

Id. at 843 (citations omitted). I agree that the governmental units knew that the lights were not working properly. I also agree that Brown should be afforded the opportunity to plead regarding whether he did not actually know about the allegedly dangerous condition.

I write separately, however, to state that I join in the judgment because our current law mandates this result. I share, however, the concerns expressed by JUSTICE HECHT that the “burden on the governments of Texas will be felt” by this opinion. It should be noted that the Texas Department of Transportation reports that there are approximately 79,297 “centerline” miles of roads and highways maintained by the State.¹ In addition, there are 142,170 miles of county roads in Texas.²

Whether to install lights in the first instance is an exercise of the government’s discretion. But once having done so, the maintenance of such a lighting system is ministerial and does not afford immunity from liability. This leads to the absurd result that when a governmental unit builds new roads or streets it should decide not to light them.

The Court’s opinion is limited to deciding whether a plea to the jurisdiction was properly granted, and it does not subject the governmental defendants to any liability. Upon remand, Brown will still need to cure his pleading defect and establish causation. The problem that exists, however, is that numerous other governmental defendants will now incur substantial litigation costs ascertaining when bulbs in exterior light fixtures burned out, what caused the light bulbs to burn out, and whether the bulbs have been burned out for so long that the governmental entity should have discovered that fact and replaced them. Plaintiffs will second guess (1) when government employees should have arrived to do the necessary repairs, (2) whether the governmental employees should have erected temporary signs, and (3) how many employees should have been dispatched to work on the lights. *See City of Baytown v. Peoples*, 9 S.W.3d 391 (Tex. App.–Houston [14th Dist.] 1999, no pet.).

In *Tarrant County Water Control & Improvement District No. 1 v. Crossland*, 781 S.W.2d 427 (Tex. App.—Ft. Worth 1989, writ denied), the plaintiffs were fatally injured in a nighttime boating

¹Pocket Facts, Texas Department of Transportation (March 2002).

²*Id.*

accident. There is a bridge in the portion of the reservoir where they were killed. A boat must slow down to sit lower in the water in order to go safely under the bridge because of the amount of clearance between the water and the underside of the bridge. *Id.* at 430. The plaintiffs were killed when their heads struck the underside of the bridge. *Id.* The plaintiffs' estates argued that the bridge and reservoir areas should have been lighted and that warning signs should have been provided. In reversing a jury award of over \$1.2 million, the court of appeals noted that the plaintiffs did not point to any specific act or omission other than the lack of lights at the bridge. *Id.* at 432. The Second Court of Appeals noted that "the decedents faced the most common and obvious danger known to man, darkness." *Id.* at 435. The Second Court of Appeals further observed "why [should] the bridge . . . be considered more dangerous than any other unlighted recreational area. With 4,790 square miles of inland water and more than 200 major reservoirs, Texas ranks second behind Minnesota for the most inland water among the continental states In summary, vast areas of Texas are devoid of artificial illumination, and the State has no duty to light the great outdoors." *Id.*³

The Second Court of Appeals was correct. There is no duty to light "the vast areas of Texas" and the 300,000 plus miles of highways, roads, and streets in this State. Ironically, the Court's opinion today provides no incentive for governmental units to increase public safety in that regard. I defer to the Legislature to act upon the County's public policy arguments regarding the financial burden that may be placed on counties to maintain all exterior lighting.

XAVIER RODRIGUEZ
JUSTICE

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³Indeed, in *Jezeq v. City of Midland*, 605 S.W.2d 544 (Tex. 1980), this Court similarly recognized that counties did not have a duty to clear or warn of vegetation that obstructed a driver's vision. We stated: "It would be a rigorous burden indeed for a rural county in a state such as Texas to police and remove vegetation from roads when they cause visual obstruction." *Id.* at 547.

