

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

Council Agenda
Item No. XI. AC.1&2
9/27/2022

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Natalie Brown
236 Allenhurst Avenue
Oklahoma City, OK 73114
Ward 7
\$778.72
Recommended for DENIAL
Deferred from September 13, 2022
Request deferral to October 11, 2022

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges her vehicle was damaged on May 17, 2022, when it struck a pothole while traveling on North Kelley Avenue near North Hefner Road. Damages are alleged in the amount of \$778.72, the cost of repairs for tire, rims, and axle of the vehicle. 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2018 Supp. §153(A).

Section 155 of the Governmental Tort Claims Act provides, in pertinent part, that the state or a political subdivision shall not be liable if the loss or claim results from:

18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred.

51 O.S. 2017 Supp. §155(18).

The office is in receipt of information from the Construction Services Division of the Public Works Department regarding this incident. This information indicates that the pothole was located within an active work zone. This information indicates that the contractor was responsible for repairing the road, including the area where the pothole was located. The contractor failed to repair the road

during the month preceding the incident while the contractor was on site in the active work zone. Claimant has been provided the contractor's contact information.

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.