

BEFORE THE KANSAS LEGISLATURE
HOUSE LOCAL GOVERNMENT COMMITTEE

TESTIMONY OF EMPORIA, KANSAS IN SUPPORT OF HB 2246

In *Whaley v. Sharp*, No 107,776 (12/24/2014), the Kansas Supreme Court reversed an interpretation of KSA 12-105b(d) that requires that anyone wishing to bring a law suit against a municipal employee give the municipality written notice of the claim. The municipality then has 120 days from the date of the receipt of the claim to take action on the claim. *Whaley* holds that a city employee can be sued with no prior notice to the City. A City can be involved in litigation under the Kansas Torts Claims Act (KTCA) before it has had any opportunity to investigate the claim first. The Kansas tort claims act should be amended to reverse this holding.

The KTCA declares its primary purpose is to impose liability for “damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.” K.S.A. 75-6103(a). Under the KTCA, a claimant is required to file a written claim for damages prior to filing a law suit. The city then has 120 days in which to investigate the claim. If the city finds that it has liability, then it can pay the claim. If the city does not believe that it is liable, it can deny the claim. The claimant then has the right to bring a law suit for damages.

This procedure works well for both the municipality and the claimant. In the vast majority of cases, claims are resolved without recourse to filing a law suit. Attached is a form used by the City of Emporia. The form is provided to a citizen if they believe that a city employee damaged their property thru negligence, or they have a personal injury claim. The claim is reviewed by the city risk manager, and if the city employee was at fault, then the claimant is contacted and payment is arranged to take care of the medical bills or damages; either the cost to repair, or the value of the property damaged.

We would like to see the KTCA restored to its original interpretation that would prohibit a law suit from being filed against a municipal employee until the city is presented with a written claim and is given 120 days in which to investigate the claim to determine if it should be paid. This saves both time and legal expenses if the City determines that the claim should be paid. The City of Emporia encourages the Committee to report HB 2246 favorable for passage by the Kansas House of Representatives. Thank you.

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**CITY OF EMPORIA KANSAS
ACCIDENT - INCIDENT CLAIM FORM**

This form shall be used by all persons making a claim upon the City for property damage or injury.

Date Claim Filed _____

Name _____ Phone # _____

Total Amount of Claim \$ _____

Claimant Information:

Full Name _____

Address _____
Street City State Zip Code

Phone # _____

Name/Address of Attorney (if applicable) _____

Personal Injury/Property Damage

Copies of bills or estimates must be attached

PERSONAL INJURY: Date _____ Time _____
Place _____

Type of Injury _____

Doctor Yes _____ No _____

If yes, list Doctor or Hospital, include copies of medical bills _____

PROPERTY DAMAGE: Date _____ Time _____
Place _____

Description of how loss or damage occurred, including approximate values or replacement estimates. *documentation must be attached* Provide 2 estimates.

Were Police Called? Yes _____ No _____

Was this reported to any City employee? Yes _____ No _____

If yes, please state name of person _____

Were there any witnesses? Yes _____ No _____

If yes, please state names _____

Signature of Claimant

Date

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1. All claims presented by the general public shall be filed on a City Claim Form with the City Clerk in accordance with KSA 75-6101 et seq.

2. A copy of all claims will be forwarded to the City Attorney or the insurance company, whichever is applicable.

3. Once notice of the claim is filed, the City has 120 days to deny or settle the claim per KSA 12-105.

RETURN FORM TO:

Kerry Sull
City Clerk
104 E. 5th Ave.
Emporia, KS 66801
(620) 343-4243