

## Torts - Public Duty

In all negligence actions, the threshold determination is whether the defendant owes the plaintiff a duty of care. The existence of a duty is generally a question of law, and must be established by the plaintiff. *Tincani v. Inland Empire*, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). The courts of this State have long recognized the distinction between the duties of government which run to the public generally for which there is no recovery in tort, and those which run to individuals who may recover in tort for their breach. *See, e.g., Baerlein v. State*, 92 Wn.2d 229, 595 P.2d 930 (1979); *Halvorson v. Dahl*, 89 Wn.2d 673, 574 P.2d 1190 (1978). Under this general rule, known as the public duty doctrine, no liability may be imposed upon a governmental entity unless the plaintiff can show that “the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general (i.e., a duty to all is a duty to no one).” *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988) (quoting *J&B Dev. Co. v. King County*, 100 Wn.2d 299, 304, 669 P.2d 468 (1983), *overruled on other grounds by Taylor and Meaney v. Dodd*, 111 Wn.2d 174, 180, 759 P.2d 455 (1988)); *Bratton v. Welp*, 145 Wn.2d 572, 576, 39 P.3d 959 (2002); *Goggin v. Seattle*, 48 Wn.2d 894, 297 P.2d 602 (1956) (no municipal liability for failure to enforce ordinances).

Without this doctrine the legislature would be put to an extreme choice whenever it considered measures to protect the public from the actions of third parties. It could either take no steps to provide protection to the public, or incur the substantial risk of indemnifying persons injured by third parties. If the public duty doctrine did not exist, the legislature would likely decline to adopt many programs designed to protect the public because of the inability to fund unlimited liability costs. The public duty doctrine allows government to provide a modicum of protection for the public in a wide range of subject areas by exercise of the police power without incurring the substantial risk of indemnifying persons injured by third parties.

There are four exceptions to the public duty doctrine, which allows a suit against a government entity for negligent conduct only if there is a duty owed to the individual, separate and apart from a duty to the public in general, (1) legislative intent, (2) failure to enforce, (3) the rescue doctrine, and (4) a special relationship; if an exception applies, an action may proceed against a governmental entity.

In a number of cases including *Chambers-Castanas v. King County*, 100 Wn.2d 275, 665 P.2d 457 (1983), the court addressed liability falling on cities where the legislative body may owe a duty of enforcement of City codes, ordinances or regulations to individuals rather than to the public at large. In that case, it was recognized that the legislative body of cities and other governmental agencies may declare a legislative intent or policy enunciating to whom the duty of enforcement is owed, and that policy may specify that the duty of enforcement is owed “to the public at large” rather than to individuals or specific members of the public.

An example of municipal code language that may be used to declare such an intent is as follows:

\_\_\_ .010 Duty of enforcement.

It is the intent of the city council that any duty of enforcement of any codes, ordinances or regulations of the city, or any part thereof, is owed to the public at large, and not to any

individual members of the public. The city council, further, intends to make no assurances or promises of protection thereby or enforcement thereof to any individual, and that no special relationship regarding enforcement of any code, ordinance or regulation shall exist with any individual which would set such individual apart from the general public. This provision applies to all prior codes, ordinances or regulations by ratification and to all subsequent codes, ordinances or regulations regardless of whether a separate duty of enforcement clause is included therein.

However, the rule in Washington is that governmental entities generally have a duty to exercise reasonable care in the maintenance of their public roads to ensure that they are reasonably safe for ordinary travel. *McCluskey v. Handorff-Sherman*, 125 Wn.2d 1, 6, 882 P.2d 157 (1994); *Boeing Co. v. State*, 89 Wn.2d 443, 446, 572 P.2d 8 (1978); *Provins v. Bevis*, 70 Wn.2d 131, 138, 422 P.2d 505 (1967); *Berglund v. Spokane County*, 4 Wn.2d 309, 313, 103 P.2d 355 (1940); *Keller v. City of Spokane*, 104 Wn. App. 545, 552, 17 P.3d 661 (2001) *affirmed by* 146 Wn.2d 237, 44 P.3d 845 (2002); *Bird v. Walton*, 69 Wn. App. 366, 368, 848 P.2d 1298 (1993). But the government is neither an insurer nor a guarantor of the safety of travelers on its roadways. *Provins*, 70 Wn.2d at 138. To establish a duty of care on the part of a governmental entity to maintain its roads in a condition that is reasonably safe for ordinary travel, a plaintiff must meet a two-part test: notice to the governmental agency of the dangerous condition it did not create and a reasonable opportunity to correct it. *Wright v. City of Kennewick*, 62 Wn.2d 163, 167, 381 P.2d 620 (1963); *Bird*, 69 Wn. App. at 368.

In Washington, state law requires that a claim be filed in advance of a tort lawsuit against a governmental entity.

RCW 4.96.020 Tortious conduct of local governmental entities and their agents-- Claims-- Presentment and filing—Contents.

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(4) No action shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

However, in *Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d. 221, 86 P.3d 1166 (2004), the court held that the statutory 60-day tolling provision for tort claims against public agencies simply added 60 days to applicable three-year limitations period. That conceivably means that an additional sixty days is added to the statute of limitations for EVERY case where the claim statute applies.