Suing The DOT: Iowa's Defective Highways

Verne Lawyer

7 FLEMING BLDG.

11-12-76
for Bob Goodwin
Good Luck!
Verne Lawyer

DEDICATION

This article is dedicated to the Iowa Department of Transportation and its dedicated employees whose conduct but never motive, is sometimes the subject of criticism by the judicial system.

My most sincere hope is that in someway the contents contained herein will contribute to the saving of just one life or the prevention of just one injury on the highways of this State. Only then will the hours of research and thought reflected herein be completely worthwhile.

Verne Lawyer

SUING THE D. O. T.

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SUING THE D.O.T. -- IOWA'S DEFECTIVE HIGHWAYS

INTRODUCTION

The purpose of this paper is not to encourage litigation against the State of Iowa. Rather, the purpose here is to provide the attorney with the tools used in making a professional judgment as to whether a client has a valid and justifiable claim against the State.

The attorney will be shown the law. He will be provided with research and investigative suggestions, then as an officer of the Court, he must decide, after thorough investigation, whether the State, his State, deserves to be sued.

HISTORY

A claim of defective roadways is nothing new in Iowa.

The year 1886. The night dark. Old Doc Fulliam, in his buggy tugged by his faithful nag, comes to disaster in a washout permitted by the city to stand without warning. The buggy upsets, Doc is thrown to his injury and slaps a suit upon Muscatine City to make things right. His claim? -- Why, the city should keep the whole width of the street in good repair. Doc lost, the Court saying that "if he knew the street to be in as bad condition as he claims that it was, and the night was very dark, it was a fair question as to whether he should not

have taken some other street if he could conveniently have done so". See Fulliam vs. City of Muscatine, 30 N.W. 861. That's the law to this day.

Thirteen years later one Lamb, while loading a piano on a dray, "blew it" when he fell upon a stump in the street. Cedar Rapids got sued and the city lost, the Court saying:

> "Where a city has sufficient notice of an alleged defect in a street, it is liable for injuries caused thereby, where it fails, in the exercise of reasonable care, to remove or remedy the defect."

See Lamb vs. City of Cedar Rapids, 79 N.W. 366.

1932 -- Eugene Morse, while reposing in the rear seat of a "tin Lizzie" driven by Reese, met his "Waterloo" when Reese drove off the traveled or graded portion of a road of dirt into a washout, landing in a creek nearby. Eugene won the first round, District Court jury, only to lose by instructional fault, when the wise men of nine in "fun city" Des Moines ruled --

> The "duty of municipality to use reasonable diligence to keep streets free from obstructions or pitfalls applies only to parts of streets dedicated to vehicular traffic."

See Morse vs. Incorporated Town of Castana, 241 N.W. 304.

There are others, but it was not until the legislation of the 1960's that the Iowa Courts were permitted to hear

claims against the counties and the State of Iowa.

THE LAW

General Rule

"Persons using highways, streets and sidewalks are entitled to have them maintained in a reasonably safe condition for travel. One traveling on a highway is entitled to assume that his way is reasonably safe, and although a person is required to use reasonable care for his own safety, he is neither required nor expected to search for obstructions or dangers." 39 Am Jur.2, Highways Sec. 337 at page 721.

Duty of State

Inherent in the State's duty of ordinary care is the duty to eliminate, to erect suitable barriers, or to adequately warn the traveling public of hazardous conditions.

"The duty of the governmental body to maintain streets or highways includes the duty to repair." I.C.A. 313.36 & 389.12, Ehlinger vs. State, 237 N W 2nd 784.

The "General rule that possessor of property is not obligated to eliminate known and obvious dangers does not apply to city's mandatory duty to keep it's thoroughfares and public places safe for public use they were designed to serve; such rule likewise does not negate State's obligation to maintain primary roads". I.C.A. Sec.25A2, Subd 5, 25A4, 313.36. Ehlinger vs. State.

Negligence of State

Failure to Adequately Warn

"The posting of a sign, does not, in itself, remedy a hazard in the highway, at least insofar as the same constitutes a hazard to those persons, such as the plaintiff, who are not charged with control of the motor vehicle or observation of highway signs." Ehlinger vs. State. See also, Weisbrod vs. State, 193 NW2nd 125 and Stanley vs. State, 197 NW2nd 599, where State had placed some warning signs, torch pots and A-frame barricades along the way which the Court held inadequate.

The "posting of 'bump' sign in vicinity of frost heave in highway" did not excuse State from performing its duty to repair such defect. See I.C.A. Sec.313.36 & 389.12, and Ehlinger vs. State.

Where highway was reduced to one lane for repair work and closed lane blocked by a sawhorse four feet high placed about ten feet from the construction area, no effective notice or warning with regard to limited travel condition was installed or given. State was negligent in not properly warning motorists of the construction project and attendant highway impairment. See Weisbrod vs. State, 193 NW2nd 125.

"Warnings and signals along a construction route should delineate the hazard for the traveler and one warning is not as good as many." See Stanley vs. State, 197 NW2nd 599.

Shoulders

Maintaining a dangerous drop-off of 10 to 12 inches between the edge of the pavement and the shoulder of the road is negligence. See Stanley vs. State, 197 NW2nd 599, BUT, negligently constructed and maintained shoulders must be a proximate cause of the accident AND, where automobile was already out of control when it ran onto negligently constructed and maintained shoulder, the State was not liable for lack of proximate cause. See DeYarman vs. State, 226 NW2nd 26.

Frost Heave -- Hydroplaning

Where highway commission failed to correct frost heave in accordance with it's own maintenance manual and water accumulated causing auto to hydroplane, it was held that State was negligent in failing to eliminate the hazard after notice thereof. See Ehlinger vs. State, 237 NW2nd 784.

FOR WHAT ROADS IS THE STATE RESPONSIBLE?

Read carefully Iowa Code Section 306.1, 306.2, 306.3 and 306.4. With the exception of some instances of concurrent jurisdiction, the State has jurisdiction over the PRIMARY roads in Iowa.

PRIMARY ROADS means (Sec. 306.3.2) "those roads and streets, both inside and outside the boundaries of municipalities, classified under 306.1 as:

1. Freeway-expressway system

a. *The freeway-expressway system* shall consist of those roads connecting and serving the major urban and regional areas of the state with high volume, long-distance traffic movements, and generally connecting with like roads of adjacent states. The national system of interstate and defense highways shall be a part of the freeway-expressway system. The freeway-expressway system, including the national interstate and defense highway mileage, shall not exceed three thousand miles.

2. The arterial system

b. *The arterial system* shall consist of those roads which connect the freeway-expressway system with the arterial connector system, or which serve long-distance movements of traffic, or which serve as collectors of long-distance traffic from other systems to the freeway-expressway system. The arterial system shall not exceed three thousand five hundred miles.

3. The arterial connector system

c. *The arterial connector system* shall consist of those roads providing service for short-distance intrastate and interstate traffic, or providing connections between highways classified as arterial or freeway-expressway.

306.1 Roads and streets

1. Functional classification of roads and streets. The roads and streets of this state are classified into the following systems:

a. The freeway-expressway system.
b. The arterial system.
c. The arterial connector system.
d. The trunk system.
e. The trunk collector system.
f. The area service system.
g. The municipal arterial system.
h. The municipal collector system.
i. The municipal service system.
j. The municipal residential alley system.
k. The state park, state institution and other state land road system.
l. The county conservation parkway system.

2. Definitions of road and street systems. For the purpose of functionally classifying the roads and streets of this state, the following words and phrases relating to roads and streets shall have the following meanings:

a. *The freeway-expressway system* shall consist of those roads connecting and serving the major urban and regional areas of the state with high volume, long-distance traffic movements, and generally connecting with like roads of adjacent states. The national system of interstate and defense highways shall be a part of the freeway-expressway system. The freeway-expressway system, including the national interstate and defense highway mileage, shall not exceed three thousand miles.

b. *The arterial system* shall consist of those roads which connect the freeway-expressway system with the arterial connector system, or which serve long-distance movements of traffic, or which serve as collectors of long-distance traffic from other systems to the freeway-expressway system. The arterial system shall not exceed three thousand five hundred miles.

c. *The arterial connector system* shall consist of those roads providing service for short-distance intrastate and interstate traffic, or providing connections between highways classified as arterial or freeway-expressway.

(con't.)

d. *The trunk system* shall consist of those intracounty and intercounty roads which serve principal traffic generating areas, and connect such areas to other trunk roads and roads on the arterial or freeway-expressway system. The trunk system shall not exceed fifteen thousand miles and shall include, but not be limited to, the major federal aid secondary roads of the state.

e. *The trunk collector system* shall consist of those roads providing service for short-distance intracounty and intercounty traffic, or providing connections between roads classified as trunk and area service. The trunk collector system shall not exceed twenty thousand miles. The trunk collector system and the trunk system shall constitute the farm-to-market road system of the state.

f. The area service system shall include those public roads outside of municipalities not otherwise classified.

g. The municipal arterial system shall consist of those streets within municipalities not included in other classifications which connect principal traffic generating areas or connect such areas with other systems. The municipal arterial system shall not exceed fifteen percent of the entire street mileage under the jurisdiction of a municipality, except that municipalities under two thousand population may exceed such limitation.

h. The municipal collector system shall consist of those streets within municipalities that collect traffic from the municipal service system and connect to other systems. The municipal collector system shall not exceed twenty percent of the entire street mileage under jurisdiction of the municipality, except that municipalities under two thousand population may exceed such limitation.

i. The municipal service system shall consist of those streets and commercial alleys within municipalities which serve primarily as access to commercial and residential property and shall also include streets within municipal parks.

j. The municipal residential alley system shall consist of those alleys which serve primarily as secondary access to residential property.

k. The state park, state institution, and other state land road system shall consist of those roads and streets wholly within the boundaries of state lands operated as parks, institutions, or other state governmental agencies.

l. The county conservation parkway system shall consist of those parkways located wholly within the boundaries of county lands operated as parks, forests, or other public access areas.

Acts 1970 (63 G.A.) ch. 1126, § 2. Amended by Acts 1970 (63 G.A.) ch. 1127, § 2; Acts 1971 (64 G.A.) ch. 170, § 1; Acts 1974 (65 G.A.) ch. 1177, §§ 1 to 3, eff. July 1, 1975.

306.2 Definitions

As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of transportation.

2. "Agency" means any governmental body which exercises jurisdiction over any road as provided in section 306.4.

Added by Acts 1974 (65 G.A.) ch. 1180, § 60, eff. July 1, 1975.

Former § 306.2, Code 1973, was repealed by Acts 1974 (65 G.A.) ch. 1177, § 9, eff. July 1, 1975. It was derived from Acts 1970 (63 G.A.) ch. 1127, § 3, and provided for four systems of highways.

Former sections 306.1 to 306.3, Code 1966, derived from Acts 1951 (54 G.A.) ch. 103, §§ 2-4, amended by Acts 1957 (57 G.A.) ch. 137, §§ 1-9; Acts 1961 (59 G.A.) ch. 166, § 1; Acts 1963 (60 G.A.) ch. 180, § 1; Acts 1963 (60 G.A.) ch. 181, §§ 1, 2; Acts 1970 (63 G.A.) ch. 1126, § 3, relating to classification of highways, definition of road systems and the jurisdiction of the state highway commission, were repealed by Acts 1970 (63 G.A.) ch. 1126, § 1.

Subject matter of former section 306.2, Code 1966, is now covered by section 306.1.

Former § 306.2, Code 1950, was repealed by Acts 1951 (54 G.A.) ch. 103, § 1.

Cross References

Filing plans, plats and field notes, see § 306.21.

306.3 Systems defined

As used in this chapter or in any chapter of the Code relating to highways:

1. "Road" or "street" means the entire width between property lines through private property or designated width through public property of every way or place of whatever nature when any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

2. "Primary roads" or "primary road system" means those roads and streets, both inside and outside the boundaries of municipalities, classified under section 306.1 as freeway-expressway, arterial and arterial connector.

3. "Interstate roads" or "interstate road system" means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the National System of Interstate and Defense Highways in Iowa.

4. "Secondary roads" or "secondary road system" means those roads, outside the boundaries of municipalities, classified as trunk, trunk collector and area service under section 306.1.

5. "Farm-to-market roads" or "farm to market road system" means those rural secondary roads classified as trunk and trunk collector under section 306.1.

6. "Local secondary roads" or "local secondary road system" means those secondary roads which are classified as area service under section 306.1.

7. "Municipal street system" means those streets within municipalities classified as trunk, trunk collector, municipal arterial, municipal collector, municipal service and municipal alleys under section 306.1.

8. "State park roads" means those roads and streets classified as state park roads under section 306.1.

9. "Institutional roads" means those roads and streets classified as institutional roads under section 306.1.

10. "Other state land roads" means those roads and streets classified as other state land roads under section 306.1.

11. "County conservation parkways" or "county conservation parkway system" means those parkways classified as county conservation parkways under section 306.1.

Acts 1970 (63 G.A.) ch. 1127, § 3. Amended by Acts 1974 (65 G.A.) ch. 1177, § 4, eff. July 1, 1975.

306.4 Jurisdiction of systems

The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.

2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

3. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. The parties exercising concurrent jurisdiction shall enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof.

4. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

a. The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

5. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:

a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

Acts 1970 (63 G.A.) ch. 1127, § 3. Amended by Acts 1974 (65 G.A.) ch. 1177, § 5, eff. July 1, 1975; Acts 1974 (65 G.A.) ch. 1180, § 61, eff. July 1, 1975.

306.6 Functional classification board

1. A functional classification board shall be appointed for each county and shall operate under procedural rules and regulations promulgated by the department under the provisions of chapter 17A. Said board shall consist of three members to be appointed as follows: The department shall appoint one member from the staff of the department, the county board of supervisors shall appoint one member which shall be either the county engineer or one of its own members, and the third member shall be a municipal official from within the county who shall be appointed by a majority of the mayors of the cities and towns of the county. The mayors shall meet at the call of the chairman of the county board of supervisors who shall act as chairman of the meeting without vote. In the event the mayors cannot agree to and appoint this member within thirty days after the call of the meeting by the chairman, the two members previously appointed shall select the third member. The board shall serve without additional compensation and shall:

a. Classify each segment of each rural public road and each municipal street in the county in accordance with the classifications found in section 306.1.

b. Establish continuity between the systems within the county and with the systems of adjacent counties.

c. File a copy of the proposed road classification in the office of county engineer for public information and hold a public hearing before final approval of any road classification action. Notice of the date, the time, and the place of such hearing, and the filing of such proposed road classification for public information shall be published in an official newspaper in general circulation throughout the affected area at least twenty days prior to the established date of the hearing.

d. Report the selected classifications to the department. The department shall review the reports of the county classification boards and may:

(1) Alter the classification of roads coinciding with or crossing county lines to provide continuity of the various county systems.

(2) Adjust the mileage of roads classified in the trunk and trunk collector systems to assure equitable distribution among the counties of the total mileage of such systems.

(3) Any action authorized under subparagraphs 1 and 2 of paragraph "d" of this section shall not be taken by the department until the proposed action has been thoroughly discussed with the affected county classification boards and their comments heard.

2. There is created a state functional classification review board which shall consist of one state senator appointed by the president of the senate, one state representative appointed by the speaker of the house of representatives, one supervisor appointed by the Iowa state association of county supervisors, one engineer appointed by the Iowa county engineers' association, two persons appointed by the league of Iowa municipalities, one of which shall be a licensed professional engineer, and two persons appointed by the department, one of which shall be a commissioner and the other a staff member. This board shall select a permanent chairman from among its members by majority vote of the total membership. The chairman and all members of the board shall serve without additional compensation.

It shall be the responsibility of the state functional classification review board to hear any and all appeals from classification boards or board members, relative to disputes arising out of the functional classification of any segment of highway or street. The state functional classification review board shall have the authority and the responsibility to make final administrative determinations based on sound functional classification principles for all disputes relative to functional classification. The review board shall also serve, when requested jointly by state and local jurisdictions, as an advisory committee for review and adjustment of construction and maintenance guidelines used in updating road and street needs studies.

Acts 1970 (63 G.A.) ch. 1126, § 5. Amended by Acts 1974 (65 G.A.) ch. 1177, § 7, eff. July 1, 1975; Acts 1974 (65 G.A.) ch. 1180, § 61, eff. July 1, 1975.

CONSTRUCTION OF ROADS

The D.O.T. is expressly charged with the duty of supervision, inspection and direction of the work of construction. See Iowa Code Section 313.12.

> **313.12 Supervision and inspection.** The department is expressly charged with the duty of supervision, inspection and direction of the work of construction of primary roads on behalf of the state, and of supervising the expenditure of all funds paid on account of such work by the state or the county on the primary system and it shall do and perform all other matters and things necessary to the faithful completion of the work herein authorized. [C24,§4701; C27, 31, 35,§4755-b12; C39, §4755.12; C46, 50, 54, 58, 62, 66, 71, 73,§313.12; 65GA, ch 1180,§86]
>
> Amendment effective July 1, 1975

And the administrator of the highway division of the D.O.T. is responsible for planning, design, construction and maintenance. See Iowa Code Section 307.24.

> **307.24 Highway division**
>
> The administrator of the highway division shall be responsible for the planning, design, construction, and maintenance of the state primary highways and shall administer the provisions of chapters 306 to 320 and perform such other duties as may be assigned by the director. There shall be a subdivision for urban systems, a subdivision for secondary roads, and such other subdivisions as may be necessary within the highway division.
>
> Acts 1974 (65 G.A.) ch. 1180, § 24, eff. July 1, 1974.

The State may establish, alter or vacate a road. See Iowa Code Section 306.10.

> **306.10 Power to establish, alter or vacate**
>
> In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said agency has jurisdiction and control.
>
> Acts 1951 (54 G.A.) ch. 103, § 5. Amended by Acts 1974 (65 G.A.) ch. 1180, § 62, eff. July 1, 1975.

It may temporarily close a road for construction and liability of the State or it's contractor is limited to damages caused by gross negligence. See Iowa Code Section 306.41.

306.41 Temporary closing for construction

The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by formal resolution entered upon the minutes of such agency when reasonably necessary because of construction, reconstruction, maintenance or natural disaster and shall cause to be erected "road closed" signs and partial or total barricades in the roadway at each end of the closed highway section and on the closed highway where that highway is intersected by other highways if such intersection remains open. Any numbered road closed for over 48 hours shall have a designated detour route. The agency having jurisdiction over a section of highway closed in accordance with the provisions of this section, or the persons or contractors employed to carry out the construction, reconstruction, or maintenance of the closed section of highway, shall not be liable for any damages to any vehicle that enters the closed section of highway or the contents of such vehicle or for any injuries to any person that enters the closed section of highway, unless the damages are caused by gross negligence of the agency or contractor.

Nothing herein shall be construed to prohibit or deny any person from gaining lawful access to his property or residence, nor shall it change or limit liability to such persons."

Added by Acts 1970 (63 G.A.) ch. 1125, § 1, eff. April 14, 1970. Amended by Acts 1974 (65 G.A.) ch. 1180, § 62, eff. July 1, 1975; Acts 1975 (66 G.A.) ch. 163, § 1.

SIGNS

The D.O.T. was ordered by the legislature to adopt a "manual and specifications for a uniform system of traffic control devices - - -". See Iowa Code Section 321.252.

321.252 Department to adopt sign manual. The department shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials.

The department shall include in its manual of traffic-control devices, specifications for a uniform system of highway signs for the purpose of naming, warning, regulating, and guiding traffic to organized off-highway permanent camps, and camp areas, operated by recognized and established civic, religious, and nonprofit charitable organizations. The commission shall purchase, install, and maintain such signs upon the prepayment by the organization of the cost of such purchase, installation, and maintenance.

Local authorities shall adhere to the specifications for such signs as established by the department, and shall purchase, install, and maintain such signs in their respective jurisdictions upon prepayment by the organization of the cost of such purchase, installation, and maintenance. The department shall include in its manual of traffic-control devices specifications for a uniform system of traffic-control devices in legally established school zones. [C24,§27,§4627; C31, 35,§§4627, 5079-d7; C39, §5019.01; C46, 50, 54, 58, 62, 66, 71, 73,§321.252; 65GA,ch 1180,§113]

Amendment effective July 1, 1975

Accordingly, the "Manual on Uniform Traffic Control Devices for Streets and Highways" has been adopted.

The D.O.T. is ordered to erect signs. See Iowa Code Section 321.253.

> **321.253 Highway commission* to erect signs.** The state highway commission* shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all primary highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. Whenever practical, said devices or signs shall be purchased from the director of the division of corrections of the department of social services. [C24, 27,§4627; C31, 35,§§4627, 5079-d7; C39,§5019.02; C46, 50, 54, 58, 62, 66, 71, 73,§321.253]
>
> Analogous provisions, §321.345
>
> *"Department" probably intended

And local authorities are restricted in what they may do without permission. See Iowa Code Section 321.254.

> **321.254 Local authorities restricted.** No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission. [C39,§5019.03; C46, 50, 54, 58, 62, 66, 71, 73,§321.254; 65GA, ch 1180,§113]
>
> Amendment effective July 1, 1975

The Manual on Uniform Traffic Control Devices states:

(page 11) (Function of Signs)

> **2A-1 Function of Signs**
>
> Signs should be used only where warranted by facts and field studies. Signs are essential where special regulations apply at specific places or at specific times only, or where hazards are not self-evident. They also give information as to highway routes, directions, destinations and points of interest. Signs ordinarily are not needed to confirm rules of the road.
>
> Roadway geometric design and signing should be coordinated so that signing can be effectively placed to give the motorist necessary directional and warning information

And with respect to legal authority: (page 12)

2A-3 Legal Authority

Traffic signs shall be placed only by the authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. No traffic sign or its support shall bear any message that is not essential to traffic control. Specific reference is made to Section 11-205 of the Uniform Vehicle Code, Revised 1968.

Any unauthorized sign placed on the highway right-of-way without authority by a private organization or individual constitutes a public nuisance. All unofficial and nonessential signs should be removed.

With proper authority being given, construction contractors and public utility companies are permitted to erect temporary construction and maintenance signs at work sites to protect the public, equipment, and workmen, provided that such signs conform to the standards of this Manual.

Effective traffic control depends not only on appropriate application of devices, but on reasonable enforcement of regulations as well. Standards in this Manual are based on that concept.

Signs are classified as <u>regulatory</u>, <u>warning</u>, and <u>guide</u>. (page 13)

2A-7 Classification of Signs

Functionally, signs are classified as follows:

<u>Regulatory</u> signs give notice of traffic laws or regulations.

<u>Warning</u> signs call attention to conditions on, or adjacent to, a highway or street that are potentially hazardous to traffic operations.

<u>Guide</u> signs show route designations, destinations, directions, distances, services, points of interest, and other geographical or cultural information.

As to where signs are to be placed the manual states: (page 27)

2A-25 Position of Signs

A warning sign is placed in advance of the condition to which it calls attention (fig. 2-5). A regulatory sign normally is placed where its mandate or prohibition applies or begins. Guide signs are placed, where needed, to keep drivers well informed as to the route to their destination. Figures 2-6a, 6b, 6c show the placement of intersection guide signs on other than expressways. Detailed specifications for sign locations are given in the sections of the Manual dealing with an individual sign or classes of signs.

WARNING SIGNS

Warning signs are important to assure safety to the motorist. Their application is described in the manual. (page 63)

C. WARNING SIGNS

2C-1 Application of Warning Signs

Warning signs are used when it is deemed necessary to warn traffic of existing or potentially hazardous conditions on or adjacent to a highway or street. Warning signs require caution on the part of the motorist and may call for reduction of speed or a maneuver in the interest of his own safety and that of other motorists and pedestrians. Adequate warnings are of great assistance to the vehicle operator and are valuable in safe-guarding and expediting traffic. The use of warning signs should be kept to a minimum however, because the unnecessary use of them to warn of conditions which are apparent tends to breed disrespect for all signs.

Warning Signs - Continued from Page 17

Even on the most modern expressways there may be some conditions to which the driver can be alerted by means of warning signs. These conditions are in varying degrees common to all highways, and existing standards for warning signs are generally applicable to expressways.

Typical locations and hazards that may warrant the use of warning signs are:

1. Changes in horizontal alignment
2. Intersections
3. Advance warning of control devices
4. Converging traffic lanes
5. Narrow roadways
6. Changes in highway design
7. Grades
8. Roadway surface conditions
9. Railroad crossings
10. Entrances and crossings
11. Miscellaneous

Advisory speed signs supplement other warning signs and are approved for use by the Uniform Manual in the following words: (page 81)

2C-36 Advisory Speed Plate (W13-1)

The advisory speed plate is intended for use to supplement warning signs. The standard size of the Advisory Speed plate shall be 18 inches x 18 inches. Advisory Speed plates used with 36 inch and larger warning signs shall be 24 inches x 24 inches.

The plate shall carry the message (35) MPH in black on a yellow background except for construction and maintenance signs (sec. 6B-34). The speed shown shall be a multiple of 5 miles per hour. The plate may be used in conjunction with any standard yellow warning sign to indicate the maximum recommended speed around a curve or through a hazardous location. It shall not be used in conjunction with any sign other than a warning sign, nor shall it be used alone. When used, it shall be mounted on the same assembly with the standard warning sign, normally below it (fig. 2-1).

Except in emergencies, or at construction or maintenance sites, where the situation calling for an advisory speed is temporary, an Advisory Speed plate shall not be erected until the recommended speed has been determined by accepted traffic engineering procedures. Because changes in surface characteristics, sight distance, etc., may alter the recommended speed, each location should be periodically checked and the speed plate corrected if necessary.

W13-1
18" x 18"
24" x 24"

Please note that no traffic engineering study is required to place advisory speed warning signs in a construction area.

PAVEMENT MARKINGS

Pavement markings may supplement warnings, advise the motorist of the location of the edge of the pavement (especially important when "low shoulder", "soft shoulder" or"unfinished shoulder" conditions exist) and have the advantage of conveying warnings and information to the driver without diverting his attention from the roadway. Part III of the Uniform Manual covers the subject.

With respect to edge line markings the Uniform Manual says:(page 190)

3B-6 Pavement Edge Lines

Pavement edge line markings provide an edge of pavement guide for drivers. They have a unique value as a visual reference for the guidance of drivers during adverse weather and visibility conditions. They also may be used where edge delineation is desirable to reduce driving on paved shoulders or refuge areas of lesser structural strength than adjacent pavement. Edge lines should not be continued through intersections and should not be broken for driveways.

Edge lines shall be provided on all Interstate highways and may be used on other classes of roads. The lines shall be white except that on divided highways where medians are extremely narrow or where obstructions exist to restrict the area beyond the edge line from use as an emergency refuge, the markings adjacent to the median should be yellow.

A good question is whether it is negligence to provide edge line markings over part of a stretch of roadway where no hazard exists because of low shoulder and to fail to provide such markings where such hazard exists.

Specification Number 773, a supplemental specification for construction projects usually incorporated by reference in highway construction contractors in Iowa, contains the following language:

> "The engineer may require temporary pavement marking for parts not included in the above requirements, including edge lines, for unusual conditions which might place the safety of the public in jeopardy."

Spec. 773 Page 37

Is his failure to do so actionable? If actionable, how is the engineer who was the subject of a newspaper interview during early July, 1976, (see page 23) going to explain his failure to provide edge lines to protect the young Michigan mother who was some twelve days later rendered hopelessly paralyzed for life in a single car roll-over on the very stretch of highway of which he speaks --

> "It would be very difficult for a motorist to regain control" if his vehicle slipped off the edge of the highway.

And, that is exactly what appears to have happened on a dark, rainy night in July last near the Adair Exit on Interstate 80. A nine-inch near verticle drop-off, road to median, and no edge line or other warning of the fact of the hazard.

Will Fix I-80 Hazard

$3.5 Million To Repair Drop-Off

By Michael Bryson
(Tribune Staff Writer)

from Tribune North

AMES, IA. — For the past decade or so, Interstate 80 across Adair County has grown by up to six inches in height measured by the layers of asphalt used to repair the superhighways — and is due to grow another three inches this summer.

As a result, the Iowa Department of Transportation (DOT) is spending about $3.5 million to correct a hazardous "drop-off."

The surface of I-80 is so much higher than the median and shoulders that motorists could experience a jarring, if not deadly, jolt if their cars left the highway.

The project includes removal of the lush, long-established sod in the interstate's median — from just south of Dexter, west 27.5 miles to the Adair-Cass County line.

DOT and its predecessor, the Highway Commission, for years have had constant problems with deterioration on this segment of I-80, which was constructed in the early 1960s, said Robert Bortle, DOT district engineer for southwestern Iowa.

Most sections of I-80 across Adair County have received at least one application of a three-inch overlay of asphalt over the years, and some sections have received a second three-inch coating, he said.

DOT is in the process of applying still another three-inch coating to I-80 in Adair County this summer, said Bortle.

The latest application would mean that the highway would be at least six inches — and in some cases nine inches — higher than the median and outer shoulders, Bortle said both state and federal highway officials became concerned about the danger of such a sharp drop-off.

"It would be very difficult for a motorist to regain control" if his vehicle slipped off the edge of the highway, he said.

The solution? DOT is raising the level of the median and outer shoulders to match the level of the highway as well as "flattening" the steepness of the median slope.

SHOULDERS - Low, Soft, or Unfinished

Are Hazardous

Who knows that its dangerous to have the roadway more than three inches higher than the adjoining shoulder? Everyone, that's who! Including the State of Iowa. See Stanley vs. State, 197 NW2nd 599 and DeYarman vs. State, 266 NW2nd 26.

The fact of the hazard is recognized in specification #773, page 3, in the following words!

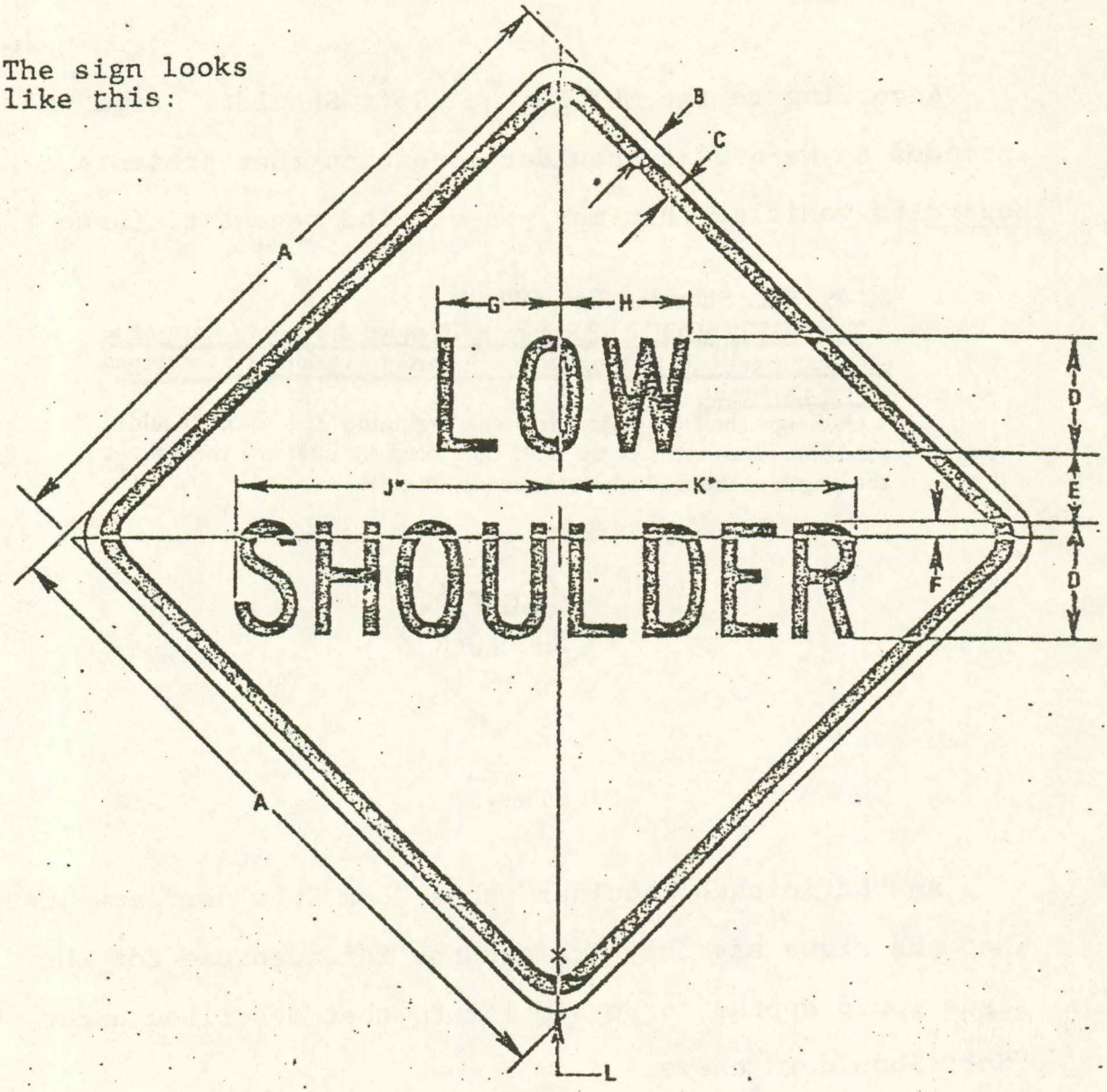
> Wherever work on the traveled way or adjacent shoulder results in a vertical or nearly vertic dropoff and subsequent work is to be done to the shoulder, the contractor shall erect and maintain "Unfinished Shoulder" signs at the project limits and at each rural public road access; and wherev the resulting dropoff is in excess of 3 inches from the traveled way of a road open to traffic to the existing shoulder, barricade warning lights and light supports described in "Supplemental Specifications for Traffic Control for Street and Highway Construction and Maintenance Operations" in effect on the contract letting date shall be provided at the expense of the contractor along the edge of the traveled way at intervals not exceeding 300 feet. Exceptions will be made during work ing hours in the immediate area where construction operations are in progress.

It is recognized by the fact of the availability of, though seldom used, "Low Shoulder", "Soft Shoulder", and "Unfinished Shoulder" signs in the State's sign inventory.

According to the Iowa D.O.T. "Sign List and Illustrations for Primary and Interestate Highways" the inventory includes five different models of "Soft Shoulder" signs, six different models of "Unfinished Shoulder" signs, and one model of "Shoulder Work Ahead" signs and no "Low Shoulder" signs. The list must be incomplete, however, since the "Low Shoulder" sign is a "Standard Highway Sign" as specified by the Manual on Uniform Traffic Control Devices of 1971.

Remember, the Iowa Legislature mandated an adoption of the Uniform Manual on Traffic Control Devices.

The sign looks like this:



W8-9

*Reduce spacing 25%

SIGN	DIMENSIONS (INCHES)										
	A	B	C	D	E	F	G	H	J	K	L
MIN.	24	3/8	5/8	4C	2-1/2	1/2	4-1/8	4-1/2	10-15/16	10-7/16	1-1/2
STD.	30	1/2	3/4	5C	3	3/4	5-3/16	5-5/8	13-11/16	13-1/16	1-7/8
EXPWY.	36	5/8	7/8	6C	3-1/2	1	6-3/16	6-3/4	16-1/2	15-3/4	2-1/4
FWY.	48	3/4	1-1/4	8C	5	1-1/4	8-1/4	9	21-7/8	20-7/8	3

COLORS

LEGEND – BLACK (NON-REFL)
BACKGROUND – YELLOW (REFL)

According to the MUTCD, the "Soft Shoulder" sign is intended to warn of a shoulder condition that presents a hazard to vehicles that may get off the pavement. (page 77)

2C-29 Soft Shoulder Sign (W8-4)

The SOFT SHOULDER sign is intended for use to warn of a shoulder condition that presents a hazard to vehicles that may get off the pavement.

One sign shall be placed near the beginning of the soft-shoulder condition, and other signs shall be placed at intervals throughout the length of the road where the condition exists.

W8-4
30" x 30"

An "Unfinished Shoulder" or a "Low Shoulder" are just what the signs say they are and the intended use for the signs would appear to be similar to that described under "Soft Shoulder" above.

Alexander and Lunenfeld in their treatise, "Positive Guidance in Traffic Control" define HAZARD as follows:

> "A HAZARD is any object, condition or situation which, when the driver fails to respond successfully produces a catastrophic system failure."

In other words, and in the terms more applicable to the law, "a HAZARD is an existing condition which,when coupled with human activity,CAN produce an injury or death." "RISK is the chance that a HAZARD WILL produce injury or death."

By any of these definitions it is readily apparent that a three-inch, six-inch or twelve-inch drop-off, road to shoulder, especially on a curve on a two lane highway,present a hazard and a risk of injury or death. The risk increases with the exposure (number of vehicles).

SIGNS IN CONSTRUCTION AND MAINTENANCE AREAS

The D.O.T. recognizes that driving through construction and maintenance sites is hazardous.

> "Roadway construction and maintenance operations frequently present hazardous driving conditions to the traveling public. These roadway conditions are not typical of the type that motorists normally encounter and in many instances cause confusion and increase the accident potential. In order to correct this situation and decrease the accident potential, proper traffic control in construction and maintenance areas is essential."

So says the introduction to the "Construction and Maintenance Traffic Control Manual for the State of Iowa."

The same introduction recognizes that the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) "offers only limited guidance on how these devices might be used in combination or adapted to specific operations."

The manual (MUTCD) also expressly states that "minimum standards are presented here for common situations. It is emphasized that these are minimum desirable standards for normal situations and that additional protection must be provided when special complexities and hazards prevail." (emphasis provided)

The Manual goes on to state that "in particular situations not adequately covered by the provisions of this Manual, the protection of the traveling public and of the workmen on the scene will dictate the measures to be taken, consistent with the general principles set forth herein."

Unfortunately, like many standards throughout the world, the prescriptions contained in the manual (MUTCD) have become not only minimum but maximum ones. The principle that safety engineering does not come from a book but from the minds of humans skilled and trained in engineering safety is "so true".

Part VI Section A, (page 267-269) of the manual (MUTCD) details the "need for standards", the "scope", the "application of standards" and the "responsibility" of those who make life and death decisions. It should be "must" reading for every highway engineer, inspector and contractor PRIOR to the beginning of any construction, repair or maintenance activity. A skilled safety engineer should review, on the scene, every proposed system of protection PRIOR to the start of activity.

Part VI. TRAFFIC CONTROLS FOR STREET AND HIGHWAY CONSTRUCTION AND MAINTENANCE OPERATIONS

A. INTRODUCTION AND GENERAL SPECIFICATIONS

6A-1 Need for Standards

Problems of traffic control occur when traffic must be moved through or around road or street construction, maintenance operations, and utility work. No one standard sequence of signs or other control devices can be set up as an inflexible arrangement for all situations due to the variety of conditions encountered.

The following treatment of signs, signals, and markings for street and highway construction and maintenance work provides a comprehensive guide to be applied as a national standard. This Part of the Manual establishes principles to be observed in the design, installation, and maintenance of traffic control devices, and prescribes standards where possible, and is designed so that it can be used independently. To that end some material concerning specifications and devices having more general application is repeated here from preceding parts of this Manual.

These principles and standards are directed to the safe and expeditious movement of traffic through construction and maintenance zones and to the safety of the work force performing these operations.

6A-2 Scope

This Part sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of the various types of traffic control devices required for road or street construction, maintenance operations and utility work. These include signs, signals, lighting devices, markings, barricades, channelizing, and hand signaling devices. Minimum standards of application are prescribed for typical situations, and for methods of controlling traffic through work areas. As part of these standards a number of typical situations are illustrated, showing the proper application of standard protective devices.

6A-3 Application of Standards

The general principles outlined in this Manual are applicable to both rural and urban areas. Since it is not practical to prescribe

detailed standards of application for all the situations that may conceivably arise, minimum standards are presented here for the most common situations. It is emphasized that these are minimum desirable standards for normal situations and that additional protection must be provided when special complexities and hazards prevail. The protection prescribed for each situation shall be based on the speed and volume of traffic, duration of operation, and exposure to hazards. As used in this Part the term street refers to all the streets in any municipality, including cities, towns, villages, or other local jurisdictions.

Traffic conditions on streets are characterized by relatively low speeds, wide ranges of volumes, limited maneuvering space, frequent turns and cross movements, a significant pedestrian movement and other obstructions. Construction and maintenance operations are more numerous and varied, including such diverse activities as pavement cuts for utility work, pavement patching and surfacing, pavement marking renewal and encroachments by adjacent building construction. Work on arterial streets should be restricted to off-peak hours to minimize conflicts with traffic.

Rural highways are characterized by lower volumes, higher speeds, and less interference from pedestrians, turns, and encroachments.

Limited access highways present problems requiring a special effort by administrators, supervisors, and work forces. Both high speeds and high volumes may be anticipated, with peak flows restricting work to relatively short periods during daylight hours.

The difficulties associated with the completion of work on lanes carrying high volumes of traffic have made it necessary in some instances to schedule construction and/or maintenance operations at night. While night scheduling avoids peak flows, the problems associated with work site delineation and warning device placement are increased.

Although each situation must be dealt with individually, conformity with the provisions established herein is required. In particular situations not adequately covered by the provisions of this Manual, the protection of the traveling public and of the workmen on the scene will dictate the measures to be taken, consistent with the general principles set forth herein.

6A-4 Responsibility

The provisions for public protection established herein are for application by (1) State highway department, county, and municipal forces performing construction or maintenance operations on roads and streets, (2) contractors employed in road or street construction or maintenance under contract to any governmental author-

ity, and (3) all others, including employees of public utility companies, performing any work on highways or so closely adjacent as to create hazards for the public or for themselves.

These standards, as a part of the Manual on Uniform Traffic Control Devices, should be adopted by all public authorities concerned with highways, and should be given effect by official instructions to employees and by incorporation into the specifications for all contracts.

It is important that the authorities having jurisdiction be able to require proper protection, that responsibility be clearly assigned, adequate training of personnel be provided, and that there be adherence to the standards and provisions of this Manual.

6A–5 General Requirements

All traffic control devices used on road or street construction or maintenance work shall conform to the applicable specifications of this Manual.

Traffic control devices shall be installed at the inception of construction or maintenance operations, and shall be properly maintained and/or operated during the time such special conditions exist. They shall remain in place only as long as they are needed and shall be immediately removed thereafter. Where operations are performed in stages, there shall be in place only those devices that apply to the conditions present. Signs that do not apply to existing conditions shall be removed, covered, or turned so as not to be readable by oncoming traffic. Barricades and sign supports shall be constructed and erected in a workmanlike manner.

Weeds, shrubbery, construction materials or equipment, spoil, etc., shall not be allowed to obscure any traffic control device.

WARNING SIGNS

"Warning signs for construction and maintenance projects are used to notify drivers of specific hazards which may be encountered when those operations are underway." (MUTCD - page 285, Sec. 6B-12) Among those "specific hazards" which the Manual mentions is the "Low Shoulder". (MUTCD - page 295, Sec. 6B-33.11)

A failure to provide warnings as to "specific hazards" is a direct violation of the manual (MUTCD) and is evidence of negligence. (See Ehlinger vs. State, 237 NW2nd 784)

WHAT DO THE EXPERTS SAY ABOUT SHOULDERS AND EDGE LINES

"Continuous edge line markings should be placed on all roads more than twenty-two feet in width where traffic volumes justify the expenditure. It is particularly important where shoulders are bad. (Road Delineation Systems, NCHRP Report #130, page 39)

H. L. Woltman in his treatise entitled "Review of Visibility Factors in Roadway Signing"(Highway Research Board Special Report #134, page 34) reports that "many drivers felt that the view of the roadway surface ahead was their principal source of information to accomplish the driving task. The view of the roadway is especially important on a two-lane highway where

drivers are more dependent on road geometry for guidance... .

The effectiveness of edge lines was suggested repeatedly by team members on all types of highway facilities. Despite a high contrast between the shoulder and through-lanes, drivers are benefited by the presence of an edge line... . Edge lines apparently give the driver a greater sense of security in operating his vehicle, and, if this is in fact the case, edge lines should be provided in order to allow the driver to perform the driving task under more nearly optimum conditions... . Rural two-lane highways present the driver with the task of tracking, and thus attention is focused on the pavement. Under these conditions, the pavement message can be very effective.

(NOTE: Pavement edge line marking in Iowa costs ten cents per foot per side. See Traffic Control Device Inventory, Iowa State Highway Commission, Table D-3)

"A desirable element and feature of a highway shoulder is to be flush and level at the through-lane edge to permit pull-over at highway speed without major steering effort to retain control....A flush, smooth shoulder area also is valuable when a driver unintentionally edges off the travel lane; in effect it is an auxiliary lane on which he corrects his path. The shoulder is the most useful part of a clear roadside area on which the driver of an out-of-control vehicle has a chance to begin to regain control....Edge-striping is used to help retain traffic in the pavement area."

(See Current Practices in Shoulder Design, Construction, Maintenance and Operation, Highway Research Circular Number 142, April 1973).

Now a question for lawyers and judges. In view of the above statements, did the courts properly decide the case of DeYarman vs. State, 226 NW2nd 26? Was the driver in that case entitled to a non-negligently constructed and maintained shoulder to use when out of control "to begin to regain control"? Was the negligence of the State in fact a part of the proximate cause?

"An intensive crash program to remove roadside hazards on existing streets and highways and to engineer the roadsides of new facilities with safety as a major criterion should have a paramount place in the highway program of each state, only in this way will the motorist who inadvertently leaves the traveled way have adequate protection against death or injury. ....shoulders should be flush with adjoining through-lane. ....even the most superficial study of traffic accident experience shows that a substantial number of vehicles leave the traveled way, inadvertently or otherwise. Because this is true, every reasonable effort should be made to design the roadsides for this eventuality. The motorist must be given as safe a roadside situation as it is practicable to provide." (emphasis supplied).

. . . The value of edge lines in enhancing safe travel and extending night visibility is universally accepted. . . paint is inexpensive, and edge lines and lane lines should be applied and maintained as needed in construction areas and on detours to assist traffic flow. . . construction and maintenance operations should include. . . the following safety considerations:

. . . adequate advance warning of all unexpected conditions.

(See "Highway Design and Operational Practices Related to Highway Safety", ASSHO, 1966).

F. WHAT HAS IOWA SAID ABOUT PAVEMENT MARKINGS?

As far back as October, 1961, in a study entitled "Traffic Control Needs in Iowa" prepared by the Traffic and Highway Planning Department of the Iowa State Highway Commission in cooperation with the then U. S. Bureau of Public Roads with the assistance of the Automotive Safety Foundation of Washington, D. C., the need for markings in the interest of safety was recognized in the following words:

> "Pavement markings are an important traffic control device. They greatly increase safety (emphasis supplied), supplement signs and signals to improve compliance with regulations, and generally assist in developing a more orderly flow of traffic."

WHAT HAS IOWA SAID ABOUT SAFETY OF THE MOTORISTS IN IOWA?

(1) Responsibility of the D.O.T.

The Iowa State Highway Commission "Safety Manual" published by that body on July 1, 1966, opens with the following words:

> "Safety is the key word in the Iowa State Highway Commission. The greatest share of our resources is directed toward building safer highways, eliminating accident frequency locations, signing for the protection of the traveler and catering to the comfort and safety of Iowa road users . . ."
>
> "The Highway Commission accepts the responsibility, within legal, practical and reasonable limits for providing . . .devices necessary for the protection. . .of the traveling public. . ." (page 1)
>
> "It shall be the responsibility of supervisory employees to: . . .see that all work areas are signed according to the Manual on Uniform Traffic Control Devices. . ." (page 1-2)
>
> "Each employee shall be expected to: . . .have regard at all times for the safety of fellow employees and the public." (emphasis supplied) (page 3)

(2) Signs and Signals

> "Instructions for the signing of work areas, to protect Commission employees and the traveling public, are covered in the Manual on Uniform Traffic Control Devices for Streets and Highways. There are also various departmental instructions covering specific operations. These instructions are to be followed to the letter and it shall be the responsibility of the supervisor to make certain that there is complete compliance. Under particularly hazardous conditions that are not covered by instructions, the supervisor shall, with proper authority, establish the emergency signing necessary to afford the best possible protection for his men and the public.

"Speed of operation is never so important that signing can be neglected." (see page 77)

RESEARCH AIDS

Before any decision is made by the lawyer to sue or not sue (or file a claim under §25A), great care should be taken to investigate the facts of the accident including an inspection of the scene, a survey of the surroundings and an analysis of the protection or lack of protection afforded the injured motorist.

The following is a partial list of source material which should be reviewed and understood before the decision to make claim is made.

1. Accident Report
2. Manual on Uniform Traffic Control Devices for Streets and Highways
3. Construction contracts
4. Specification 735
5. Specification 726
6. Specification 732
7. Specification 760
8. Standard Specifications for Construction on Primary, Farm-to-Market, Secondary, State Park & Institutional Roads and Maintenance work on the Primary Road System
9. Project plans
10. District Engineer's file
11. Job Descriptions for D. O. T. personnel involved
12. Highway Safety Literature
13. Highway Engineering by Herves & Oglesby
14. Highway Engineering by Ritter
15. Highway Design & Construction by Bruce & Clarkson
16. Highway Design & Operational Practices related to Highway Safety - AASHO Report - 1967

17. Highway Safety Program Manual Vols. 12 & 13, by Federal Highway Administration.
18. "Traffic Engineering" by Institute of Traffic Engineers.
19. "Road & Streets"
20. "American Road Builder"
21. Iowa Highway Specifications for Construction & Maintenance
22. Publications of the Highway Research Board
23. "Safety Manual" - Iowa Highway Commission
24. Annual Speed Check at Selected Primary Road Locations by D. O. T.
25. Traffic Reviews for Operational Safety
26. Highway Sufficiency Ratings - Iowa D. O. T.
27. Positive Guidance in Traffic Control - U. S. D. O. T.
28. "Current Practices in Shoulder Design, Construction, Maintenance & Operation" Highway Research Circular, April 1973
29. "County Motor Vehicle Traffic Flow Map" Iowa D. O. T.
30. "Iowa Volume of Traffic on the Primary Road System" - Iowa D. O. T.
31. "Traffic Control Devices" - U. S. D. O. T.
32. Iowa State Highway Commission Maintenance Manual - Policies and Procedures - Iowa D. O. T.

Care should be taken to research and review all available material on the suspected cause of the accident. The library at the State University of Iowa at Ames is a good place to start. Many universities have excellent "transportation" libraries such as the one at the University of Michigan at Ann Arbor.

MAKING THE CLAIM

Claims against the D. O. T. are addressed exclusively to the State of Iowa. It is inappropriate to sue any agency. The STATE OF IOWA is the defendant. (Jones vs. Iowa State Highway Commission, 207 NW2nd 1)

Chapter 25A, Code of Iowa, 1975, is set out in full for convenience and guidance.

Chapter 25A

STATE TORT CLAIMS ACT

Chapter 25A, Iowa Tort Claims Act, consisting of sections 25A.1 to 25A.20, was enacted by Acts 1965 (61 G.A.) ch. 79.

The 1975 General Assembly (66 G.A.) added:

25A.1 Citation and applicability

This chapter may be cited as the "Iowa Tort Claims Act". Every provision of this chapter is applicable and of full force and effect notwithstanding any inconsistent provision of the Iowa administrative procedure Act.
Amended by Acts 1974 (65 G.A.) ch. 1090, § 207, eff. July 1, 1975.

25A.2 Definitions

As used in this chapter, unless the context otherwise requires:

1. "State agency" includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition shall not be construed to include any contractor with the state of Iowa.

2. "State appeal board" means the state appeal board as defined in section 23.1.

3. "Employee of the state" includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation. Professional personnel, including medical doctors, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of social services are to be considered employees of the state, whether such personnel are employed on a full-time basis or render such services on a part-time basis on a fee schedule or arrangement, but shall not include any contractor doing business with the state.

4. "Acting within the scope of his office or employment" means acting in his line of duty as an employee of the state.

5. "Claim" means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of his office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission, except an act of malfeasance in office or willful and wanton conduct, of any employee of the state while acting within the scope of his office or employment.

6. "Award" means any amount determined by the state appeal board to be payable to a claimant under section 25A.3, and the amount of any compromise or settlement under section 25A.9. Acts 1965 (61 G.A.) ch. 79, § 2.

25A.3 Adjustment and settlement of claims

Authority is hereby conferred upon the state appeal board, acting on behalf of the state of Iowa, subject to the advice and approval of the attorney general, to consider, ascertain, adjust, compromise, settle, determine, and allow any claim as defined in this chapter. If any claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the unanimous approval of all members of the state appeal board and the attorney general shall be required and the approval of the district court of the state of Iowa for Polk county shall also be required.

Claims made under this chapter shall be filed with the state comptroller, who shall acknowledge receipt on behalf of the state appeal board.

The state appeal board shall adopt rules, regulations, and procedures for the handling, processing, and investigation of claims, according to the provisions of the Iowa administrative procedure Act.

Amended by Acts 1974 (65 G.A.) ch. 1090, § 208, eff. July 1, 1975.

25A.4 District court to hold hearings

The district court of the state of Iowa for the district in which the plaintiff is resident or in which the act or omission complained of occurred, or where the act or omission occurred outside of Iowa and the plaintiff is a nonresident, the Polk county district court, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any suit or claim as defined in this chapter. However, the laws and rules of civil procedure of this state on change of place of trial shall apply to such suits.

The state shall be liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the state shall not be liable for interest prior to judgment or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the state were a private litigant.

The immunity of the state from suit and liability is waived to the extent provided in this chapter.

A suit is commenced under this chapter by serving the attorney general or his duly authorized delegate in charge of the tort claims division by service of an original notice. The state shall have thirty days within which to enter its general or special appearance.

If suit is commenced against an employee of the state pursuant to the provisions of this chapter, an original notice shall be served upon the employee in addition to the requirements of this section. The employee of the state shall have the same period to enter a general or special appearance as the state.

Amended by Acts 1969, (63 G.A.) ch. 81, § 3, eff. July 1, 1969; Acts 1975 (66 G.A.) ch. 80, § 3.

25A.5 When suit permitted

No suit shall be permitted under this chapter unless the state appeal board has made final disposition of the claim; except that if the state appeal board does not make final disposition of a claim within six months after the claim is made in writing to the state appeal board, the claimant may, by notice in writing, withdraw the claim from consideration of the state appeal board and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter. Acts 1965 (61 G.A.) ch. 79, § 5.

25A.6 Applicable rules

In suits under this chapter, the forms of process, writs, pleadings, and actions, and the practice and procedure, shall be in accordance with the rules of civil procedure promulgated and adopted by the supreme court of the state. The same provisions for counterclaims, setoff, interest upon judgments, and payment of judgments, shall be applicable as in other suits brought in the district courts of the state. However, no writ of execution shall issue against the state or any state agency by reason of any judgment under this chapter. Acts 1965 (61 G.A.) ch. 79, § 6.

25A.7 Appeal

Judgments in the district courts in suits under this chapter shall be subject to appeal to the supreme court of the state in the same manner and to the same extent as other judgments of the district courts. Acts 1965 (61 G.A.) ch. 79, § 7.

25A.8 Judgment as bar

The final judgment in any suit under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the state or the employee of the state whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this chapter.

Amended by Acts 1975 (66 G.A.) ch. 80, § 4.

1975 Amendment: Added "the state or".

25A.9 Compromise and settlement

With a view to doing substantial justice, the attorney general is authorized to compromise or settle any suit permitted under this chapter, with the approval of the court in which suit is pending. Acts 1965 (61 G.A.) ch. 79, § 9.

25A.10 Award conclusive on state

Any award made under this chapter and accepted by the claimant shall be final and conclusive on all officers of the state of Iowa, except when procured by means of fraud, notwithstanding any other provisions of law to the contrary.

The acceptance by the claimant of such award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim, by reason of the same subject matter. Acts 1965 (61 G.A.) ch. 79, § 10.

25A.11 Payment of award

Any award to a claimant under this chapter, and any judgment in favor of any claimant under this chapter, shall be paid promptly out of appropriations which have been made for such purpose, if any; but any such amount or part thereof which cannot be paid promptly from such appropriations shall be paid promptly out of any money in the state treasury not otherwise appropriated. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general. Acts 1965 (61 G.A.) ch. 79, § 11.

25A.12 Report by comptroller

The state comptroller shall annually report to the general assembly all claims and judgments paid under this chapter. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim. Acts 1965 (61 G.A.) ch. 79, § 12.

25A.13 Limitation of actions

Every claim and suit permitted under this chapter shall be forever barred, unless within two years after such claim accrued, the claim is made in writing to the state appeal board under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the state appeal board as to the final disposition of the claim or from the date of withdrawal of the claim from the state appeal board under section 25A.5, if the time to begin suit would otherwise expire before the end of such period.

If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the time to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would otherwise expire before the end of such period. The time to begin a suit under this chapter may be further extended as provided in the preceding paragraph.

This section is the only statute of limitations applicable to claims as defined in this chapter.

Amended by Acts 1969 (63 G.A.) ch. 81, § 4, eff. July 1, 1969; Acts 1975 (66 G.A.) ch. 80, § 5.

25A.14 Exceptions

The provisions of this chapter shall not apply to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse or process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workmen's compensation law or the Iowa occupational disease law. Acts 1965 (61 G.A.) ch. 79, § 14.

6. Any claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when such damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "active state service" as defined in section 29A.1, subsection 5.
Amended by Acts 1970 (63 G.A.) ch. 1027, § 1; Acts 1975 (66 G.A.) ch. 80, § 6

25A.15 Attorney's fees and expenses

The court rendering a judgment for the claimant under this chapter, or the state appeal board, with the advice and approval of the attorney general, making an award under section 25A.3, or the attorney general making an award under section 25A.9, as the case may be, shall, as a part of the judgment or award, determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a serious misdemeanor.

25A.16 Remedies exclusive

From and after March 31, 1965, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on claims as defined in this chapter. The remedies provided by this chapter in such cases shall be exclusive. Acts 1965 (61 G.A.) ch. 79, § 16.

25A.17 Adjustment of other claims

Nothing contained herein shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a claim as defined in this chapter. Acts 1965 (61 G.A.) ch. 79, § 17.

25A.18 Extension of time

If a claim is made or a suit is begun under this chapter, and if a determination is made by the state appeal board or by the court that the claim or suit is not permitted under this chapter for any reason other than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the state appeal board, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period. Acts 1965 (61 G.A.) ch. 79, § 18.

25A.19 Claims before appeal board

Section 25.7 shall not apply to claims as defined in this chapter, except as expressly provided in section 25A.2.[1] The other provisions of chapter 25 shall not apply to claims as defined in this chapter. However, any or all of the provisions of sections 25.1, 25.4, and 25.5 may be made applicable to claims as defined in this chapter by agreement between the attorney general and the state appeal board from time to time. Acts 1965 (61 G.A.) ch. 79, § 20.

[1] Section 1 in Act as passed.

25A.20 Liability insurance

Whenever a claim or suit against the state is covered by liability insurance, the provisions of the liability insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this chapter. The attorney general and the state appeal board shall co-operate with the insurance company. Acts 1965 (61 G.A.) ch. 79, § 21.

25A.21 Officers and employees defended

The state shall defend any employee of the state, whether elected or appointed and, except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful and wanton conduct, shall save harmless and indemnify such employees of the state against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties.
Added by Acts 1975 (66 G.A.) ch. 80, § 7.

25A.22 Actions in federal court

The state shall defend, indemnify and hold harmless an employee of the state in any action commenced in federal court under section 1983, Title 42, United States Code, against the employee for acts of the employee while acting in the scope of employment. If the acts or omissions of the employee, upon which the action is based, are within the exceptions to claim as defined in section 25A.2, subsection 3, paragraph "b", the state shall not indemnify or hold harmless the employee.
Added by Acts 1975 (66 G.A.) ch. 80, § 7.

THE STATE APPEAL BOARD AND THE ADMINISTRATIVE PROCEDURES ACT

(Chapter 17A, Code of Iowa, 1975)

The "State Appeal Board" is composed of the Auditor of State, Treasurer of State and State Comptroller as provided by Chapter 23, Code of Iowa, 1975.

All claims filed against the State must be first presented to the "State Appeal Board" in accordance with the provisions of Chapter 25A and the Administrative Procedures Act which Act provides as follows:

APPEAL BOARD, STATE[60]

CHAPTER 1
TORT CLAIMS

CHAPTER 1
TORT CLAIMS

60—1.1(25A) Definitions. As used in these rules, "state agency," "employee of the state," "claim" and "award" bear the definitions ascribed to them in section 25A.2 of the Code. "Board" means "state appeal board" as defined in section 23.1. "Executive secretary" means executive secretary of the state appeal board.

60—1.2(25A) Meetings of board. The board shall meet at a time and place fixed by the chairman or a majority of the board.

1.2(1) *Orders of board.* The board shall be considered in continuous session for the purpose of entering orders, issuing determinations and making awards.

1.2(2) *Quorum.* A majority of the membership of the board shall constitute a quorum for the transaction of all business. But the compromise, settlement or allowance of any claim in an amount larger than $5,000 shall require the approval of all members of the board and of the district court of Polk county.

1.2(3) *Executive secretary.* The state comptroller shall appoint an employee of his office to serve as executive secretary of the board.

60—1.3(25A) Form of claims. All claims should be typewritten, but claims printed by hand will be accepted if legible.

1.3(1) *Place of filing.* Claims shall be filed in triplicate with the State Comptroller, State Capitol, Des Moines, Iowa 50319.

1.3(2) *Verification.* Claims shall be verified.

1.3(3) *Names and signatures.* Claims shall state thereon the names, addresses and telephone numbers of the person making the claim and of the attorney, if any, preparing or assisting in preparing the claim and their signatures.

1.3(4) *Designation by number.* The executive secretary shall assign a number to each claim. Thereafter it may be referred to by such a number.

60—1.4(25A) Content. All claims shall set forth information as follows:

1.4(1) *Description of accident.* State, in detail, all known facts and circumstances attending the damage or injury, identifying persons and property involved and the cause thereof.

1.4(2) *In connection with personal injuries or death.*

a. A detailed description of the nature, extent and duration of any and all injuries.

(1) The names and addresses of any and all physicians, surgeons, dentists or other medical personnel providing treatment or services.

(2) The dates and places of the treatments or services.

(3) The date of the final treatment or service and the name of the physician or other person providing same.

(4) If treatment or services are continuing, the name and address of each physician or other person rendering said treatment or service, and the nature of the treatment or service.

b. The name and address of any hospital in which claimant is or was confined and the dates of admission and discharge.

c. The name and address of any and all persons who have taken the X rays of claimant, the dates of such X rays and a statement as to what the X rays purportedly established.

d. A statement as to any pre-existing injury, illness or condition, the nature of such pre-existing injury, illness or condition, and the name and present address of each physician or other person who has rendered or who is rendering treatment for such disability.

e. If employed at the time of the injury or death, the name and address of the employer, the position or job held and nature of the work performed, the average weekly wage or salary for the year immediately past, the period of time lost from employment (dates), and the sum of wages or salary claimed to have been lost, if any, by reason of injuries or death.

f. If other loss of income, profit or earnings is claimed, the amount of such loss or losses and how computed, the source of such loss, the date of deprivation thereof, the period of time and whether it is continuing.

g. Name and address of present employer, if claimant has returned to work, the position or job held, the nature of the work being performed and present weekly wages, earning, income or profits.

h. Itemization in detail of any and all moneys expended or expenses incurred in connection with said claim.

i. Names and addresses of all persons who have personal knowledge of any facts relating to said claim.

1.4(3) *In connection with property damage or loss.*

a. Motor vehicle.

(1) Make, model, year.

(2) Date of purchase and purchase price.

(3) Cost estimates for repairs or actual costs thereof, with copies of estimates or bills.

(4) Specific part or parts allegedly damaged.

(5) Names and addresses of any and all persons having personal knowledge of any facts relating to the claim.

b. Other property.

(1) Nature and description of such other property or items of property separately listed.

(2) Method by which such property was acquired. If purchased, then the name of the person or place from which purchased, the price, date and usage made of the property.

(3) Depreciated value at date of damage or loss.

(4) Costs estimates for repairs or actual costs thereof with copies of cost estimates made or of bills paid.

(5) Names and addresses of any and all persons having personal knowledge of any facts relating to the claim.

60—1.5(25A) **Allegations denied.** No answer to a claim shall be required of the state, and all allegations of the claim shall be treated as denied pending final disposition.

60—1.6(25A) **Attorney general.** The executive secretary shall deliver or cause delivery of two copies of each claim to the special assistant attorney general assigned to claims.

60—1.7(25A) **Investigation.** Upon receipt of said copy, the special assistant attorney general shall investigate the claim. He shall ex officio be empowered to administer oaths or may take testimony in the form of affidavits, depositions or oral or written interrogatories or otherwise. He may compel the attendance of witnesses and certify to any district court for contempt.

60—1.8(25A) **Notification.** The special assistant attorney general shall notify the claimant or his attorney, in writing, of the board's determination and of the amount of the award, if any.

60—1.9(25A) **Release or covenant not to sue.** The claimant shall be required to execute a release of the claim or a covenant not to sue in consideration of the amount of the award fixed by the board.

60—1.10(25A) **Acceptance.** Return of the release or covenant not to sue properly executed by the claimant or his attorney shall constitute acceptance of the award in full settlement of the claim.

60—1.11(25A) **Attorney fee affidavit.** Along with the executed release or covenant not to sue the claimant's attorney shall submit in affidavit form the amount of his attorney fees in connection with his services to claimant.

60—1.12(25A) **Warrant.** If the board determines the claimant's attorney's fees to be reasonable and the release or covenant not to sue properly executed the comptroller shall cause the issuance of a warrant in the amount of the award, payable to claimant and to his attorney, if he has one.

60—1.13(25A) **Withdrawal.** Withdrawal of claims shall be by notice in writing addressed to the State Appeal Board, Office of the State Comptroller, Des Moines, Iowa 50319.

[Filed June 16, 1967; amended September 26, 1967, August 12, 1970]

APPENDIX TO RULES

This appendix is not a part of the rules and has not been adopted by the state appeal board. The forms are not official forms and their use is not mandatory except to the extent that they incorporate provisions required by the rules.
The following forms are suggested as aids to claimants.

Form A, Iowa Tort Claims Act

State Appeal Board of the State of Iowa
CLAIM AGAINST THE STATE OF IOWA
(For damages under the Iowa Tort Claims Act)

.....
CLAIMANT
Claim No. .....

.....

1. Post-office address of Claimant:
.....
.....
.....

2. Nature of claim (check one):
Personal injury.....
Property damage .....
Both of above.....

3. Time, date and place claim arose: .....
.....
.....

4. State agency and employee whose act or omission gave rise to this claim: .....
.....
.....

5. Attached hereto and made a part of this claim are:
Statement of facts, personal injury .....
Statement of facts, property damage .....

(Note: Statements of facts are those required by 1.4(2) and 1.4(3). They should be as detailed as possible).

6. Amount of award claimed as compensation:
For personal injury .....
For property damage.....
Total award claimed .....
7. I (am) (am not) represented by an attorney.

.....
Claimant's signature
Address.....
.....
Telephone No. .....
.....
Attorney for Claimant
Address.....
.....
Telephone No. .....

STATE OF IOWA }
ss.
COUNTY OF }

I, ..., being duly sworn, depose and say that I am the claimant herein, and have read the foregoing claim filed by me or on my behalf, and that the facts stated therein are true as I verily believe,

.....
Claimant's signature

Subscribed in my presence and sworn to before me by the said ..... this .....day of ....., 19.....

.....
Notary Public

Form B, Iowa Tort Claims Act

State Appeal Board of the State of Iowa
CLAIM AGAINST THE STATE OF IOWA
(For damages under the Iowa Tort Claims Act)

.....
CLAIMANT
Claim No. .....

REQUEST FOR HEARING[1]

To: EXECUTIVE SECRETARY
STATE APPEAL BOARD

COMES NOW the claimant herein and requests a hearing on the issues arising under his claim. Said claim was filed with the State Comptroller on the.....day of....., 19.....

.....
Claimant's signature
Address.....
.....
Telephone No. .....
.....
Attorney for Claimant
Address.....
.....
Telephone No. .....

[1]A request for hearing must be filed within thirty days after the claim is filed with the state comptroller (Rule 1.11). If claimant desires to depose a state employee or submit interrogatories to be answered in writing, he must file with his request for hearing, applications to do so (Rules 1.9, 1.10).

Form C, Iowa Tort Claims Act

State Appeal Board of the State of Iowa
CLAIM AGAINST THE STATE OF IOWA
(For Damages under the Iowa Tort Claims Act)

.....
CLAIMANT
Claim No. .....
APPLICATION TO
TAKE DEPOSITION[1]

COMES NOW the claimant herein and files this application in triplicate for the taking of the deposition of the following employee of the State of Iowa:

1. Name: .....
2. State agency which employs him: .....
.....
3. Place of employment: .....
.....
4. Name and address of immediate superior (if known): .....
.....
5. Time, date and place preferred for taking of deposition: .....
.....
6. Is person named the person whose act or omission gave rise to this claim?
Yes..... No.....
7. Reasons why deposition is sought: .....
.....
.....
.....
.....
8. I (am) (am not) submitting written interrogatories.

.....
Signature of Claimant or Attorney
.....
Address.....
.....
Telephone No. .....

[1]The application shall be filed with the request for hearing. (Rule 1.9).

Form D, Iowa Tort Claims Act

State Appeal Board of the State of Iowa
CLAIM AGAINST THE STATE OF IOWA
(For damages under the Iowa Tort Claims Act)

.....
CLAIMANT
Claim No. .....
APPLICATION FOR CONTINUANCE

COMES NOT the claimant herein and requests continuance of the hearing on his claim previously set for the ..... day of ....., 19...., at ..... o'clock, at (place) .....,
for the reasons that:
.....

.....
Claimant's (or attorney's) signature
Address.....
.....
Telephone No. .....

The Attorney General's Office reports that it is rare for a claimant to request a hearing before the State Appeal Board though the rules permit such a hearing provided request is filed within thirty (30 days after the claim is filed. The claimant may depose State employees or submit interrogatories, but the application to do so must be filed with the request for hearing.

Read carefully the Administrative Procedure Act Chapter 17A, Code of Iowa, 1975 and check with the Executive Secretary of the State Appeal Board in the Comptroller's Office for any recent rule changes prior to filing claim with the Board.

It appears to be the practice of the Board and the Attorney General's Office to take no action on most claims involving five thousand dollars ($5,000.00) or more and the D. O. T. but to simply permit the six (6) months to elapse without action unless the claimant demands hearing or takes some other affirmative step during the six (6) month period.

HOW THE D. O. T. COULD ELIMINATE OR REDUCE CLAIMS MADE AGAINST IT

From the legal standpoint, the dedicated members of the D. O. T. staff could eliminate or greatly reduce claims made against the D. O. T. by adhering to the following simple rules:

1. Follow its own rules and regulations to the letter.

2. Tell it like it is.

   A. If there is a "Low Shoulder" ahead, tell the motorist with a sign.

   B. If there is an "Unfinished Shoulder" post the sign.

   C. If there is "Shoulder Work" ahead, so advise.

   D. If there is a drop-off, roadway to shoulder, Be Specific, tell the motorist.

   E. Do not be subtle in the use of warning signs: There is nothing subtle about regulatory signs such as STOP, YIELD, NO PASSING, SPEED LIMIT 55. Why leave the motorist in a guessing game with such things as small barricades along the edge of the shoulder, when in fact there is a dangerous drop-off from roadway to shoulder? Barricades along the roadside do not necessarily say the same thing to all people - certainly not "Low Shoulder" or "Danger, don't get off the road", or "Beware, twelve-inch drop-off".

3. Define the responsibility of those who are charged with the responsibility of affording safety to the traveling public.

4. Make certain that those who are so charged understand the principles of safety engineering and provide adequate warnings in accordance with the principles of reasonable protection.

5. Do not permit the contractor to dictate the progress of the work - you have the power under the law and your contract with him to require that the work be performed in proper sequence and in the interest of safety.

6. Require that the contractor live up to the terms of the contract and if safety requires that shoulders be built up to pavement levels as the work progresses (and the hazards involved almost always will so dictate) require the contractor to finish the shoulder as the work progresses.

7. If it is impossible for the contractor to "eliminate the hazard", then require him to "minimize the hazard" and "instruct and warn" as to the remaining hazard and risk.

8. Employ a qualified safety engineer to analyze all construction activities and authorize him to require proper signing in the interest of safety.

9. Remember that in construction activities your own Manual requires warning as to specific hazards. You must place or require the placement of appropriate warning signs warning of the specific hazard to be confronted by the motorist. Your failure to do so can be evidence of negligence on the part of the State.

10. In maintenance and repair operations, require your maintenance personnel to read and understand your manual and perform the operations in accordance with the provisions of the manual.

WHAT THE LAWYER CAN DO TO ELIMINATE OR REDUCE CLAIMS MADE AGAINST THE STATE OF IOWA (D. O. T)

1. Do your homework.

2. Do not file a claim against the State (D.O. T.) without first having followed and applied the principles set forth herein.

3. If after careful analysis you are convinced that a proper claim will lie against the State (D. O. T.), then follow very carefully the law of Section 25A and the Administrative Procedure Act in the filing of a claim.

4. Demand a hearing before the State Appeal Board and present your claim, thus giving the Board a fair opportunity to evaluate the claim prior to suit.

5. If the State Appeal Board refuses the claim, then and only then should you file the petition and pursue the claim through the court process.

Remember,

1. The claimant may sue only after claim has been rejected by the State Appeal Board or after six months has elapsed and the claim has been withdrawn.

2. The case is triable to a judge without a jury and you are bound by the verdict of the court insofar as the facts are concerned.

3. Justice requires that only those suits which have merit be filed. Frivolous claims and suits are harmful to the future right of injured parties to make claim against those who are responsible.

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Des Moines, Iowa 50309