

MEMORANDUM OF LAW

DATE: March 22, 1996

TO: Shaka Williams, Real Estate Assets Department

FROM: City Attorney

SUBJECT: Immunity from Use of Recreational Trails

In a memorandum dated March 1, 1996, you posed a number of specific questions regarding the nature and scope of California Civil Code section 846, commonly known as California's Recreational Use Immunity Statute (the "RUIS"). Set forth below are your questions, as posed, and my responses.

1. Does the RUIS apply to private landowners as well as the City?

The RUIS applies only to: private landowners, private leaseholders of private or public lands, and the federal government as a landowner. The RUIS cannot be invoked as a defense by the City for incidents occurring on public land or by any other local or state public entity. Pursuant to California Government Code section 831.4, however, the City does nevertheless enjoy absolute immunity for claims arising from the recreational use of trails on public lands. Attached please find a recently drafted memorandum I wrote to Nick Osler regarding Government

Code section 831.4 immunity.

2. Consider the following: A trail has been permitted by a private landowner, or the City, to be installed on their property for recreational use. A hiker wanders from the trail onto property adjacent to the trail owned by a different private party. The hiker is injured on the adjacent property.

NO BREAK

a. Who is liable?

The RUIS is a statutory defense or shield to liability which is available to certain landowners under certain
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circumstances. Without knowing more details about how the hiker was injured, it is not really possible to determine who, if anyone, might be ultimately liable for the injury. However, in response to your next question, I can offer my opinion as to who can invoke the statutory defense for protection from liability.

b. Who is or is not protected under Section 846?

When a private landowner has permitted a trail to be installed on his or her property for public use and someone is injured on adjacent property as described in your example, the landowner where the trail is located can use the RUIS to be protected from liability provided that:

(1) The landowner did not willfully or maliciously fail to guard or warn against a dangerous condition, use, structure, or activity (for example, if the owner purposely blocked the trail on his property knowing that it could force the hiker into a dangerous condition on adjacent property they could not use the RUIS as a defense); or

(2) If the landowner with the trail is charging

the public a fee for using the trail they cannot use the RUIS as a defense; or

(3) If the landowner with the trail has expressly extended a personal invitation to someone to use the trail.

From your example it also appears that the adjacent property owner could use the RUIS as a defense and be protected from liability. The RUIS broadly provides that no landowner owes a duty of care to keep a premises safe for entry or use by others for any recreational purpose. Of course, the one caveat remains that the defense is not available if the adjacent property owner wilfully or maliciously fails to warn of or creates a dangerous condition on the property (i.e., a booby trap), knowing of the likelihood that someone could be hurt.

In your example, you also contemplate an alternative where the City permits a trail to be installed on private property, but you do not elaborate as to whether this would be with or without the consent of the owner. As I am sure you are aware, absent an easement agreement or lawfully exacted easement, the City cannot mandate that the public be allowed to access private property, at

least not without paying just compensation. However, in the event the City could secure a public easement from the private landowner for the development of a trail, in all likelihood the City would agree in that easement to defend and indemnify the landowner from any claims arising from the public's use of the trail. The City, in turn, could protect itself from liability when sued by claiming absolute immunity from liability pursuant to Government Code section 831.4.

c. Who is liable if the adjacent property is not for recreational use?

Courts have held that in this circumstance the determining factor as to whether the adjacent property owner can invoke the RUIS for protection is not whether the adjacent property was suitable or contemplated for recreational use, but rather whether

the person who entered the land entered for a recreational purpose. *Ornelas v. Randolph*, 4 Cal. 4th 1095 (1993). In your example, the hiker was engaging in a recreational pursuit when he or she wandered off onto the adjacent property. Therefore, if the hiker sues the adjacent property owner, the adjacent property owner can use the RUIS as a defense because the hiker entered the property with a recreational purpose. Also, courts have held that the RUIS is available even when at the moment of injury the person who is injured is not literally engaging in a recreational pursuit.

Mattice By and Through Mattice v. U.S. Dept. of Interior, 969 F.2d 818 (1992). For example, in your fact pattern if at the moment of injury the hiker is lost on the adjacent property and is trying to "escape" or "survive" rather than hiking for pleasure, the RUIS can still be used as a defense to liability.

d. If the property is for non-recreational use, then how does Section 846 apply? If it does not apply, what protection does the adjacent land owner and primary land owner have against liability?

For the most part, the answer to this question is addressed above in answers to questions B and C. Both property owners should be able to use the RUIS for protection when the public, engaging in recreational pursuits, wanders upon their land. In those situations where the RUIS is not available as a shield from liability (i.e., a trespasser is injured using private property for a non-recreational purpose), the general rule of law holds that the landowner is liable for another's injury caused by the landowner's lack of ordinary skill in managing his or her own property.

It is also important to note that, while the RUIS can effectively serve as a strong shield of defense against liability, landowners will always be susceptible to being sued. In the

process of defending the lawsuit, the landowner will incur court costs and attorneys' fees which may or may not be recoverable.

I hope these answers have been helpful. If you have any additional questions, do not hesitate to contact me.

JOHN W. WITT, City Attorney

By
Richard A. Duvernay
Deputy City Attorney

RAD:lc:260x710(x043.2)
Attachment
cc Meryl Balko
Tom Story
ML-96-16