



CHAPTER 9
TOWN
LIABILITY

9.01 Town Liability

Approval or acceptance of a drainage design by the local government does not relieve the design engineer of either professional liability or ethical responsibility. Designs are normally reviewed for compliance with required design standards and codes, with the reviewer taking no responsibility for the outcome of the project as designed. The ultimate responsibility (and/or liability) rests on the design engineer who seals the plans.

Tennessee Code Annotated 29-20-205 states that all government entities are guaranteed “Immunity from suit ...for injury...caused by negligent act or omission of any employee within the scope of his employment...if the injury arises out of:

- (3) the issuance, denial, suspension, or revocation of, or by failure to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

- (4) a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;

A municipality generally has no responsibility for drainage problems among private landowners, unless the municipality has itself violated the natural flow rule. Likewise, in the absence of such a violation by the municipality, the municipality generally has no obligation to maintain the integrity of the drain, and no right to go onto the properties in question. An exception to this would occur in a case where the landowner has created the drainage problem by violating subdivision regulations, stormwater ordinances, or other ordinances or laws. In such a case the municipality could deal with the problem as a compliance issue.

9.02 Miller v. City of Brentwood

Plaintiffs (the property owners in a subdivision) sued the City of Brentwood, Tennessee, alleging that the city, by granting building permits for construction which reduced the absorption of rainfall into the earth, authorized and permitted an increase in the “runoff” of water. They alleged this overtaxed a drainage ditch passing by and/or through their properties, located in the lower portion of the subdivision, thereby causing flooding and damage to their property. The lower court held that the city had caused the increased flooding of plaintiffs’ properties and thereby created an actionable nuisance, entitling plaintiffs to appropriate injunctive relief. On appeal the Court of Appeals of Tennessee, Middle Section, reversed the lower court’s decree, vacated all relief granted, and dismissed the plaintiffs’ suit. Excerpts from the opinion given by the Court of Appeals include:

Even if it be accepted that part of plaintiffs’ troubles arise from construction authorized by the city, this does not establish plaintiffs’ rights against the city.

The right of action, if any, for plaintiffs' injuries is directly against those who caused the problem, i.e., the owners of property which is producing the unnatural amount of surface water.

No right of action is recognized against a municipality for issuing a permit for construction in accordance with existing laws and regulations. Correspondingly, there is no authority for the Courts to enjoin the issuance of a permit, otherwise lawful, for the reason that its use might result in a private injury.

It is the conclusion of this Court that no right of action whatever exists against the city in the present circumstances.

9.03 Britton v. Claiborne County

Where property owners are damaged by runoff from drainage ditch as result of a private individual construction of property improvement, right of action for damaged property owners, if any, was directly against those who caused the problem.

9.04 Butts v. City of South Fulton, Kind v. Johnson City

Wrongful interference with natural drainage of surface water causing injury to adjoining landowner constitutes actionable nuisance. In these cases it was deemed that the city did cause the nuisance by wrongful interference with natural flow
