

October 26, 2009

Jesse Schomberg
University of Minnesota Sea Grant Program
145 Chester Park
Duluth, MN 55812

Re: Rescue station liability (MASGP 09-008-13)

This product was prepared by the National Sea Grant Law Center under award number NA06OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Jesse,

Please find attached our analysis of the liability associated with a local government's installation of rescue stations at public beaches. The attached information is intended as advisory research only and does not constitute legal representation of the University of Minnesota Sea Grant Program or its constituents. It represents our interpretations of the relevant laws and regulations. As we understand it, there are three specific questions: 1) If a city installs rescue stations, would it then be liable if the rescue stations were misused or if equipment was missing when a rescue was needed? 2) Would certain procedures for equipment checking and replacement be required? 3) Are there other liability issues the city should be aware of in considering such rescue stations?

Landowner Liability

First, it is important to ground these questions in general liability principles. Most likely, any liability claim would be based in negligence. Common law defines negligence as "conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm."¹ To prove negligence, a plaintiff must prove three elements: 1) that the defendant owed a duty to the plaintiff; 2) the defendant breached that duty; and 3) the breach proximately caused injury to the plaintiff.

The "duty of care" owed to a plaintiff depends on the status of the person on the land at the time of the accident. Visitors to a municipal beach would be considered "invitees," which is defined

¹ Restat. 2d of Torts § 282.

as a person who enters onto land for the purpose for which the land is held open to the public.² Landowners have a duty to carry on their activities with “reasonable care” for an invitee’s safety and to protect invitees from conditions that the invitee is unlikely to discover.³ “Reasonable care” is the care with which a reasonable person or entity in the same position would recognize as necessary to prevent the unreasonable risk of harm to another.⁴ Landowners generally do not have a duty to protect invitees from obvious dangers posed by water, such as the risk of drowning or diving into obviously shallow water. These general common law rules, however, may be abrogated by state law.

Many states grant municipalities immunity under state tort claims acts. In Minnesota, “every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.”⁵ However, an exception in Minn. Stat. § 466.03, subd. 6(e) provides municipalities with immunity for “any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services... Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person.”⁶

According to Minn. Stat. § 466.03, subd. 6(e), a municipality would be liable only if it violated the standard of care that a private landowner owes to a trespasser.⁷ To determine the standard of care owed to a trespasser, Minnesota has adopted Restatement 2d. Torts § 335 (1965), which states:

A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if

(a) the condition

(i) is one which the possessor has created or maintains and

(ii) is, to his knowledge, likely to cause death or seriously bodily harm to such trespassers and

(iii) is of such a nature that he has reason to believe that such trespassers will not discover it, and

(b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.

Therefore, a municipality would be immune from suit for the operation of a beach unless the land in question contained a hidden “artificial condition” and its conduct would entitle a trespasser to damages against a private person. (Hereafter called the “trespasser exception.”)

² *Id.* § 332.

³ *Id.* § 341A.

⁴ *Id.* § 298.

⁵ MINN. STAT. § 466.02 (2008).

⁶ *see* Neumann v. City of St. Paul, 538 N.W.2d 921 (Minn. Ct. App. 1995).

⁷ *see* Martin v. Spirit Mt. Rec. Area Auth., 566 N.W.2d 719.

Artificial conditions could be man-made ponds, ditches, and swimming areas. Courts have emphasized that for the trespasser exception to apply, the artificial conditions must have been hidden.⁸ For example, in a case in which a child drowned while swimming in an artificially created swimming pond, the court found that the danger was not hidden because the pond had a gradually sloped bottom with no drop-offs or unusual currents.⁹ Because the Minnesota Sea Grant Program is working to establish the stations to protect against rip currents, it is likely that the stations would not be located on beaches with artificial conditions. However, it would be wise for municipalities to assume that there could be hidden artificial conditions at the beaches and strive to meet the “reasonable care” standard.

Liability for Maintenance

Although a municipality may not have a duty to provide rescue stations, once it assumes that duty, it should act with reasonable care.¹⁰ As stated above, “reasonable care” is the care with which a reasonable person or entity in the same position would recognize as necessary to prevent the act from creating an unreasonable risk of harm to another.¹¹

As long as a municipality maintained life jackets, throw rings, boogie boards, and other equipment in the rescue station with reasonable care, it will have met this standard. For example, it seems reasonable for a municipality to establish a regular maintenance schedule during which it could inspect the equipment. A checklist requiring inspectors to look for any tears, loose buckles and straps, dry rot or mildew on equipment might help standardize maintenance. In compiling maintenance procedures, it might be helpful for cities to look at safety equipment standards and maintenance schedules used at other local governments’ pools or beaches.

Liability for Misused or Missing Equipment

Again, a municipality should use the “reasonable care” standard in the case of misused or missing equipment. If municipalities expect that equipment may be misused or taken from the rescue stations, the stations should be inspected on a regular basis to ensure that the equipment is present and in good condition.

Other Issues

One additional consideration is that the establishment of a rescue station would provide evidence that the municipality is operating a public recreation area. If the city is operating a public recreation area that has an artificial condition, Minnesota law would require the city to not only operate and maintain the rescue stations with “reasonable care,” but also the entire swimming area.¹²

I hope you find this information useful. Please contact me at anytime if you have additional questions.

⁸ Johnson v. Washington County, 518 N.W.2d 594, 600 (Minn. 1994).

⁹ *Id.*

¹⁰ Restatement 2d of Torts § 341A.

¹¹ *Id.* § 298.

¹² *see* Breaux v. City of Miami Beach, 899 So. 2d 1059, 1064 (Fla. 2005).

Sincerely,

Terra Bowling
Research Counsel
National Sea Grant Law Center