

# City not immune

**Supreme Court rules sewer line back-ups due to city negligence can be that city's financial responsibility**

One ringy dingy. Two ringy dingy. Is this party to whom I am speaking? Perry?

Perry Dray may pick up a few extra ten thousand bucks from the City of Cheyenne in the near future.

'cause another Wyoming Supreme Court ruling just dropped the City of Cheyenne and its Board of Public Utilities squarely into the soup again.

The case is Cottier v. City of Torrington and the ruling came on an appeal by that City to a District Court decision that made them (the City) liable for damages caused by raw sewage backup into private property when the City was negligent in maintaining the main (trunk) lines of their public sewer system.

Are you listening, Tim Wilson?

You might want to hire a little bitty fellow, buy a Stihl chainsaw, then send him and it into the sewer lines to cut out some of those tree roots you've allowed to accumulate for years and that now block the flow of the ... well, you know.

The Appeal was heard by the entire Varsity. The five Supreme Court justices, no district court stand-ins.

Justice James Burke wrote the unanimous opinion for the Court.

The City of Cheyenne has encountered dozens, possibly hundreds, of similar claims. Their practice is to deny the claims on the basis of governmental immunity. Just like they do if a police car slams into the back of a citizen's parked car which yielded to the emergency vehicle, as Wyoming law requires.

"Yes. We were negligent. We are at fault. We were to blame. And we're sorry. But, you don't get a dime because we have governmental immunity."

I think up until about a year ago, Saddam Hussein thought he had governmental immunity. He didn't either.

In many City cases, governmental immunity applies. But not in every case.

The law (W.S. § 1-39-108) states, basically, that unless a claim falls within one of the statutory exceptions to governmental immunity, the claim will be barred.

W.S. § 1-39-108 (a) "A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the **operation of public utilities and services** including gas, electricity, water, **solid or liquid waste collection or disposal**, heating and ground transportation." (Herald Underlining.)

Faced with the real prospect of having to pay for its negligence when it comes to raw sewage backing up into residents homes, offices, etc., the City of Torrington took a page out of the City of Cheyenne's play book. (Not the one written by Mike Basom that says "lie in court." Another one.)

"OPERATION." The City of Torrington's issue for review in this case became: "Whether the waiver of governmental immunity for 'operation' of public utilities found in W.S. § 1-39-108(a) extends to 'maintenance' of public utilities?"

When all else fails, parse. Split hairs. Divide the question. Confuse the issue.

Torrington claimed they could only be held liable for the "operation" of the sewer system, not for negligence in the "maintenance" of that system. The District Court told the City "wrong" and held it responsible and liable for damages. The City appealed. Of course.

How about the following for a defense? One that should make voters give "thumbs up" to the mayor and council.

The City of Torrington "asserts that its negligence in this case relates to its failure to maintain the sewer system." Oh, no one 'splained it like that before. They didn't "maintain" the system by removing tree roots from the main line, but could "operate" the system anyway? Sounds like an argument Mike Basom would file an Amicus Brief to support.

When questioned, a City of Torrington employee admitted that his duties in the overall "operation" of the sewer system included "inspection, maintenance, keeping it free from obstructions."

Someone didn't brief this employee to lie as well as an attorney could have.

Torrington maintained that the Legislature would have written "operation and maintenance" if that is what they had intended.

Yes, and if they intended that it would take more than three votes for a municipal write-in candidate to get on the general election ballot, they should have written it that way. They didn't but their intention was clear - 3% but not less than 3 votes. Wyoming statutes are replete with errors and inconsistencies like these. That is why the Supreme Court has to decide so many issues that are left ambiguous by the Legislature.

In this case, the Supreme Court ruled that a City is liable for damages if they don't remove obstructions from the main sewer line. Residents are responsible from the main to their house.

How does this apply in Cheyenne?

For residents who have had their claim denied and main sewer line obstruction was the cause of the back-up, if the statute of limitations hasn't expired, hit them with your claim again. If the amount is sizeable enough to consider an attorney, the Woodhouse Law Office (432-9399) has brought similar actions against the City and can answer questions you may have.

In the Opinion, Justice Burke wrote: "Wyo. Stat. Ann. § 1-39-108(a) waives immunity for the negligence of public employees in the operation of public utilities and services, including solid or liquid waste collection or disposal. In other words, the statute waives immunity for negligence in keeping the public utility operable or functional. If an obstruction in the line occurs and is not removed, the sewer lines are no longer functional or operable."

My sincere  
**THANK YOU**

.. to those that assisted in Door to Door efforts, attended events, asked questions, made donations, displayed yard signs, talked to others about my campaign and those that voted. The campaign for Laramie County Board of Commissioners is and was about issues and concerns for Laramie County. I am proud to have been a participant and very much enjoyed learning more about Laramie County the past 9 months. Thank you again for the opportunity.

--- Mike Dowling

PAID FOR BY THE MIKE DOWLING CAMPAIGN COMMITTEE