

2002

Katie Shafer v. State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

KATIE SHAFER,

Plaintiff/Appellant,

vs.

STATE OF UTAH,

Defendant/Appellee.

Case No. 20020120-SC

Priority No. 11

BRIEF OF APPELLANT KATIE SHAFER

Appeal From the Third District Court, Salt Lake Department
Judge Leslie Lewis Presiding

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UTAH SUPREME COURT

MAY 16 2002

PAT BARTHOLOMEW
CLERK OF THE COURT

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Statement of Jurisdiction

This Court has jurisdiction pursuant to Utah Const. Art. VIII, § 3 and Utah Code § 78-2-2(2)(j) (West 2002).

Statement of Issues

Whether directing and delivering notice of claim to a listed office of the State's attorney general satisfies the notice of claim provisions of the Governmental Immunity Act?

Whether, because several offices exist for the attorney general, the notice provisions of the Act are satisfied where notice is delivered to one of the listed addresses and the State has an opportunity to investigate, remedy and possibly settle the matter without litigation?

Whether directing and delivering notice of claim to Heber Valley Railroad's executive director satisfies the notice provisions of the Act?

Standard of Review

This case was dismissed on State of Utah's Motion to Dismiss under Utah R. Civ. P. 12 (West 2002). Accordingly, the dismissal is reviewed for correctness accepting all facts as true and according no deference to the decision of the district court. "Because a trial court's dismissal of a complaint under rule 12(b)(6) of the Utah Rules of Civil Procedure is a conclusion of law, we review for correctness, granting no deference to the trial court's decision." *Larson v. Park City Mun. Corp.*, 955 P.2d 343, 345 (Utah 1998).

Statutory Provisions

Utah Code Ann. § 68-3-8.5 (West 2002)	Addendum 1-2
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Utah Code Ann. § 68-3-12 (West 2002)	Addendum 9

Statement of the Case

In June of 1999, 69 year old Katie Shafer came as a tourist to Park City, Utah from her home in Florida. Katie, along with her daughters, decided to ride on the sight seeing train ‘Heber Creeper’ operated by Heber Valley Historic Railroad Authority on June 23, 1999. (R. 2). Heber Valley places stools down for passenger to step on while disembarking. (*Id.*). Upon return to the station, the train stopped adjacent to an unpaved and gravelly surface. Katie, first to disembark, stepped down onto the stool. The stool flipped out from beneath her and Katie suffered a broken leg during the ensuing fall. Katie spent the remaining three days of her vacation in her hotel room.

On returning to Florida, Katie went under the care of a physician and began rehabilitation. Initially, all medical bills were being paid by Utah Risk Management. However, at some point, Katie began to receive unpaid medical bills. Katie, residing in Florida, then contacted counsel in order to protect her interests and preserve her claims. Counsel initially delivered a Notice of Claim to Attorney General Jan Graham and Craig Lacey, executive director for Heber Valley Railroad, via regular postage on May 5, 2000. Then, on June 5, 2000, counsel resent the same Notice of Claim via certified mail.

Return Receipts were received for delivery to, and acceptance by, both the attorney general for the State and the executive director for Heber Valley. (R. 81, 83). After negotiations with Department of Risk Management adjustor Paul Watson failed, a Complaint was filed on October 6, 2000. (R. 1).

On May 29, 2001, the State moved to dismiss for failure to comply with the notice of claim requirements. The State argued that the notice was deficient because, although mailed to an address where the attorney general keeps an office, it was the wrong office at which to deliver a notice of claim. (R. 61-63). The State also argued that delivering a notice to Heber Valley's executive director simply did not apply. The district court, Judge Leslie Lewis presiding, agreed with the State's argument. (R. 107-09). The district court then dismissed Katie Shafer's on February 25, 2002. This appeal followed.

Summary of the Argument

Appellant Katie Shafer delivered notice of claim in satisfaction of the Governmental Immunity Act requirements for three specific reasons. First, Katie 'directed and delivered' a notice of claim to the State's attorney general according to statutory directives for mailing such claims. Under Utah Code Ann. § 68-3-8.5(2)(c) (West 2002) if a claim "is sent by United States mail and either registered or certified, a record authenticated by the United States post office of that registration or certification is considered to be competent evidence that the report or payment was delivered to the person or entity to which it was addressed." Here, notice of claim was sent via certified mail to Attorney General Jan Graham and return receipt received.

Second, while the State's attorney general maintains myriad offices, the statute only requires delivery of a notice without specifying *which* office is competent to receive notice of claim. Since there is no specific office identified, an ambiguity exists which requires inquiry into whether the purposes of the notice of claims provision were met in this case. Because the State had adequate time to investigate, the purpose of a notice have been met and the Katie's claim should not have been dismissed.

Finally, the State operates Heber Valley Historic Railroad as a public body created by statute. Under Utah Code Ann. § 63-30-11(3)(ii)(F) (West 2002), delivering a notice to Heber Valley's executive director satisfies the requirements. Accordingly, the notice of claim provisions were complied with and dismissal by the district court must be reversed.

ARGUMENT

I. PROOF OF NOTICE OF CLAIM BY CERTIFIED MAIL IS CONSIDERED EVIDENCE OF DELIVER.

Delivering a notice of claim to an office of the attorney general through certified mail and acceptance of that notice satisfies the statutory requirements under the Act. The Act requires that, prior to suit being commenced, a notice of claim must be "directed and delivered to the attorney general, when the claim is against the State of Utah." Utah Code Ann. s 63-30-11(3)(b)(ii)(F) (West 2002). Claims against the State of Utah are "barred unless notice of claim is filed with the attorney general within one year after the claim arises." Utah Code Ann. s 63-30-12 (West 2002). Katie Shafer forwarded a notice of

claim, via certified mail, to the Qwest telephone directory listing for Jan Graham, Attorney General, 515 East 100 South, Salt Lake City, Utah. (R. at 65). This office is one of several listed in the Qwest telephone directory for Salt Lake City. Indeed, the attorney general lists over The notice of claim was accepted as evidenced by the Return Receipt. (R. at 81).

Directing and delivering notice of claim to the attorney general at a listed address and through certified mail conclusively establishes receipt of the notice. Under Utah Code Ann. s 68-3-8.5(2)(c) (West 2002), any claim which "is sent by United States mail and either registered or certified, a record authenticated by the United States post office of that registration or certification is considered to be competent evidence that the [claim] was delivered to the person or entity to which it was addressed."¹ The State argued in its Reply Memorandum, and the trial court agreed, that there was "no evidence" that the notice of claim was received by the attorney general. (R. at 90, 108). However, under the statute, directing and delivering the notice via certified mail conclusively demonstrates delivery of the claim.

Additionally, receipt of the notice by a person other than the attorney general herself is also consistent with statutory rules of construction. "[W]ords used to denote an executive or ministerial officer, may include any... person performing the duties of such officer, either generally or in special cases." Utah Code Ann. § 68-3-12(2)(v) (West

¹ "Report" means a report, claim, tax return, statement or other document. Utah Code Ann. § 68-3-8.5 (West 2002).

2002). No matter who received the notice at the address to which it was sent, they are by statute performing the function of the attorney general's office when they accept certified mail.

As noted in *Scarborough v. Granite School Dist.*, 531 P.2d 480, 482 (Utah 1975) "the 'filing' of a [notice of] claim should include these essentials: that it be ... delivered to someone authorized to or responsible for receiving it." The attorney general received notice of claim when the certified mail was received at a designated office of the attorney general. If the person receiving the certified mail was unauthorized to accept it, it would have been rejected and Katie Shafer would have sought to deliver it to a person who could receive notice. Dismissal was inappropriate and must be reversed because there can be no question that the attorney general received notice of claim.

This case is similar to that of *Larson v. Park City Mun. Corp.*, 955 P.2d 343, 345 (Utah 1998). There, "neither the Utah Governmental Immunity Act nor the Utah Municipal Code states how or in what manner a notice of claim should be filed with the city council." *Id.* at 345-46. Relying upon statutory definitions and Utah R. Civ. P. 4, the claimant sought to deliver notice of claim to the city council through the city clerk. The *Larson* court found that because a statutory basis existed for the claimant's method, the notice was effective.

Here, similarly, the Governmental Immunity Act is silent as to how and in what manner a notice of claim should be filed with the attorney general. Unlike *Larson*, however, Utah Code Ann. s 68-3-8.5(2)(c) (West 2002) is directly on point and

expressly recognizes that the certified mail receipt 'is considered to be competent evidence that the [claim] was delivered' to the attorney general. Because Katie Shafer delivered a notice in compliance with the statutory requirements, dismissal of her claims must be reversed.

The trial court erred when it agreed that the notice provisions require the attorney general him or herself to be served with a notice of claim. "The statute does not specify which office to serve because it is the Attorney General who must him or herself be served and not any one particular office." (R. at 108). Nothing in the statute supports the proposition that the attorney general must personally be served with a notice. Indeed, the statute merely requires 'directing and delivering' the notice. Moreover, common grammar dictates that referral to a proper noun requires capitalization while useage of a general noun employs lower case letters. For example: President George W. Bush vs. the president of the United States. *See, e.g.,* Harbrace College Handbook, 570-71, 11th ed.(1990). Here, the legislature chose to use lower case letters indicating that it is the attorney general in the informal sense, and not a proper person who must receive notice of claim.

If the legislature desired to require delivery of a notice to the Attorney General him or herself, they would have used capital letters to denote the proper noun form as opposed to using lower case to denote the attorney general as an office. "In construing a statute, we assume that each term in the statute was used advisedly; thus the statutory words are read literally, unless such a reading is unreasonably confused or inoperable."

Johnson v. Redevelopment Agency of Salt Lake County, 913 P.2d 723, 727 (Utah 1995)(citations omitted). The mere fact that the office is occupied by a person does not mean that the notice of claim should be personally received by them.

Indeed, one of the very purposes of the notice of claim provision is to avoid difficulties which might be associated with a change in the administrator after election. "[N]otice of claim minimizes difficulties that might arise from changes in administrations." *Sears v. Southworth*, 563 P.2d 192, 193 (Utah 1977). Requiring personal service on the Attorney General would not minimize difficulties arising during a change in administration and would, in fact, complicate matters if the person served were to leave office shortly after service.

Finally, three recent decisions of this Court, while 'strictly construing' the notice of claim requirements, are distinguishable from this case. First, in *Pigs Gun Club, Inc. v. Sanpete County*, 2002 UT 17, 42 P.3d 379 property owners who were not even listed on the notice of claim sought to join in an action. Because they wholly failed to file notices, they were denied the opportunity to pursue their claims. Second, in *Greene v. Utah Transit Authority*, 440 Utah Adv. Rep. 3, ¶ 13, 37 P.3d 1156 the claimant alleged 'misrepresentation' by a claims adjuster who suggested all correspondence, including the notice of claim, should be directed to him. The claimant never even attempted to file notice of claim with the board of the UTA as required by the statute.

Third, in *Wheeler v. McPherson*, 440 Utah Adv. Rep. 3, ¶ 3, 40 P.3d 632, a case involving claims against a county, the claimants directed and delivered notice of claim to

the county commissioner and the county's insurance carrier. However, by statute, the notice of claim against a county was to be 'directed and delivered' to the county clerk, not the commissioners or the county insurance carrier. *Id.* at ¶ 10.

The claimants in each of these cases failed to strictly comply with the notice provisions, either by wholly failing to file a notice or by directing and delivering it to the wrong person. Here, by contrast, the notice was directed and delivered through certified mail to the attorney general, the appropriate person to receive notice of claim. Because, by statute, the attorney general received the notice of claim, the statutory requirements have been met and dismissal of this case based on failure to comply must be reversed.

II. BECAUSE THE ATTORNEY GENERAL LISTS SEVERAL OFFICES, THE PURPOSE OF THE NOTICE PROVISION IS MET WHERE THE STATE HAS OPPORTUNITY TO INVESTIGATE AND SETTLE THE MATTER.

At best, there exists an ambiguity in the statute because the attorney general maintains several offices yet the Act is silent as to which may properly receive a notice of claim. The Salt Lake Qwest directory in effect at the time Katie Shafer delivered her notice listed seven different addresses. The State admits that one of the above addresses received notice. (R. 61).² Neither Utah Code Ann. § 63-30-11 nor § 63-30-12 suggest that a particular address is appropriate for receiving notice. In *Greene*, 2001 UT 109, ¶

² Qwest listed the following addresses: 160 E. 300 S., Salt Lake City; 236 State Capitol, Salt Lake City; 515 E. 100 S., Salt Lake City; 5272 College Dr. Suite 300, Murray; 1594 W. North Temple, Suite 300, Salt Lake City; 55 North University #219, Provo; 2540 Washington Blvd., Ogden. (R. at 79-80).

15 this Court observed that:

the legislature has explicitly declared how, what, when, and to whom a party must direct and deliver a Notice in order to preserve his or her right to maintain an action against a governmental entity... In the absence of some ambiguity, we will not disturb explicit legislative requirements and read into the statute an actual notice exception.

Here, the statute does indeed identify the how, what, when and to whom, but omits the all important 'where.'

In *Greene*, of course, the 'where' was not at issue both because the plaintiff admittedly never delivered a notice to the board as the statute required as well as the fact that UTA lists a single address. Because the Act fails to designate a specific address while the attorney general keeps several disparate offices, an inherent ambiguity exists in applying the notice requirement.

One alternative would be to require delivery of a notice to every address listed by the attorney general. This Court expressly rejected a similar solution in *Larson*. See, *Larson*, 955 P.2d at 346, n. 4. Another alternative would be to do exactly as the State suggests and 'serve' whoever currently occupies the attorney general position. Of course, in order to avoid argument that the 'wrong' address was served and service accepted by an 'unauthorized' individual, claimants would likely settle for nothing less than service directly on the Attorney General him or herself, where ever they might most easily locate him or her, including their home. The more reasonable solution is to determine whether the purpose of the notice provision was accomplished.

Although this Court has apparently never addressed the issue as to what must be

done when an ambiguity arises in the notice provisions in the Governmental Immunity Act, the Court of Appeals has discussed the matter. In *Brittain v. State By and Through Utah Dept. of Employment Sec.*, 882 P.2d 666 (Utah Ct. App. 1994) Brittain was injured when he fell on icy steps at the State Department of Employment. Brittain filed a notice of claim under the prior version of the subsection currently at issue. That version required delivery of a notice to both the attorney general and the 'agency concerned.' Brittain delivered notices to the attorney general and the State Department of Risk Management. After negotiations failed, Brittain commenced a legal action and the State moved to dismiss on the basis that the notice provisions were not complied with because the Department of Risk Management was not the agency concerned. The State argued that the Department of Employment was the agency concerned, the trial court agreed and dismissed the case.

On appeal, the Utah Court of Appeals directly addressed the ambiguity in the phrase agency concerned. "Because the term "agency concerned" is not clear on its face, we will interpret the notice requirement of section 63-30-12 in a manner consistent with the overall purpose of the Utah Governmental Immunity Act." *Id.* at 670. *Brittain* relied on this Court's instruction that it "is necessary to consider the policy of the notice requirement so that in any particular case the facts can be evaluated to determine if the intent of the statute has been accomplished by substantial compliance with the statutory directive." *Stahl v. Utah Transit Authority*, 618 P.2d 480, 482 (Utah 1980)(interpreting notice provisions of Transit Act).

Where the State has the opportunity to investigate an incident, correct the situation and possibly settle the matter without costly litigation, the purpose of a notice provision has been met.

[T]he primary purpose of a notice of claim requirement is to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of a claim and to arrive at a timely settlement, if appropriate, thereby avoiding the expenditure of public revenue for costly and unnecessary litigation.

Stahl, 618 P.2d at 482.

Here, the State was given adequate notice and made aware that Katie actually intended to assert her claims. The State, through the Department of Risk Management, had been paying some of Katie's medical bills, even prior to her retention of legal counsel. (R. at 76). Moreover, the State does not claim that it was never given opportunity to investigate this case or that it did not receive the notice of claim. Additionally, counsel for Katie Shafer spoke with Paul Watson, an adjustor for Risk Management, after filing of the notice of claim. Mr. Watson indicated that he did not want to have a trial and wished to settle the case without filing of a law suit. (R. at 77) The primary purpose of affording the State an opportunity to investigate, remedy and settle the claim prior to legal action was fulfilled.

Because the State maintains several attorney general offices, it cannot be heard to complain that a notice was filed with the wrong office when no prejudice exists. Ample opportunity existed in which to investigate and possibly settle the claim. The purposes of a notice provision have been met and the district court decision to dismiss this case was

in error. Accordingly, Katie requests that this Court reverse the district court and allow Katie to pursue her day in court.

III. DELIVERING NOTICE OF CLAIM TO HEBER VALLEY RAILROAD'S EXECUTIVE OFFICER SATISFIED THE NOTICE REQUIREMENTS.

The Act's notice provision may also be satisfied by delivering notice to an executive or member of the board when the claim involves a public corporation. Notice of claim may be directed to "a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body." Utah Code Ann. § 63-30-11(3)(ii)(F) (West 2002). Here, Katie's injuries arose while disembarking from the Heber Creeper, a sight seeing train operated by the Heber Valley Historic Railroad. Heber Valley is a public corporation created by statute. *See*, Utah Code Ann. §§ 9-3-301 *et. seq.* (West 2002).

The State admits that it maintains Heber Valley Historic Railroad. (R. 66) The State also admits that Katie delivered a notice to Craig H. Lacey, the executive director of Heber Valley. (*Id.*). However, the district court found the notice ineffective because the claim was not against "any other public board, commission or body." (R. 109). Based on the admission by the State that it maintains Heber Valley and the receipt of notice by Mr. Lacey, the district court erred in concluding that notice to be ineffective. Accordingly, the dismissal must be reversed because all pleadings and admissions indicate adequate

notice was delivered.³

CONCLUSION

Because return receipt for certified mail shows acceptance of the notice to the State's attorney general, delivery of the notice is considered established by statute. Additionally, there exists an ambiguity in applying the Act's requirement of notice where several attorney general offices are kept. However, the State had actual notice in this case along with an opportunity to investigate, cure the environment giving rise to the claim, and possibly settle the case. Accordingly, the purpose of supplying a notice has been met and dismissal was incorrect.

Finally, the State admits operating Heber Valley Railroad, and admits the Railroad's executive director received notice. Because the notice was received under the Act's direction to deliver notice to the executive director, dismissal was inappropriate based on failure to comply with the Act. The State should not be allowed to hide from liability for the negligence of its agents where adequate notice was provided. Accordingly, Katie Shafer respectfully requests that this Court reverse the dismissal.

³ After dismissal by Judge Lewis, counsel for Katie refiled a Complaint directly against Heber Valley Historic Railroad Authority in the Fourth Judicial District Court. That action is premised on (1) application of the savings statute and (2) the fact that operation of a sightseeing railroad is not a governmental function and therefore not subject to the Governmental Immunity Act. Counsel for Katie Shafer invited the State to stay the current appeal until such time as the Fourth District Court could resolve inevitable argument on these two issues. The State refused this invitation. Nonetheless, to the extent this Court finds judicial economy would be better served by a single resolution and opinion on all these issues arising from a common incident, counsel for Katie invites this Court to stay current appellate proceedings.

DATED: May 6, 2002



Peter W. Summerill

CERTIFICATE OF MAILING

I hereby certify that on May 6, 2002, I

Mailed ☐

Faxed ☐

Hand-delivered ☐

a true and correct copy of the foregoing to:

Nancy Kemp
Utah State Attorney General
160 East 300 South, Sixth Floor
Salt Lake City, Ut. 84114-0856



Peter W. Summerill

ADDENDUM

UTAH CODE, 1953
TITLE 68. STATUTES
CHAPTER 3. CONSTRUCTION

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Current through the 2001 Supplement (2001 First Special Session)

68-3-8.5 Mailing reports and payments to government --General requirements
for determining when the report or payment is considered to be filed or made.

(1) As used in this section:

(a) "Payment" means monies required or authorized to be paid.

(b) "Report" means a report, claim, tax return, statement or other document.

(2) (a) A report or payment required or authorized to be filed or made to the state of Utah, or to any political subdivision of Utah, that is transmitted through the United States mail, is considered to be filed or made and received by the state or political subdivisions on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(b) A report or payment that is either mailed but not received by the state or political subdivisions, or received but the cancellation mark is illegible, erroneous, or omitted, is considered to be filed or made and received on the date it was mailed if:

(1) the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and

(11) the sender files with the state or political subdivision a duplicate within 30 days after written notification is given to the sender by the state or political subdivisions of nonreceipt of the report, tax return, statement, or other document.

(c) If any report or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of that registration or certification is considered to be competent evidence that the report or payment was delivered to the person or entity to which it was addressed and the date of registration or certification is considered to be the postmarked date.

(3) If the date for filing a report or making a payment falls upon a Saturday, Sunday, or legal holiday, the filing or payment is considered to be timely if it is performed on the next business day.

History: L. 1967, ch. 179, § 1; C. 1953, 63-37-1; renumbered by L. 2001, ch. 16, § 1.

U.C.A. 1953 § 68-3-8.5

UT ST § 68-3-8.5

END OF DOCUMENT

UTAH CODE, 1953
TITLE 68. STATUTES
CHAPTER 3. CONSTRUCTION

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Current through the 2001 Supplement (2001 First Special Session)

68-3-12 Rules of construction.

(1) In the construction of these statutes, the following general rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute:

- (a) The singular number includes the plural, and the plural the singular.
- (b) Words used in one gender comprehend the other.
- (c) Words used in the present tense include the future.

(2) In the construction of these statutes, the following definitions shall be observed, unless the definition would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute:

(a) "Adjudicative proceeding" means:

(1) all actions by a board, commission, department, officer, or other administrative unit of the state that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(11) judicial review of all such actions.

(b) "Advisory board," "advisory commission," and "advisory council" means a board, commission, or council that:

(1) provides advice and makes recommendations to another person or entity who makes policy for the benefit of the general public;

(11) is created by and whose duties are provided by statute or by executive order; and

(111) performs its duties only under the supervision of another person as provided by statute.

(c) "Councilman" includes a town trustee or a city commissioner, and "city commissioner" includes a councilman.

(d) "County executive" means:

(1) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;

(11) the county executive in the "county executive-council" optional form of government authorized by Section 17-52-504; and

(111) the county manager in the "council-manager" optional form of government authorized by Section 17-52-505.

(e) "County legislative body" means:

(1) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;

(11) the county council in the "county executive-council" optional form of government authorized by Section 17-52-504; and

(111) the county council in the "council-manager" optional form of government authorized by Section 17-52-505.

(f) "Executor" includes administrator, and the term "administrator" includes executor, when the subject matter justifies such use.

(g) "Guardian" includes a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and a person who is appointed by a court to manage the estate of a minor or incapacitated person.

(h) "Highway" and "road" include public bridges and may be held equivalent to the words "county way," "county road," "common road," and "state road."

(i) "Him," "his," and other masculine pronouns include "her," "hers," and similar feminine pronouns unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(j) "Insane person" include idiots, lunatics, distracted persons, and persons of unsound mind.

(k) "Land," "real estate," and "real property" include land, tenements, hereditaments, water rights, possessory rights, and claims.

(l) "Man" or "men" when used alone or in conjunction with other syllables as in "workman," includes "woman" or "women" unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(m) "Month" means a calendar month, unless otherwise expressed, and the word "year," or the abbreviation "A.D." is equivalent to the expression "year of our Lord."

(n) "Oath" includes "affirmation," and the word "swear" includes "affirm." Every oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depone."

(o) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

(p) "Personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein.

(q) "Personal representative," "executor," and "administrator" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(r) "Policy board," "policy commission," or "policy council" means a board, commission, or council that:

(i) possesses a portion of the sovereign power of the state to enable it to make policy for the benefit of the general public;

(ii) is created by and whose duties are provided by the constitution or by statute;

(iii) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute; and

(iv) is permanent and continuous and not temporary and occasional.

(s) "Population" shall be as shown by the last preceding state or national census, unless otherwise specially provided.

(t) "Property" includes both real and personal property.

(u) "Review board," "review commission," or "review council" means a board, commission, or council that:

(i) possesses a portion of the sovereign power of the state only to the extent to enable it to approve policy made for the benefit of the general public by another body or person;

(ii) is created by and whose duties are provided by statute;

(iii) performs its duties according to its own rules without supervision other than under the general control of another person as provided by

statute; and

(iv) is permanent and continuous and not temporary and occasional.

(v) "Sheriff," "county attorney," "district attorney," "clerk," or other words used to denote an executive or ministerial officer, may include any deputy, or other person performing the duties of such officer, either generally or in special cases; and the words "county clerk" may be held to include "clerk of the district court."

(w) "Signature" includes any name, mark, or sign written with the intent to authenticate any instrument or writing.

(x) "State," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the District and the territories.

(y) "Town" may mean incorporated town and may include city, and the word "city" may mean incorporated town.

(z) "Vessel," when used with reference to shipping, includes steamboats, canal boats, and every structure adapted to be navigated from place to place.

(aa) "Will" includes codicils.

(bb) "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer; and "process" means a writ or summons issued in the course of judicial proceedings.

(cc) "Writing" includes printing, handwriting, and typewriting.

History: R.S. 1898, § 2498; L. 1907, ch. 72, § 1; C.L. 1907, § 2498; C.L. 1917, § 5848; R.S. 1933 & C. 1943, 88-2-12; L. 1977, ch. 194, § 72; 1977, ch. 266, § 1; 1985, ch. 21, § 45; 1987, ch. 161, § 286; 1993, ch. 38, § 76; 1993, ch. 227, § 383; 1994, ch. 223, § 16; 1998, ch. 369, § 25; 2000, ch. 133, § 164; 2001, ch. 241, § 84.

U.C.A. 1953 § 68-3-12

UT ST § 68-3-12

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UTAH CODE, 1953
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 30. GOVERNMENTAL IMMUNITY ACT

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Current through the 2001 Supplement (2001 First Special Session)

63-30-11 Claim for injury --Notice --Contents --Service --Legal
disability --Appointment of guardian ad litem.

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(1) a brief statement of the facts;

(11) the nature of the claim asserted; and

(111) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be:

(1) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(11) directed and delivered to:

(A) the city or town recorder, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the president or secretary of the board, when the claim is against a special district;

(E) the attorney general, when the claim is against the State of Utah;
or

(F) a member of the governing board, the executive director, or
executive secretary, when the claim is against any other public board,
commission, or body.

(4) (a) If the claimant is under the age of majority, or mentally incompetent
and without a legal guardian at the time the claim arises, the claimant may
apply to the court to extend the time for service of notice of claim.

(b) (1) After hearing and notice to the governmental entity, the court may
extend the time for service of notice of claim.

(11) The court may not grant an extension that exceeds the applicable
statute of limitations.

(c) In determining whether or not to grant an extension, the court shall
consider whether the delay in serving the notice of claim will substantially
prejudice the governmental entity in maintaining its defense on the merits.

(d) (1) If an injury that may reasonably be expected to result in a claim
against a governmental entity is sustained by a potential claimant
described in Subsection (4) (a), that government entity may file a request
with the court for the appointment of a guardian ad litem for the
potential claimant.

(11) If a guardian ad litem is appointed under this Subsection (4) (d),
the time for filing a claim under Sections 63-30-12 and 63-30-13
begins when the order appointing the guardian is issued.

History: L. 1965, ch. 139, § 11; 1978, ch. 27, § 5; 1983, ch. 131, § 1; 1987,
ch. 75, § 4; 1991, ch. 76, § 6; 1998, ch. 164, § 1; 2000, ch. 157, § 1.

U.C.A. 1953 § 63-30-11

UT ST § 63-30-11

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Current through the 2001 Supplement (2001 First Special Session)

63-30-12 Claim against state or its employee --Time for filing notice.

A claim against the state, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the attorney general within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

History: L. 1965, ch. 139, § 12; 1978, ch. 27, § 6; 1983, ch. 131, § 2; 1987, ch. 75, § 5; 1998, ch. 164, § 2.

U.C.A. 1953 § 63-30-12

UT ST § 63-30-12

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