

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

DENIED

Council Agenda
Item No. XI. P
4/22/2025

TO: Mayor and Council

FROM: Kenneth Jordan
Municipal Counselor

Tracy Burroughs
724 NW 198th Street
Edmond, OK 73012
Ward 8
\$3,047.74
Recommended for DENIAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on March 12, 2025, when it struck a pothole while traveling eastbound on I-240 near the I-35 overpass in Oklahoma City. Damages are alleged in the amount of \$3,047.74, the cost of a replacement alloy wheel, a replacement tire, vehicle inspection, and installation and balancing services. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

To the extent that the state is required by law to maintain a road, street, or highway within the territorial limits of a political subdivision, the political subdivision shall not be liable for any loss occurring from a defect or dangerous condition in the area required to be maintained by the state.

51 O.S. 2023 Supp. § 155.1.

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. This information indicates that the pothole is located on a stretch of road maintained by the Oklahoma Department of Transportation. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with the contact information for the Oklahoma Department of Transportation.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

JRS

DENIED

Kevin Cale
2517 Tifton Court
Edmond, OK 73012
Ward 7 (Location of Incident)
\$475.75
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges his vehicle was damaged on March 22, 2025, when it struck a defect in a railroad grade crossing while traveling on NW 122nd Street between North Santa Fe Avenue and Broadway Extension in Oklahoma City. Damages are alleged in the amount of \$475.75, the cost of parts and labor to replace one tire and to correct the vehicle's alignment. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

The Supreme Court of Oklahoma has held that "the municipality is not an insurer of safety of the traveling public." *Williams v. City of Bristow*, 350 P.2d 484 (Okla. 1960), *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970), and *Evans v. City of Eufaula*, 527 P.2d 329, 332 (Okla. 1974). A

municipality has a duty to exercise ordinary or reasonable care in maintaining the streets and sidewalks in a reasonably safe condition for those using them in a proper manner. *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970) and *Evans v. City of Eufaula*, 527 at 332. A municipality is liable only for negligence in failing to repair, remove or guard against substantial defects or obstructions after actual or constructive notice of their existence. *Williams* at 488.

Regarding constructive notice, the Supreme Court of Oklahoma has held that a city need not have actual notice of the condition of its streets to be liable for injuries resulting from defective condition of its streets, but it is sufficient that the defective condition has existed for such a period of time that the city, by use of ordinary care, could have discovered it. *City of Norman v. Sallee*, 238 P.2d 292, 296 (Okla. 1951), *Picher v. Barrett*, 249 P.739, 740 (Okla. 1926), *Wagoner v. Black*, 97 P.2d 21, 23 (Okla. 1939) citing *Armstrong v. City of Tulsa*, 226 P. 560, 563 (Okla. 1924), and *Sapulpa v. Williams*, 249 P. 152 (Okla. 1926).

The photos provided by the claimant show that the defect is a portion of the railroad company's grade crossing. This office is also in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. The information indicates that the road defect falls within the railroad's easement and is a portion of the roadway that is not maintained by the City. The claimant has been informed that he will need to contact the railway company for any damage claims.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

JRS

DENIED

Bryan Muse
2508 Arbor Drive
Norman, OK 73071
Ward 4 (Location of Incident)
\$2,286.80
Recommended for DENIAL

AGENDA CLAIM # c

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges his vehicle was damaged on March 6, 2025, when it struck a pothole while traveling at or near South Sooner Road between I-240 and SE 80th Street in Oklahoma City. Damages are alleged in the amount of \$2,286.80, the cost of parts and labor to replace wheels and tires, wrecker services, and the cost for installation of a temporary tire. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

To the extent that the state is required by law to maintain a road, street, or highway within the territorial limits of a political subdivision, the political subdivision shall not be liable for any loss occurring from a defect or dangerous condition in the area required to be maintained by the state.

51 O.S. 2023 Supp. § 155.1.

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. This information indicates that the pothole is located on a stretch of road maintained by the Oklahoma Department of Transportation. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with the contact information for the Oklahoma Department of Transportation.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

JRS