

OFFICE OF THE CITY ATTORNEY

OPINION 91-01

TO: Dennis L. Frederickson, City Manager

FROM: Stephen M. Kemp, City Attorney

DATE: March 14, 1991

SUBJECT: Opinion on Detention Basin Liability

QUESTION:

Does the City of Peoria incur additional liability for personal injuries on City bicycle paths adjacent to City detention basins.

OPINION:

Generally, the City is under a legal duty to keep its streets and public ways, including bicycle paths reasonably safe, taking into account minimal expectations of persons using the facilities. Coburn v. City of Tucson, 143 Ariz. 50, 691 P.2d 1078 (1984). The existence of this legal duty does not make the City the insurer of its streets, highways and other public ways. Arizona State Highway Department v. Bechtold, 105 Ariz. 125, 460 P.2d 179 (1969).

Consequently, the following issues arise:

1. What is the general nature of the City's liability.
2. Is this liability expanded by construction of additional facilities.

The bicycle paths must be constructed in such a manner that they are reasonably safe for travel. This same standard would apply to sidewalks and any other public ways. "Reasonably safe" can be defined as preventing any defects which render the condition of the path, sidewalk or street unsafe for ordinary use. City of Phoenix v. Williams, 89 Ariz. 299, 361 P.2d 651 (1961).

Opinion No. 91-01
Page 2

Obviously, the construction of each facility increases the City's liability incrementally, since there is then another facility which may develop a defect. However, the establishment of a bicycle path does not adjust the standard of liability or result in increased risk, since the City would be responsible in removing any obvious defects from the detention basin regardless of the existence of the bicycle path.

Therefore I would conclude that the City does not incur any additional liability by the construction of a bicycle path adjacent to a detention basin. If you should have any questions, please do not hesitate to contact me.

SMK:jf

cc: Meredith R. Flinn, Assistant City Manager

\\STEVEK\OPINION\91-01