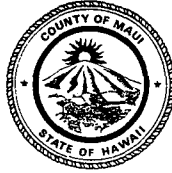


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March 6, 2002

Honorable Michael J. Molina, Chair
Subcommittee on Outdoor Lighting Standards
County Council
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Subject: Outdoor Lighting Standards (S-OLS 1)

Dear Chair Molina:

The following is sent in response to your request for advice dated February 22, 2002.

- I. An opinion on potential indemnification of property owners who light areas surrounding their land for the purposes of providing safety, security and protection of individuals visiting or utilizing their property. May I request that you also include an opinion on whether lighting of neighboring areas, such as public beaches, by an adjacent property owner will reduce the liability of said property owner for any harm that may come to individual(s) using said beach?

Before answering the specifics of your question, it is useful to briefly discuss the subject of premises liability in broader terms. Under tort law, the general duty of care owed by a property owner to an invitee is to make conditions on the land reasonably safe. Reasonable care may mean inspecting the premises and taking steps to make them safe or providing a warning of dangers to an invitee. There is a statutory limit upon liability for landowners who make their lands available to recreational users (H.R.S. §520-4) under which such users are deemed not to be invitees.

The special relationship between a hotel and its guests creates a greater burden upon the hotel to protect the safety of its guests than an ordinary landowner. In Knodle v. Waikiki Gateway Hotel, 69 Haw. 376, 742 P.2d 377 (1987), the Supreme Court stated:

Honorable Michael J. Molina, Chair
Subcommittee on Outdoor Lighting Standards
March 6, 2002
Page 2

[A] hotel is under a duty to its guests to protect them from unreasonable risk of physical harm. *Restatement (Second) of Torts, supra*, §314A. Because of the special relation, this duty extends to risks arising ... from the acts of third persons, whether they be innocent, negligent, intentional, or even criminal. (See § 302B.).

The test is whether "there is some probability of harm sufficiently serious that [a] reasonable and prudent person] would take precautions to avoid it." [Knodle at 393, emphasis in original, nonrelevant portions omitted.]

With respect to the use of beaches fronting a hotel, state law extends liability to hotelkeepers who fail to warn guests about hazardous beach conditions which are known or should have been known to a reasonably prudent hotelkeeper. H.R.S. §486K-5.5 states:

In a claim alleging injury or loss on account of a hazardous condition on a beach or in the ocean, a hotelkeeper shall be liable to a hotel guest for damages for personal injury, death, property damage, or other loss resulting from the hotel guest going onto the beach or into the ocean for a recreational purpose, including wading, swimming, surfing, boogie boarding, diving, or snorkeling, only when such loss or injury is caused by the hotelkeeper's failure to warn against a hazardous condition on a beach or in the ocean, known, or which should have been known to a reasonably prudent hotelkeeper, and when the hazardous condition is not known to the guest or would not have been known to a reasonably prudent guest. A hotelkeeper owes no duty and shall have no liability for conditions which were not created by the hotel to a person who is not a guest of the hotel for injury or damage resulting from any beach or ocean activity.

As used in this section, "beach" means the beach fronting the hotel, and "hotel guest" means a guest of that particular hotel and other persons occupying the assigned rooms.

Hotel operators can be liable to their guests for injuries sustained as a result of criminal acts of third parties if the hotel operator failed to exercise reasonable care under the circumstances. See discussion, Fraze v. Med Center Inns of America, 1993 WL 312674 (Tenn.Ct. App., 1993) at page 5. In Fraze, the Plaintiff raised the issue of inadequate lighting alleging that the hotel owner failed to adequately light the

Honorable Michael J. Molina, Chair
Subcommittee on Outdoor Lighting Standards
March 6, 2002
Page 3

parking area even though the lighting was planned and specified by professional engineers.

Turning to the specifics of your question, I am uncertain of what is meant by the phrase "potential indemnification of property owners." Indemnity is the right of an injured party to claim reimbursement or compensation for loss, damage or liability from another party especially in the area of tort losses. Without an indemnification agreement, a property owner is directly liable for injuries resulting from a violation of any duty owed to a third party visiting or using the owner's property. A prudent landowner would take steps to reduce the potential for claims and insure itself against the risk of loss. It is possible (but not advisable) that the County could indemnify a property owner against losses, however, the cost would be prohibitive. The County is not a general insurer of property owners.

With regards to the practice of a hotel providing lighting on or near the beach, giving the foregoing discussion of the duties of hotel owners, the use of lighting on the beach would likely limit the hotel's liability to its guests. To the extent that a hotel owner can anticipate that its guests will use the beach at night and that there are hazards that exist on the beach (walking hazards, criminal activity, etc.), it would be a reasonable and prudent practice to use lighting to make those hazards known to hotel guests.

II. Draft language for inclusion in Section .050, General exemptions, of the draft bill, that would incorporate the exemption of certain construction and repair projects for public property, including roadways and utility easements.

The Subcommittee may consider adding the following subsection to .050 General exemptions:

D. Roadway Construction and Repair Projects. Lighting required related to roadway construction or repair projects is exempted from the requirements of this ordinance. The necessity and use of such lighting is at the discretion of the applicable governmental agency.

E. Agricultural Activities. Lighting necessary to support agricultural activities is exempted from the requirement of this ordinance.

Honorable Michael J. Molina, Chair
Subcommittee on Outdoor Lighting Standards
March 6, 2002
Page 4

If you have any questions, please do not hesitate to contact
this office.

Very truly yours,




Gregory J. Garneau
Deputy Corporation Counsel

GJG:ko

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Approved for transmittal:



James B. Takayesu
Corporation Counsel