.

5. When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien, but if payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. Said costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. The cost and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. Said lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At any time prior to collection as provided for in this paragraph, the municipality may pursue any civil remedy for collection of the amount owing and interest thereon. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien.

6. The municipality may designate, by ordinance, an administrative officer or administrative body to carry out the duties of the governing body specified in this section. The property owner shall have the right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered.

7. For the purposes of this section, "dilapidated building" means a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that said structure is a hazard to the health, safety, or welfare of the general public. Owner means the owner of record as shown by the most current years tax rolls of the county treasurer.

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8. Nothing in the provisions of this section shall prevent the municipality from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public.

9. The officers, employees or agents of the municipality shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

10. The provisions of this act shall not apply to any property zoned and used for agricultural purposes.

Okla. Stat. Tit. 11, §22-112 (West Supp. 1991).

This office is in receipt of a report from Kay Buzzell of Neighborhood and Community Planning. The report indicates the following:

05-28-91	Property inspected.
06-07-91	Property posted with Notice of Hearing. Notices of Hearing mailed to record owner as shown at County (Thelma Rex, 1117 N.E. 38th) and mortgage holder (FNMA, Dallas)
06-10-91	Notice to record owner returned; no forwarding address.
06-18-91	Notice received by FNMA.
06-25-91	Council declares structure to be dilapidated and/or its removal.
06-28-91	Dilapidation Notice filed at County Registrar of Deeds.
10-08-91	Demolition proceeds.

It appears from the above facts and applicable law that proper notice of dilapidation was given. Therefore, it is the opinion of this office that this claim be denied, and we so recommend.

LC

0225
4373

Denied

Louis B. Jr. and Janet R. Whitesell
6413 Ann Arbor Terrace
OKC, OK 73132
Ward 1 (Location of Occurrence)
\$102.50
Recommended for DENIAL

AGENDA CLAIM # g

This office is in receipt of a claim from the above-named claimant, wherein it is alleged that on August 7, 1991, property at 2405 N.W. 11th, was mowed by The City. Claimants allege that notice was received by mail on July 31, 1991, and that this notice stated that they had until August 14, 1991, to mow their property. Claimants further allege that The City mowed the property on August 7, 1991. Damages are alleged in the amount of \$102.50, the amount they were billed by The City. This amount is supported by proper documentation.

Title 11, Section 22-111 of the Oklahoma Statutes provides:

Oklahoma law provides the following procedure for removal of tall grass and weeds by a municipality:

A. A municipal governing body may cause property within the municipal limits to be cleaned of trash and weeds to be cut or mowed in accordance with the following procedure:

1. At least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before the governing body holds a hearing or takes action. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property, as appropriate, and said notice shall further state that unless such work is performed within ten (10) days of the date of the notice the work shall be done by the municipality and a notice of lien shall be filed with the county clerk against the property for the costs due and owing the municipality. At the time of mailing of notice to the property owner, the municipality shall obtain a receipt of mailing from the postal service. However, if the property owner cannot be located within ten (10) days from the date of mailing by the municipal governing body, notice may be given by posting a copy of the notice on the property or by publication, as defined in Section 1-102 of this title, one time not less than ten (10) days prior to any hearing or action by the municipality.

Okla. Stat. Tit. 11, §22-111 (A)(1). (West 1978 and Supp. 1991).

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This office is in receipt of a report from B.J. Eans of Neighborhood and Community Planning. This report indicates that notice was posted on the property on July 19, 1991, and also sent to Louis B. Jr. and Janet R. Whitesell at 6413 Ann Arbor Terrace on July 22, 1991. The City obtained a receipt of mailing. The County Treasurer tax rolls list 6413 Ann Arbor Terrace as the address of the owner of the property in question. This notice indicated that the property would be mowed by The City if the nuisance was not abated on or before August 2, 1991. The property was then mowed on August 7, 1991.

This office also received from the claimants a copy of a notice of violation which gave them until August 14, 1991, to abate the property at 2405 N.W. 11th. In a telephone conversation, Mr. Eans stated that occasionally more than one notice will be sent to a citizen. For example, one notice might be the result of a citizen complaint and the second notice is a result of a request for a "neighborhood sweep" for overgrown property.

It appears that The City complied with all relevant statutes and proper notice was given to the claimants. Based on the above facts and the applicable Oklahoma law, it is the opinion of this office that this claim be denied, and we so recommend.

MW

0229
4305

Denied

Mary Joyce Williams
114 N. Harrison Ave.
Oklahoma City, OK 73104
Ward 7
\$75,000.00
Recommended for DENIAL

AGENDA CLAIM # h

This office is in receipt of a claim from the above-named claimant, wherein it is alleged that on October 7, 1991, at the "detoxification center", claimant was injured when the person in charge of the center shoved claimant backward, causing claimant to fall on the concrete floor. Damages are alleged in the amount of \$75,000.00, for injury to finger, head and back. Claimant has only provided medical bills totaling \$255.35 to support the claim for damages.

Section 153 of the Governmental Tort Claims Act provides:

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

Okla. Stat. Tit. 51, §153 (1981 and Supp. 1989).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: (1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 714 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. Id. Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." Id. (Citations omitted) "Proximate cause" is also a synonym for "legal cause." Black's Law Dictionary, 804 (5th Ed. 1979). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." Gaines v. Providence Apartments, 750 P.2d 125, 126-27 (Okla. 1987) (Citations omitted).

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Section 155(18) of The Governmental Tort Claims Act provides that The City is exempt from liability if a loss or claims results from an act or omission of an independent contractor or consultant of his employees, agents, subcontractors or suppliers or of a person other than an employee of the ... political subdivision at the time act or omission occurred.

This office in receipt of a report from the Oklahoma City Jail. The report indicates that the claimant was never in the jail.

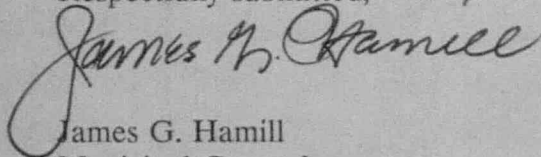
This office is also in receipt of a report from the Oklahoma City Metropolitan Alliance for Safer Cities. The Alliance is a nonprofit organization under contract to The City. The Alliance is referred to sometimes as the "Detox Center". The Alliance is used as a public inebriate alternative. It appears that the claimant was brought to the Alliance location by Oklahoma City Police for such an alternative program. The Alliance has provided the following report by the employee on duty regarding the subject incident:

The client was brought in at approximately 7:00 p.m., she was very intoxicated. After the officers had left she became very loud and disorderly yelling and arguing with the male clients, all the while insisting on staying in the desk area. When I instructed her to go to the females' area she became very angry, screaming that she would not because I could not tell her what she can and cannot do. I then tried to corral her into the female area. I almost had her there when she grabbed my shirt to try and pull me out of her way. I simply held my ground, she lost her grip and her balance. She fell to the floor hitting her head on the side of the corner post of one of the beds. She immediately stood up and started screaming that I shoved her into the bed and that she was going to sue me for it. She would not let me see if she was seriously injured. She was conscious and there was no blood that I could see. She stayed conscious for about three hours after the fall. I did not feel that she needed an ambulance so I did not call EMSA.

It appears from the evidence that the alleged occurrence involved an independent contractor and its employees. Therefore, based upon the above evidence and the applicable Oklahoma law it is the opinion of this office that this claim be denied and we so recommend.

CR

Respectfully submitted,



James G. Hamill
Municipal Counselor

JGH:MHS:CR:JF:MW:cmt