



Ready for the Defense

To have an inspection system or not to have an inspection system: that is the question

This month's column will discuss the question: Should a local public entity have an inspection system for its streets, roads, sidewalks or other facilities?

This question: to have an inspection system or not to have an inspection system arises frequently. For example, a complaint against a township may charge that the township negligently failed to inspect its road for potholes. Or, a complaint against a county may charge that the county negligently failed to follow its own inspection system and discover a vandalized stop sign.

One of the most frequently asked questions we encounter in speaking about Tort Immunity Act defenses to local public entity organizations is: "If we establish an inspection system or policy, can local government be liable if it fails to follow its own policy or inspection system?"

The answer to the question is two-fold:

- (1) There is no duty under Illinois law to establish an inspection system for roads and streets and sidewalks. No statute, code or ordinance or common law/case law rule mandates an inspection system. The decision to establish, or not establish, an inspection system or policy involves a judgment call protected by § 2-201, discretionary immunity of the Tort Immunity Act (745 ILCS 10/2-201).
- (2) If an inspection system is established, there can be no liability for failure to follow or comply with such inspection system. A local public entity is not liable (is not negligent) in failing to follow or comply with its own internal poli-

cies or procedures or guidelines, unless the law (a statute, code, ordinance or case law) mandates such.

Is There a Duty To Have an Inspection System — Does The Law Require It?

For a local public entity to be liable for an accident and injuries occurring on its streets or roads or sidewalks, it must be negligent. Negligence requires proof of four elements: (1) a duty imposed by law (a statute imposes a duty to stop for "stop signs"); (2) a breach of that duty by the defendant (driver runs the "stop sign"); (3) injuries or damages (driver collides with another car injuring the occupants); and (4) proximate causation (driver's running "stop sign" caused the injuries).

Does any Illinois statute or local ordinance or code require a local public entity to "establish and follow an inspection system for its streets or sidewalks"? None exists.

Illustrative of a duty imposed by law is *Snyder v. Curran Township*, 167 Ill.2d 466, 657 N.E.2d 988 (1995) (township had duty to place curve warning sign on right-hand shoulder because state statute required township to conform to the Uniform Manual (MUTCD) and the Manual stated such warning signs shall be placed on the right-hand side). We all know *Snyder* and the duty imposed.

Illustrative of no duty imposed by law and, therefore, a judgment call, is *Koltes v. St. Charles Park District*, 293 Ill.App.3d 171, 687 N.E.2d 543 (2nd Dist. 1997) (Park District had no duty to erect a fence around the women's tee area to prevent a golfer standing on the tee from being hit by an errant golf ball because no statute, code, ordinance or case law rule requiring such and Park District could exercise its discretion to fence or not fence the tee area).

The Appellate Court in *Koltes* explained that the Park District had no duty to fence and could exercise its discretion to fence, or not fence, the tee area:

Rahn Equipment Company

2400 Georgetown Rd.,
Danville, IL 61832

800-252-3159 or Fax 217-431-1237
Web Site www.soltec.net/~rahnequi



Trucks Built The Way You Want

However, the plaintiff has not cited any case law, statute, or regulation that imposes such a duty upon the defendant to provide fencing or warnings for the area in question. In addition, the plaintiff has not shown that there was a prescribed method that was to be followed during the design or construction of the golf course in question. As these decisions were not determined in a prescribed manner or in obedience to the mandate of legal authority, they were left to the discretion and judgment of the defendant's employees. ... Accordingly, we conclude that the trial court properly found that the defendant's actions were discretionary. (293 Ill.App.3d at 176, 687 N.E.2d at 547). (Emphasis added.)

So, too, with the discretion of a local public entity to have, or not have, a "street, road or sidewalk inspection system or policy." There is no duty, no law requiring such.

Discretionary Immunity for Failure to Establish Inspection System

Since there is no legal duty to establish a "street, road or sidewalk inspection system," the failure to do so is protected by § 2-201, discretionary immunity, of the Tort Immunity Act.

§ 2-201 discretionary immunity under the Tort Immunity Act provides as follows:

2-201. Determination of Policy or Exercise of Discretion

§ 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion. (745 ILCS 10/2-201).

The Supreme Court in *Harinek v. 161 No. Clark Street Ltd. Partnership*, 181 Ill.2d 335, 692 N.E.2d

1177 (1998), established the two-pronged test for the applicability of § 2-201 judgment call or discretionary immunity under the Tort Immunity Act:

- (1) A policy determination is necessary — a policy determination requires a balancing amongst competing interests: available manpower and time, available finances, equipment and materials/resources, what is better and safer for the public: money spent on inspections or money spent on new roads or signs and similar benefits.
- (2) An exercise of judgment or discretion — a determination that an inspection system will be established and the terms and details of such inspection system in terms of manpower, time allocated, frequency and detail of such inspections, standards to be employed in such inspection to decide if and when repairs or replacement are needed.

Therefore, if a local public entity does not have an inspection system, it cannot be legally liable for an accident on its road because it had no inspection system or failed to inspect its road.

(NOTE: The fact there can be no liability for failure to have an inspection system or failure to inspect a road or sidewalk does not mean there is no liability if the road or sidewalk is defective or negligently maintained.)

Is There Liability if the Local Public Entity has an Inspection System & Fails to Follow It?

The general rule is that there can be no liability if a local public entity has a policy or procedure or guidelines, such as a "street, road or sidewalk inspection system," but does not follow it.

That is, if there is no duty under the law to have a "street, road or sidewalk inspection system" in the first place, instituting such an inspection system and then failing to follow it will not constitute negligence and result in liability. A local public entity's own internal policies and procedures do not impose a duty.

An example which helps illustrate the fact that

liability will not result from establishing an "inspection system" or "internal policies and procedures" is the *Fillpot* case. (*Fillpot v. Midway Airlines Inc.*, 261 Ill.App.3d 237, 633 N.E.2d 237 (1st Dist. 1994) (Where airline owed no legal duty to remove ice and snow, internal policy manual requiring the clearing of walkways of ice and snow did not create such a duty)).

In *Fillpot v. Midway Airlines*

Tire Chains
1-800-435-3450



**Galva Iron
& Metal Co.**

Inc., 261 Ill.App.3d 237, 633 N.E.2d 237 (1st Dist. 1994), Judith Fillpot, alighting from a Midway Airlines plane, slipped and fell on ice and snow on the runway as she walked to the terminal at Willard Airport in Champaign. She sued Midway contending that, as a passenger, she was owed the highest degree of care and that meant Midway should have removed the natural accumulation of ice and snow or salted it or put abrasives on it, as was Midway's own internal policy or procedure. The Appellate Court found Midway was not liable as it had no duty to remove natural accumulations of ice and snow and that Plaintiff Fillpot cited no authority for the proposition that Midway could be liable for failure to follow its own policy manual.

The Supreme Court in *Rhodes v. Illinois Central Gulf Railroad*, 172 Ill.2d 213, 665 N.E.2d 1260 (1996), stated the rule as follows: "... where the law does not impose a duty, one will not generally be created by a defendant's rule or internal guidelines" (172 Ill.2d at 238, 665 N.E.2d at 1272).

Therefore, establishing a "street, road or sidewalk

inspection system" which is not complied with will not result in liability — it is not negligence.

Conclusion

The establishment of a "street, road or sidewalk inspection system" can be beneficial and its establishment will not result in legal liability — even when not followed. It is a judgment call protected by no duty, in the first place, and discretionary immunity, in the second place.

Whether to establish, or not establish, such "inspection system" will involve a policy determination for each local public entity. Some may find an "inspection system" is the best use of finances, manpower, equipment, materials and time constraints. Others may find the best use of its finances, manpower, equipment, materials and time constraints is in another area — *e.g.*, resurfacing roads, replacing sidewalks, installing more or new signs.

In short, if otherwise beneficial, a "streets, roads or sidewalk inspection system" should not be foregone out of fear of liability.

Official Changes

Editor's Note: Each month, we will publish changes in the ranks of township officials that have been sent to our office. If you have a copy of the 2005-2007 Directory of Illinois Township Officials, you might want to note these changes for your records. We hope townships will continue to notify us when changes are made in the ranks of officials.

| County | Township | Office | Name | Address | City | Zip | Replaces |
|-----------|------------|--------|---------------------|-------------------------|---------------|-------|-------------------|
| Boone | Belvidere | CL | Judy Schabacker | 9077 McKinley | Belvidere | 61008 | Bernie Bahling |
| Cook | Riverside | TT | Matthew J. Decosola | 27 Riverside Rd. | Riverside | 60546 | vacant |
| Fulton | Putman | HC | Anthony Fahrenbruch | 15148 Mishi Nama | Cuba | 61427 | John Downing |
| Grundy | Braceville | CL | Penny Wills | 1720 S. Carbon Hill Rd. | Coal City | 60416 | Carolyn Van Arkel |
| Kankakee | Manteno | TT | Dave LeSage | 1950 E. Amberstone Rd. | Manteno | 60950 | Steve Curl |
| Logan | Chester | CL | Marilyn Weingarz | 1424 1307th St. | Lincoln | 62656 | Laura Slayton |
| Macon | Illini | TT | Sue Cundall | 6980 Glasgow Rd. | Warrensburg | 62573 | Ona Fulscher |
| McHenry | Alden | AS | Alan Weaver | 8515 Alden Rd. | Harvard | 60033 | Lorens West |
| Sangamon | Williams | TT | Alan Justice | 50 Northridge | Sherman | 62684 | Jim Newman |
| Sangamon | Williams | AS | Dale Halford | 317 E. Main | Williamsville | 62693 | Thomas Bumgardner |
| Shelby | Dry Point | HC | Brent Reynolds | RR 2 Box 228T | Beecher City | 62414 | vacant |
| Vermilion | Elwood | TT | Eric Haase | PO Box 252 | Ridge Farm | 61870 | Dustin Hinchman |
| Will | Lockport | AS | Debbi Mason | 222 E. 9th St. | Lockport | 60441 | Sharon Morelli |

Coming up in next month's *Township Perspective*:

Join us as we begin our look back over TOI's 100 years!



Ruff Brothers Grain Company

3046 CR 1950N, Minonk, IL 61760
815-796-4254 or 309-432-2333



McCabe Bros. Tool Rental

411 N. Wright • Champaign, IL 61824-0562 • 217-352-5620

Hours: Dec-Feb M-F 7:30 am-5:30 pm, Sat. 7:30 am-4:30 pm
March-Nov M-Sat. 7:30 am-6 pm