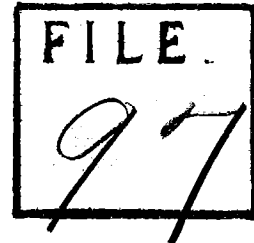


MUNICIPAL CORPORATIONS: Violation of city ordinance regulating automobile speed is offense against city and is not a State offense. 5

October 7, 1941

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Honorable R. P. C. Wilson III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri



Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"I respectfully request an opinion on the construction to be given to Section 8395, R. S. Missouri, 1939. I desire to know whether, after a municipality passes an ordinance as provided for under that section, limiting the speed of motor vehicles passing through the municipality on the state highway, the violation of the ordinance so passed is to be considered a violation of the state laws."

Section 8395, R. S. Mo. 1939, provides as follows:

"Municipalities may, by ordinance, establish reasonable speed regulations for motor vehicles within the limits of such municipalities: \* \* \* \* \*"

As was said in Ex Parte Williams, 139 S. W. (2d) 485, 1. c. 489:

"The extent of this (police) power of a city thus derived is subject to, and dependent upon, the limitations of its charter. The city is a

creature of the state; and before it can exercise a particular police power it must fairly be included in the grant of powers by its charter."

As was pointed out in *Kansas City v. Case Machinery Co.*, 87 S. W. (2d) 195, 337 Mo. 913, a municipal corporation has no inherent police power but derives it solely from delegation by the State. Judge Hyde in the above opinion said (l. c. 202):

"The protection of life, liberty, and property, and the preservation of the public peace and order, in every part, division, and subdivision of the state, is a governmental duty, which devolves upon the State, and not upon its municipalities, any further than the state, in its sovereignty, may see fit to impose upon or delegate it to the municipalities."

While there is no question but that careless and reckless driving is a violation of State law (Section 8383, R. S. Mo. 1939), still the Legislature has delegated to the municipal corporations the right to regulate the speed of motor vehicles within the confines of the corporation. Therefore, a city, in pursuance to the authority granted by the Legislature, which enacts an ordinance setting the speed limit for such city, may properly arrest and prosecute a person who violates the terms of the ordinance. That this violation is a wrong against the city and not the State, is the view of the Supreme Court of Missouri. The rule is stated in *McQuillin Municipal Corporations*, (2d Ed.) Vol. 3, page 50, as follows:

"The doctrine generally supported may be thus stated: That the single act being made punishable both by the state law and by the municipal ordinance of the place wherein it was committed constitutes two distinct and several offenses; an offense against the state and an offense against the municipality. The

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purpose of the ordinance is to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation; the state law has a more enlarged object in view, namely, the maintenance of the peace and dignity of the state. \* \* \*

In support of this statement is cited the following Missouri cases: State v. Muir, 164 Mo. 610, 65 S. W. 285; St. Louis v. Knox, 74 Mo. 79; Ex parte Hollwedell, 74 Mo. 395.

Therefore, it will be seen that a violation of a city ordinance setting the maximum speed that may be traveled by a motor vehicle within the confines of a municipality, is a wrong against the municipality and is not a State offense, and the prosecution must be conducted by the city attorney and not the Prosecuting Attorney of the county.

#### Conclusion

In view of the above authorities it is the opinion of this Department that the violation of a city ordinance regulating the speed of a motor vehicle is an offense against the municipality and not against the State, and the prosecution of same must be conducted by the city attorney.

Respectfully submitted

ARTHUR O'KEEFE  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(ACTING) Attorney-General

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