



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

LOCAL ORDINANCE FOR ABUTTING PROPERTY OWNER - LIABILITY

Filed by the Iowa Supreme Court
June 13, 2014

Madden v. City of Iowa City and State of Iowa
No. 13-0673

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Background and Procedure. A bicyclist was riding on the sidewalk abutting the grounds of the University of Iowa in Iowa City (City) when she fell, sustaining an injury. The bicyclist filed a negligence action against the City for failure to maintain the sidewalk in a safe condition. The City moved to add the State of Iowa (State) as a third-party defendant, arguing that it had by ordinance imposed a requirement on the abutting landowner to maintain the sidewalk and that the ordinance was permitted under Iowa law. The City's motion was granted. The City then filed a cross-petition against the State alleging entitlement to contribution. The State filed a motion to dismiss the City's cross-petition. The district court later denied the State's motion to dismiss the City's cross-claim. The State then filed a motion for interlocutory review.

Issue. Whether a city has the authority to impose liability by ordinance on abutting landowners for sidewalk maintenance and repair.

Arguments and Analysis. The Iowa Supreme Court (Court) described the general common law rule that a statute or ordinance that imposes a duty on an abutting landowner to maintain a sidewalk in good repair does not automatically make the landowner liable for damages. Instead, liability only attaches when there is express legislative authorization. The Court acknowledged Iowa's longstanding adherence to that general rule. Iowa Code §364.12(2)(c) states that an abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets. The City's ordinance enacted based upon Iowa Code §364.12, provides that the abutting property owner shall maintain the sidewalk in a state of good repair and that the abutting property owner may be liable for damages caused by a failure to maintain the sidewalk.

In examining the language of Iowa Code §364.12, the Court acknowledged the existence of a liability provision as it relates to an abutting property owner's failure to remove accumulations of snow and ice and the absence of such a provision for the general maintenance and repair of the property containing the sidewalk. The Court stated that if this case was merely a question of whether the City has authority to impose liability under the statute, the answer would be that the City does not. The City has, however, asserted its authority to enact the ordinance under the home rule provisions of the Iowa Constitution and the Court then analyzed whether the Legislature had preempted the City's power to enact such an ordinance through the provisions of Iowa Code §364.12.

The Court concluded that legislative silence on the issue of abutting property owner liability does not preempt a local ordinance. Therefore, even though there was not specific statutory authority to impose liability, no conflict exists between the statutory provisions of Iowa Code §364.12 and the City's ordinance.

The Court also rejected the State's argument that the City's ordinance amounted to an unauthorized tax under the Iowa Constitution's home rule provisions. The Court also addressed the State's argument that liability may not be imposed as

the result of the Iowa Tort Claims Act (ITCA). The Court rejected the State's argument that the waiver of sovereign immunity is limited to claims that would have been recognized at the time of the passage of the ITCA and instead determined that the State, subject to the statutory exceptions, stands in the same position as a private party for claims regardless of the claim's viability at the time the ITCA was enacted.

Holding. The Court held that the City ordinance is not preempted by Iowa law, that the potential imposition of indemnity does not give rise to an unlawful tax, and that the claim brought is within the scope of the ITCA.

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