



## Tort Liability for Unsafe and Defective Streets

---

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](https://www.mtas.tennessee.edu)

Table of Contents

Tort Liability for Unsafe and Defective Streets.....	3
--	---

## Tort Liability for Unsafe and Defective Streets

**Reference Number:** MTAS-715

Tennessee municipalities are liable under the Tennessee Governmental Tort Liability Act when they have actual or constructive knowledge of a defective, unsafe or dangerous condition on a street or highway "owned and controlled" by them. T.C.A. § 29-20-203. [Also see *Swafford v. City of Chattanooga*, 743 S.W.2d 174 (Tenn. Ct. App. 1987); *Baker v. Seal*, 694 S.W.2d 948 (Tenn. Ct. App. 1984); *Bryant v. Jefferson City*, 701 S.W.2d 626 (Tenn. Ct. App. 1985); *Fretwell v. Chaffin*, 652 S.W.2d 948 (Tenn. Ct. App. 1984); *Johnson v. EMPE, Inc.*, 837 S.W.2d 62 (Tenn. Ct. App. 1992); *Dailey v. Bateman*, 937 S.W. 2d 927 (1996), appeal denied.] Whether a condition of a governmentally-controlled street, outlet, sidewalk or highway is defective, unsafe or dangerous for purposes of removing governmental immunity is a question of fact. *Cornell v. State*, 118 S.W.3d 372 (2003).

The Tennessee Governmental Tort Liability Act does not define the dimensions of a "street" or "highway," except to say that it includes "traffic control devices thereon." However, a "street" and a "highway" within the meaning of T.C.A., Title 55, Chapter 8, which contains the state law for the rules of the road, are the same: "the entire width between the boundaries lines of every way when any part thereto is open to the use of the public for purposes of vehicular travel." T.C.A. §§ 55-8-101(21) and (60). Assuming that the definition of streets and highways is probably the same for the purposes of the Tennessee Governmental Tort Liability Act as it is for T.C.A., Title 55, Chapter 8, these definitions appear to include the entire street right-of-way.

In a 2006 decision (*Moseley v. McCanless*, 207 S.W.3d 247 (2006)), the Tennessee Court of Appeals removed Metropolitan Nashville's governmental immunity where the city had notice of numerous complaints over the years of overgrown vegetation and seven crashes at an intersection. A motorist was injured when a vehicle allegedly failed to stop at a stop sign and pulled out in front of him. Evidence showed that the stop sign was 33 feet from the intersection and the public was not warned about limited sight distance prior to accident at issue. Plaintiff lost hearing, memory, concentration, motor speed, and dexterity. Plaintiff was awarded \$293,200 in damages, for which Metropolitan Nashville was held 35 percent proportionally liable. Clearly, a city should take action once it has actual or constructive notice of a dangerous condition.

"Constructive notice" of dangerous condition on street or highway is information or knowledge of fact imputed by law to person, although he may not actually have knowledge, because he could have discovered fact by proper diligence and his situation cast upon him duty of inquiring into it. *Kirby v. Macon County*, 892 S.W.2d 403 S.W.2d 403 (1994).

Once a traffic control device is installed, failure to maintain it (or to complete its installation) may result in liability when a defective, unsafe, or dangerous condition is created. *Burgess v. Harley*, 934 S.W.2d 58 (1996), appeal denied.

Apparently there is no reported case under the Tennessee Governmental Tort Liability Act involving damage to a motorist or pedestrian arising from a condition on private property entirely outside the boundary of the street right-of-way. But governments have been held liable for damages arising from such conditions in a significant number of cases in the United States [3 A.L.R.2d 6; 98 A.L.R.3d 101; 45 A.L.R.3d 875; 3 A.L.R.4th 770; 60 A.L.R.4th 1249; 95 A.L.R.3d 778; 100 A.L.R.3d 510; 54 A.L.R.2d 1195; 52 A.L.R.2d 689; 57 A.L.R.4th 1217; 19 A.L.R.4th 532]. The same is true with respect to pedestrians in Tennessee in cases that pre-date the Tennessee Governmental Tort Liability Act, but that probably still apply to the application of that Act to streets as well as sidewalks.

For example, in *City of Knoxville v. Baker*, 150 S.W.2d 224 (Tenn. 1941), the question was whether the city was liable for injury to a pedestrian who voluntarily stepped off a sidewalk and tripped over a steel water cut-off rod projecting 18 inches above ground, but located 18-21 inches off the sidewalk and entirely upon private property. The Tennessee Supreme Court held the city not liable for the injury on the ground that when he was injured, the pedestrian was a voluntary trespasser on private property. But in doing so the Court rejected the city's argument that it was not liable because "its duty of keeping the street and sidewalk clear of obstructions extended only to the limits of the streets 'as made and used'; that it was under no duty to go upon private premises and remove the water cutoff or erect a barrier along the side of the walk to prevent persons from straying off the sidewalk and into a place of danger." The rule, declared the Court, is that if an obstruction or excavation be permitted which renders the alley, street, or highway unsafe or dangerous to persons or vehicles—whether it lie immediately in or on the alley, street, or highway, or so near it as to produce the danger to the passer at any time when he shall properly desire to use such highway,—it is such a nuisance as renders the corporation liable.... [Emphasis is mine.]....A party bound to keep a highway in repair and open for the passage of the public in a city by night or by day, certainly cannot be held to perform that duty by simply keeping the area of the highway free, while along its edge there is a well or excavation undisclosed, into which the passer, by an inadvertent step or an accidental stumble, might fall at any time. [Citing *Niblett v. Nashville*, 59 Tenn. 684, 12 Heisk. 684, 686-689, 27 Am. Rep. 755.] [At 226-227.] [Emphasis the courts.]

The Court pointed to 25 Am.Jur., p.184, Section 531, for support:

As a general rule, the duty of a municipal or quasi-municipal corporation or of a private individual to guard excavations or other dangerous places or hazards and the resulting liability for failure to do so exists only when such places are substantially adjoining the way, or in such close proximity thereto as to be dangerous, under ordinary circumstances, to travelers thereon who, using ordinary care, or, as it is sometimes stated, where they are so located that a person walking

on the highway might, by making a false step or movement, or be affected with a sudden giddiness, or by other accident, come into contact therewith. No definite rule can be laid down as to how far a dangerous place must be from the highway in order to cease to be in close proximity to it, but the question is a practical one, to be determined with regard to the circumstances of the particular case. In the determination of the question whether a defect or hazard is in such close proximity to the highway as to render traveling upon it unsafe, that proximity must be considered with reference to the highway 'as traveled and used for the public travel,' rather than as located, and the proper test for determining the necessity for a barrier or liability for injury, is whether the way would be dangerous to a traveler so using it rather than the distance from it of the dangerous object or place. The mere fact that the space adjoining the highway is unsafe for travel is not enough to impose such liability, and none exists, either on the part of the municipality or of the owner of the premises, if, in order to reach the danger, one must become an intruder or voluntary trespasser on the premises of another. The fact that the injury occurs on the adjoining premises does not necessarily preclude a recovery, however where the traveler is not a voluntary trespasser. Furthermore, if the traveler is forced to leave the highway in order to pass around an obstruction placed by the landowner, the latter is liable for injury resulting from a dangerous condition on his premises even though the condition was not in such close proximity to the highway as to render him liable under ordinary circumstances [At 226].

[Also see *Niblett v. Mayor of Nashville*, 59 Tenn. 684 (Tenn. 1874); *McHargue v. Newcomer & Co.*, 100 S.W. 700 (Tenn. 1906); *Chattanooga v. Evatt*, 14 Tenn. App. 474 (1932).]

As *City of Knoxville v. Baker* suggests, where a motorist suffers damage from an obstruction or an excavation entirely outside the street right-of-way, the question of the obstruction's or excavation's distance outside the street right-of-way is a practical one; there is no hard, fast rule. In that case the plaintiff was injured on private property when he voluntarily left a sidewalk of ample width and in good condition. However, reason dictates that generally, the nearer the excavation or other condition to the edge of the right-of-way in general, and to the traveled portion of the street in particular, the more likely it is that municipal liability will be found.

Many of the cases in which a municipality has been found liable for damages arising from motorists striking obstructions outside the boundaries of the street right-of-way involve dead end streets or sharp curves of which motorists were not warned as *they proceeded along the traveled portion of the roadway*, and other unusual conditions related to the nature and condition of the traveled portion of the roadway. [See *Chattanooga v. Evatt*, 14 Tenn. App. 474 (1932).] Generally, it appears that to recover damages for striking an obstruction entirely outside the street right-of-way, the motorist must show that a defect or unsafe condition in the traveled portion of the street itself caused him to strike the obstruction.

---

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

**Source URL (retrieved on 09/21/2021 - 4:34am):** <https://www.mtas.tennessee.edu/reference/tort-liability-unsafe-and-defective-streets>



Municipal Technical Advisory Service  
INSTITUTE for PUBLIC SERVICE