

October 16, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

12/03/97

ED
WM

Favorable

Re: SB 38 - Senator Thomas
Relief of Dena Sheryl Steels

THIS IS A \$200,000 SETTLEMENT-BASED EXCESS JUDGMENT CLAIM ARISING OUT OF THE DROWNING DEATH OF THE CLAIMANT'S 8-YEAR-OLD SON IN A DRAINAGE SYSTEM ON PROPERTY OWNED BY THE LEON COUNTY SCHOOL BOARD AND MAINTAINED BY THE SCHOOL BOARD AND THE CITY OF TALLAHASSEE.

FINDINGS OF FACT:

Procedural Background: The claimant, Dena Sheryl Steels, filed a wrongful death claim against the City of Tallahassee and the Leon County School Board seeking damages resulting from the death of her 8-year-old son, Kenny Pyles, in June of 1992. The case was referred to court-ordered mediation and, as a result of mediation, the parties entered into a Settlement Agreement on April 18, 1996, for a total amount of \$400,000. The city and school board have paid \$200,000 of this amount (\$100,000 each) and in accordance with the Settlement Agreement, the remainder of the claim was submitted to the Legislature for approval of a claim bill. The city and school board have agreed to pay \$100,000 each in full satisfaction of the excess claim.

This claim was first submitted to the Legislature in 1997. The House bill, HB 653 by Representatives Lawson and Turnbull, was unanimously approved by the full House on April 24, 1997. The Senate did not take up HB 653 or the companion bill, SB 1504 by Senator Thomas, during the 1997 regular session. In accordance with House Rule 96(a), HB 653 was carried over to the 1998 regular session.

The claim was re-filed in the Senate for the 1998 regular session by Senator Thomas as SB 38.

Facts of the Case: On June 12, 1992, Kenny Pyles (age 8) was playing with a group of children on the grounds of the Belle Vue Middle School in Tallahassee. Kenny and the other children were playing in a large area of calm-appearing water which had gathered following a severe rainstorm. The water had collected over a drainage culvert that was not covered by a grate or otherwise protected. Kenny drowned when he was sucked into the culvert by a strong undercurrent created by the water flowing into the culvert and through the connected enclosed pipe and drainage system. His body traveled under water for approximately 600 feet through the drainage system. Another child and a college student were also sucked into the culvert when they attempted to rescue Kenny. Unlike Kenny, they were ejected from an outflow of the drainage system prior to drowning.

CONCLUSIONS OF LAW:

Liability of the City and the School Board: At one time the culvert was covered by a steel grate that would have prevented Kenny's death. The claimant contends that the city placed the grate at the head of the culvert in 1983 because of complaints to the City and County Commissions by members of a nearby neighborhood association who were specifically concerned about the dangers to children created by the uncovered culvert. Both the city and the school board knew that children played in the pool of water (commonly referred to as "Little Lake Belle Vue") that routinely formed at the site after heavy rains. Notwithstanding knowledge of the dangerous condition created by the uncovered culvert, the city removed the grate in 1988 because its workers, and county workers, complained about the inconvenience of cleaning debris which accumulated on and around the grate. The culvert is located on property owned by the school board, specifically the grounds of Belle Vue Middle School. Therefore, liability of the city and the school board is clear.

Equities: Kenny was Dena's only child and, because of a medical condition, she is unable to have any other children. Dena has suffered severe emotional distress as a result of Kenny's death and she has undergone significant counseling to deal with her grief. The damages sought by Dena through

this claim bill are not excessive to compensate her for the losses that she has suffered. Dena is the sole claimant. Kenny's father received (Dena's ex-husband) received a portion of the initial payment from the city and school board and waived any rights to the proceeds of this claim bill. As part of the Settlement Agreement, the city and the school board agreed not to oppose the claim bill.

ATTORNEYS FEES:

Limited to 25 percent of recovery under the provisions of s. 768.28, F.S.

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that SB 38, which authorizes and directs the city and the school board to each pay \$100,000 in full satisfaction of the Settlement Agreement, be reported FAVORABLY.

Respectfully submitted,

William R. Pfeiffer
Senate Special Master

cc: Senator Thomas
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master