

Significant Statutory Provisions and Case Law Affecting Liability of Governmental Entities, Engineers, and Developers for Drainage

Local Governmental Entities

Tennessee Code Annotated, § 29-20-204

(a) Immunity from suit of a governmental entity is removed for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement owned and controlled by such governmental entity.

(b) Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive and/or actual notice to the governmental entity of such condition be alleged and proved

Lee v. City of Cleveland, 859 S.W.2d 347 (Tenn. App. 1993)

Complaint alleging that blockage in city sewer system caused sewage to back up into plaintiff's business failed to state a cause of action and was properly dismissed.

T.C.A. § 29-20-205

Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of:

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(3) the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;

(4) a failure to make an inspection, or by reason of making an inadequate inspection or negligent inspection of property;

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Case Law on Drainage

Webster v. Fleming and Frierson, 1841 WL 1804 (Tenn. 1841)

A riparian proprietor has a right to divert water of a stream from its natural channel, and use it higher or lower than the natural channel, provided he return the water to its natural channel before it leaves his land.

Mayor, Etc., of City of Chattanooga v. Reid, 53 S.W. 937 (Tenn. 1899)

It is a well-settled principle of law that a municipal corporation is not bound to build sewers, and that it is not responsible to a private citizen for failing to provide sewers in any part of its territory. The building of a public sewer by a municipal corporation is the exercise of a legislative discretion, and it is not responsible in a private action for its failure to exercise this discretion.

Where S. constructs a sewer on his lot, and creates a nuisance by the garbage and sewage thus conducted into the street, injuring the property of R., an adjoining lot owner, R. cannot recover of the city for the damage, because of its refusal to prevent it by constructing a sewer, or by abating it by proceedings against S. – a city not being bound to build sewers, and not being liable to an individual for its breach of duty to the public to abate a nuisance; but the remedy of R. is by prosecution of S. for creating and continuing the nuisance, or by civil action against him.

Tennessee Electric Power Co. v. Van Dodson, 1931 WL 1575 (Tenn. App. 1931)

Where a subterranean stream flows in a distinct, permanent, and well defined channel, it is governed by the same rules as apply to a natural watercourse on the surface. The owners of land beneath which it flows have the same rights in respect to it as riparian proprietors have with respect to a stream on the surface. The same is true with respect to large bodies of underground water located in well-defined strata. But all underground waters are presumed to be percolating. To rebut this presumption, the existence and course of a permanent channel must be clearly shown.

Johnson v. Kraft-Phenix Cheese Corporation, 94 S.W.2d 54 (Tenn. App. 1935)

Cheese manufacturer held not liable to riparian owner, on theory of nuisance or otherwise, for damages caused by discharge of refuse from cheese plant into city sewer that emptied into creek immediately above riparian owner's farm. It was city's duty to take care of and septinize sewage after it was deposited into the sewer system, and cheese manufacturer committed no wrong in putting its sewage into the system.

Slatten v. Mitchell, 124 S.W.2d 310 (Tenn. App. 1938)

The “common enemy” doctrine, according to which, broadly stated, each land owner may fight off surface water and dispose of it as best he can does not apply in Tennessee.

All lands are of necessity burdened with receiving and discharging all waters that flow from higher land. If the owner or occupier of lower lands impedes the natural flow and causes the higher lands to be flooded, he is responsible in damages for infringing the natural flow unless he has gained a right to impede the flow by contract, grant, or prescription.

If the owner of higher lands alters the natural flow and discharges it in a concentrated form and in unnatural quantities on land below, he will be responsible for damages to the possessor of the lower land.

Spencer v. O’Brien, 158 S.W.2d 445 (Tenn. App. 1941)

A riparian owner may not divert the flow of a stream to the property of other riparian owners, to the material damage of other riparian owners, but that rule was not applicable where riparian owner had not suffered damage by reason of the overflowing of her land because of the construction of a wall by the other riparian owner to confine water within the bed of a creek.

Dixon v. City of Nashville, 203 S.W.2d 178 (Tenn. App. 1946)

A city engaged in the construction and drainage of streets had no right to interfere with the natural drainage of surface water by deflecting it across gullies and concentrating it in a metal drain terminating in an alley to the injury of lower lying land.

A city may improve its property in any natural and ordinary way as long as there is no substantial change in the flow of surface water.

The fact that a drainage plan was adopted by the city engineer could not relieve city of liability for creating and maintaining a nuisance by deflecting surface water to the detriment of lower property owners.

Yates v. Metropolitan Government of Nashville and Davidson County, 451 S.W.2d 437 (Tenn. App. 1969)

Metro government could not be held liable for failure to fill up or remove ditches in a utility easement where there was no showing that the government actually created or permitted creation of the ditches.

Proper remedy for unlawful diversion of water onto plaintiff's property by the construction of the ditches was a suit against the owners of the property where the ditches were located to require abatement or diversion or to regrade and ditch their own property.

Miller v. City of Brentwood, 548 S.W.2d 878 (Tenn. App. 1975)

There was no liability for city for granting building permits and failing to restrain property owners to whom permits were granted from reducing water absorption and thereby causing flooding. There was also no liability for failure to provide adequate drainage facilities.

No right of action is recognized against a city for issuing a permit for construction in accordance with existing laws and regulations, and there is no authority for courts to enjoin issuance of a permit for the reason that it might result in a private injury.

The right of action if any of the plaintiffs is against the property owners who produced an unnatural amount of surface water.

Butts v. City of South Fulton, 565 S.W.2d 879 (Tenn. App. 1977)

Where property owner, in addition to damages to his land caused by flooding from road construction, had a right of action against city for inverse condemnation, these were adequate remedies and an injunction was not necessary.

Blackwell v. Butler, 582 S.W.2d 760 (Tenn. App. 1978)

A landowner, whether in country or city, has an easement for drainage of surface water in its natural flow over the land of a neighboring owner; and if the latter places an obstruction of any character upon his land that arrests this drainage and thereby causes injury to the former, an action lies for damages.

A man may build a dam across a stream on his own land, provided that thereby he does not appreciably diminish the amount of water which should naturally flow on

to the land of his neighbor below, or materially affect the continuity of flow.

Gregory v. Jenkins, 665 S.W.2d 397 (Tenn. App. 1983)

Owners of higher property were entitled to injunction requiring owners of lower property to remove dam.

Owners of higher property may not channelize natural flow of water so that it enters the property of lower owner with unnatural destructive force. Owners of higher property enjoined from placing grass clippings, pine needles, and other yard waste against chain link fence so that water is unnaturally channelized.

Brown v. City of Kingsport, 711 S.W.2d 607 (Tenn. App. 1986)

Upper riparian owners have a duty of care not to interfere with the natural surface water runoff that would expose others to an unreasonable risk of harm.

City's dumping of dirt on property of adjacent property owner was not a negligent act and landowner's spreading of dirt and creating a berm was an intervening act that produced flooding and damages sustained by plaintiff. Therefore, dumping of dirt by city was not a proximate cause of the of injury suffered by the plaintiff.

Standard of Care for Engineers

Martin v. Barge, Waggoner, Sumner and Cannon, 894 S.W.2d 750 (Tenn. App. 1994)

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.

Engineer was qualified to testify as expert on behalf of plaintiffs in action for negligence in performing engineering services, despite fact that engineer did not practice engineering within state and despite contention that he was not familiar with local customs dictated by unique natural conditions of the local environment. Engineer had become familiar with local requirements, documents, and specifications relevant to the issues raised, and had participated in soil explorations of the site in question, and his testimony would assist jury in determining the applicable standard of care.

Johnson v. EMPE, Inc., 837 S.W.2d 62 (Tenn. App. 1992)

An engineer or architect can avoid liability for construction accidents by contracting that they will play no role in supervising the construction work.

Project engineer was not liable where it was abundantly clear that he had no authority and no significant role in supervising the construction work and he was not charged with negligence in preparing the plans and specifications.