

# DOCUMENTING THE INSTALLATION OF TRAFFIC CONTROL SIGNS ON COUNTY ROADS

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## CAMPBELL v. STATE—ABOLISHED SOVEREIGN IMMUNITY

*Campbell v. State*, (1972) 259 Ind. 55, 284 N.E. 2d 733 clearly abolished sovereign immunity as to the state of Indiana and re-affirmed that no such immunity exists as to cities and counties. The “proprietary” versus “governmental” distinction was abolished. However, “discretionary” functions were found to be still immune; there must be a breach of a duty owed to a private individual for a governmental body to be found liable for tort in Indiana.

The Indiana Tort Claims Act, I.C. 34-4-16.5-1 *et seq.*, codified the *Campbell* result effective February 19, 1974. This included the “discretionary” immunity section: I.C. 34-4-16.5-3. However, a “discretionary” function is still an undefined term in Indiana law.

## LIABILITY AREAS—DESIGN, CONSTRUCTION, MAINTENANCE, SIGNING

There are four areas of potential liability for public roads in Indiana: design, construction, maintenance, and signing. Liability clearly attaches for negligent maintenance (chuckholes, drop-offs, collapsed roads). It is also now clear that a downed traffic sign or malfunctioning stop light can produce liability. *Board of Commissioners of Delaware County v. Briggs*, (1975) — Ind. App. —, 337 N.E. 2d 852, *rehearing denied* (1976) — Ind. App. —, 340 N.E. 2d 373, *transfer denied* (downed traffic sign). However, a governmental entity must have actual or constructive notice of such condition. *City of Indianapolis v. Bates*, (1976) — Ind. App. —, 343 N.E. 2d 819 (malfunctioning traffic light).

## IMMUNE "DISCRETIONARY" FUNCTION—UNSETTLED

It is still unsettled Indiana law whether design, construction, and the initial placement of traffic signs are immune "discretionary" function. The *Briggs* case, *supra*, refused to decide this question. The issue is before the appellate courts on cases being appealed by the Attorney General's Office for the Indiana State Highway Commission. Trial courts routinely treat these issues as jury questions in the absence of supreme court interpretations.

## DEFENSE OF ENGINEERING DECISIONS

This means that engineers working for state and local governments in Indiana can expect to have to defend their engineering decisions on design, construction, and the initial placement of traffic control devices on the witness stand. The state's experience shows that such a jury defense can be successful, although obviously *not every time*. Governmental entities in Indiana have the advantage of the 180-day notice provision of the Tort Claims Act, I.C. 34-4-16.5-6 and 7, and a limitation of liability of \$300,000, I.C. 34-4-16.5-4. However, the important features of public liability on Indiana's highways and roads remains, to date, a jury question to be fought on a case by case basis.

## KEEP RECORDS OF ROAD SIGNINGS AND RUN TRAFFIC STUDIES

The specific problem facing all governmental units in Indiana, from the state on down to the smallest jurisdiction controlling roads, is the ability to prove the existence of traffic control devices several years after an accident has occurred. The first step in such documentation involves the proper promulgation, pursuant to the appropriate statutes, of the installation of stop signs, speed zones, and other traffic control devices. The preparation and presentation of such records can be crucial in litigation.

## TRAFFIC STUDIES

A second emerging area of potential liability involves running traffic investigations in order to control traffic pursuant to the Uniform Manual of Traffic Control Devices. Potential litigation can arise from the failure or inability to utilize such investigations. The unfortunate side issue here deals with the cost of such activity, particularly for smaller jurisdictions.

## TELEPHONE LOGS AND TROUBLE SHEET RECORDS

Telephone logs for incoming complaints and reports of inoperative signs and signals are becoming increasingly necessary to document activities of highway departments. Such telephone logs, supplemented by trouble run sheets for malfunctioning signals, can provide evidence of activities years after the events in question, as well as refresh the recollection of potential witnesses. The simple use of a grease pencil date on the back of a sign can refute potential plaintiff testimony.

## GET REPORT HELP FROM PUBLIC AND POLICE

Finally, the key to proper signing documentation and usage lies in cooperation with all levels of law enforcement officers and the general public. No jurisdiction has sufficient funds for round-the-clock signing patrols. Every highway department must rely on police and citizen calls to avoid lengthy signal malfunctions and downed traffic signs.