



Oklahoma Conservation Commission

District Directors' Responsibilities:

A 10-Minute Guide Series

This is one in a continuing series of informational/discussion topics designed to help conservation district directors become more informed and knowledgeable about their responsibilities. It is suggested that board members review these guides before a board meeting and then have a ten-minute discussion on them at a meeting.

Guide No. 25 - Tort Claims

Since conservation districts can be subject to "Tort Claims" it is important that district directors know what a Tort Claim is and how a district might be affected by such a claim. Since this is a legal matter, all the rules and definitions can't be put into this guide, but a source for more details on the subject is provided.

What is a Tort Claim?

Tort law is a branch of civil law that is concerned with civil wrongs, but not contract actions. Tort law imposes the duty to act with caution when it is possible to injure another or cause injury to another's property. This law requires all people to act reasonably when conducting their lives.

A tort is best defined as a civil wrong which the victim seeks remedy for, in the form of some kind of damages.

An example of a tort claim that could be filed against a conservation district might be: a district employee while inspecting a flood control dam on private property drives a vehicle over tall grass and the catalytic converter sets the grass on fire. The fire destroys a barn and some round bales of hay. The landowner could file a tort claim for damages.

Types of Damages

Two types of damages may be recovered in a civil tort suit:

- ◆ **Compensatory Damages** are awarded to cover the actual monetary loss suffered by the plaintiff, to make them whole, usually paying to repair or restore property damages. If damages were personal, then compensatory damages would also cover medical bills, lost wages, pain and suffering and cover an estimated loss of future earnings.
- ◆ **Punitive Damages** are often awarded where compensatory damages are deemed an inadequate remedy. Punitive damages are intended to punish, reform, or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff.

Who is Considered an Employee?

A conservation district is considered a political subdivision of government and under the Tort Law, an employee is any person who is authorized to act in behalf of the district. This includes all elected and appointed board members as well as employees whether permanent or temporary, full-time or part-time, with or without compensation.

Presentation of Claim

Any person having a claim against a political subdivision must present it within one year of the date the loss occurs. The claim must be in writing.

A person may not initiate a suit against a political subdivision unless the claim has been denied in whole or part. A political subdivision, after conferring with authorized legal counsel, may settle or defend against a claim or suit brought against it or its employees under this act.

Types of Torts

Intentional - Involves the intentional acts of the defendant in bringing some harm to the plaintiff.

Negligent - The doing of something which a reasonable prudent person would not do, or the failure to do something which a reasonable prudent person would do under the circumstances.

Strict liability - Legal responsibility for injuries sustained by or as a result of someone's conduct, whether or not they used reasonable care and regardless of their state of mind. (Product liability, ultrahazardous activities, care of animals, and other statutory offenses fall in this category).

Scope of Employment

The Tort Claims Act states that a political subdivision (such as a conservation district) shall be liable for loss resulting from its torts or the torts of its employees **acting within the scope of their employment** subject to this act and only where the state or political subdivision would be liable for money damages under the laws of the state.

The state or 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 employment.

Scope of employment means performance by an employee acting in good faith within the duties of the employee's office or employment or tasks lawfully assigned by a competent authority, including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud.

A political subdivision shall have the right to recover from an employee for any claim or action under this act or any other claim or action any payments made by it for any judgement or settlement, and costs and fees by or on behalf of an employee's defense, if it is shown:

- ◆ That the conduct of the employee which gave rise to the claim or action was outside the scope of employment
- ◆ The employee failed to cooperate in good faith in the defense of the claim or action.

Additional Resources:

A power point presentation on Tort Claims is available on the Oklahoma Conservation Commission website. There is a link to this presentation provided in the listing of 10-Minute Guides on the website.

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June 2009*