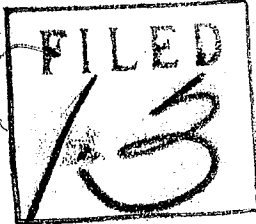


TRAFFIC ORDERS OF
JACKSON COUNTY:

The County Court of Jackson County has exceeded its authority, and Section 6 of Article XII is without foundation in statute or constitution, and since the County Court exceeded its jurisdiction, such provision is null and void.



October 5, 1954

Honorable Hilary A. Bush
Office of County Counselor
Suite 202 Courthouse
Kansas City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"The County Court of Jackson County has requested that I ask your official opinion concerning the following question:

"Jackson County, Missouri, pursuant to the provisions of Section 304.130 R.S.Mo. '49, adopted a Traffic Order for the unincorporated territory of Jackson County, Missouri, a copy of which is enclosed for your information.

"Article III of that Order provides for a Traffic Administrator to be known as Traffic Commissioner. The provisions of Article XII relate to the method of enforcing the Order and provides generally two methods: (1) the arresting officer can make an arrest and proceed with charges in the Magistrate Court as in other violations of a misdemeanor, and (2) under the provisions of Section 6, Article XII, a procedure is set up whereby the arresting officer gives the violator notice to appeal before the Traffic Commissioner.

"It is contemplated in said Order that if the prescribed penalty is paid to the Traffic Commissioner no further action shall be taken, but if such penalty is not paid, then the Traffic Commissioner shall file charges and the matter shall be prosecuted in the Magistrate Court as for other misdemeanors. This follows generally the procedure followed by the Traffic Bureau of Kansas City, Missouri.

Honorable Hilary A. Bush

"The Sheriff of Jackson County has taken the position that the procedure under Section 6, Article XII is illegal and has indicated that he will not follow such procedure prior to an opinion from your office holding it legal.

"The County Court would, therefore, appreciate your opinion in this matter."

It is our thought that the action of the Legislature, Section 304.130 RSMo 1949, does not in any way authorize the action that Jackson County has taken under said Section 6, Article XII of the Traffic Code. The statute provides that the County Court may adopt by order or ordinance "regulations to control vehicular traffic upon public roads and highways," and "establish reasonable speed regulations in congested areas." This is all that the County Court is authorized to do. Nowhere is the County Court authorized to set up its own system of courts or to provide its own machinery for the enforcement of these traffic orders.

Section 6 provides that one who receives a traffic ticket for violation of any of the provisions of this traffic order is ordered "to be and appear before the Traffic Violation Bureau within seven days thereafter to answer to the charge against him." Further, Section 7 of Article XII provides that one receiving a ticket "may appeal to any Magistrate Court in this county from any action or decision of the Traffic Commissioner."

In addition to the fines provided, Section 8 of Article XII provides for the assessment of \$2.00 costs against each violator. It is submitted that the authority contained in Section 304.130 RSMo 1949 in no way authorizes the establishment of the Traffic Violation Bureau under the direction of the Traffic Commissioner, which is apparently to pass upon the charge against the motorist since Section 6 provides that the motorist shall appear before the Traffic Violation Bureau to answer to the charge against him. Likewise, it appears that the Traffic Commissioner is to make some decisions or otherwise act as a court since Section 7 provides for an appeal from such action to a Magistrate Court. Not only is such action in establishing a court unauthorized by the Legislature, but it is certain the Legislature did not and doubtful if it could authorize the county to confer appellate jurisdiction upon Magistrate Courts since said courts are established by the Constitution of Missouri and are made courts of record and their jurisdiction is established by the Legislature.

Further, Section 304.140 RSMo 1949 provides that any violation of traffic regulations enacted pursuant to the provisions of

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Section 304.130 is a misdemeanor. Thus the Legislature has provided for the punishment to be inflicted for violation of such traffic regulations and the county court is without authority to change such punishment. In this connection, it should be noticed that Section 304.570 RSMo 1949 provides that for any violation of any of the provisions of this chapter, for which no specific punishment is provided, that the violators may be punished by a fine of not less than \$5.00 and not more than \$500.00, or by imprisonment in the county jail for a period not to exceed two years, or by both such fine and imprisonment. Thus the Legislature has set the punishment and provided the degree of the crime for violation of such traffic regulations, and the county court is totally without authority to arrogate unto itself the fixing of penalties for violation of such traffic regulations to be enforced by the Traffic Violation Bureau. The County Court has presumed to take upon itself this authority by enacting Schedule XI of Article XIII, wherein a schedule of fines for many and various offenses is set out ranging from \$1.50 to \$5.00. They have further provided in Section 9 of Article XII that fines for a second offense shall be double the amount set out in said Schedule XI, and fine for a third offense shall be triple the amount set out in said Schedule. They then have further presumed to provide that those guilty of additional offenses shall be tried before a Magistrate Court when it appears that, from the enactment of the Legislature, any violation of these traffic regulations is declared by statute to be a misdemeanor which should be prosecuted before a Magistrate Court.

CONCLUSION

It is therefore the opinion of this office that the County Court of Jackson County has exceeded its authority, and that Section 6 of Article XIII of the Traffic Order for the unincorporated territory of Jackson County, Missouri, is without foundation in statute or constitution, and that since the County Court exceeded its jurisdiction, such provision is null and void.

Very truly yours,

JOHN M. DALTON
Attorney General