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T. E. Lauer

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PROLEGOMENON TO MUNICIPAL COURT REFORM IN MISSOURI

T. E. LAUER*

In Missouri there are hundreds of incorporated municipalities: constitutional charter cities, special charter cities, third class cities, fourth class cities, and towns and villages. Each of these incorporated municipalities has a municipal court which possesses exclusive original jurisdiction to try and to determine actions involving alleged violation of the ordinances of the municipality.

Certainly these municipal courts handle more cases than any other courts in the state. Although many of the matters dealt with are disposed of summarily, nevertheless more persons come into contact with municipal courts than with other Missouri courts. For this reason alone, these are important courts, for it is through them that many persons acquire their understanding of courts, our legal system, and the legal profession. This understanding, in turn, determines how persons regard the law—whether as a splendid means of achieving the great ideal of justice in human society, or as merely a troublesome, quibbling and uncertain mechanism which serves little useful purpose.

Unfortunately, the functioning of Missouri's municipal courts leaves much to be desired. In many respects they represent a modern anomaly, the result of ill-defined legislation and inconsistent judicial decisions extending across more than a century. Generally they have been overlooked or ignored as the misshapen stepchildren of our judicial system. To a substantial segment of the bar, there is something less than respectable about extensive practice in municipal courts, or in serving as municipal judge. The public is little concerned with the operation of municipal courts—except on those unhappy occasions when persons find themselves ensnared in the meshes of one of these courts, and even then it is oftentimes a simple matter of uncomprehendingly pleading guilty and paying a fine in order to “get it over with.”

The lack of public respect for municipal and police courts was stressed at the recent Citizens' Conference on Missouri Courts, held at

*Associate Professor of Law, University of Missouri.

Jefferson City in October 1965. The conclusions of the Conference included a recognition that "a significant number of these courts in Missouri do not function well under the existing system," and a call for judicial reform at this level.

It is true that in recent years the practice and procedure in municipal courts has been improved. Substantial efforts have been made to increase the quality of municipal judges and to make these judges more fully aware of their judicial function. Missouri Supreme Court Rule 37 has contributed greatly to the uniformity and regularity of practice in these courts. Further improvement is certain to come in the years ahead.

Fundamental difficulties, however, remain. It is not certain that they can be solved merely by the use of new or altered procedure, or by the appointment to the municipal bench of more enlightened judges. Instead, these difficulties appear to arise out of an underlying conflict between the premises upon which the existence of our municipal courts is founded and the basic principles upon which stand the other courts of the state. Even a cursory examination of the law relating to Missouri's municipal courts will serve to disclose the nature and magnitude of this conflict.

What may be needed to cure these deeper ills is a thoroughgoing revision of the entire procedure for the judicial enforcement of municipal ordinances. Such a revision might require the abandonment of many time-honored concepts relating not only to the municipal courts themselves, but also to the nature of the action alleging a municipal ordinance violation, and to the very power of municipalities to enact ordinances of particular types. Before such a revision can be proposed, however, it will be necessary to undertake a careful study of the functioning of Missouri's municipal courts, to determine specifically those areas where change is most needed.

I. THE MUNICIPAL COURT

The Missouri Constitution provides that "The judicial power of the state shall be vested in a supreme court" and other designated courts, including "municipal corporation courts."¹ Municipal courts thus derive their judicial powers directly from the constitution, and are to be regarded as a part of the state court system. In keeping with this principle, practice and procedure in the municipal courts is considered to be subject to the

1. MO. CONST. art. V, § 1. The reference to municipal corporation courts was first found in art. VI, § 1, of the 1875 Constitution of Missouri.

rule-making power of the Missouri Supreme Court,² which has adopted Rule 37 prescribing procedure in these courts.

But although a part of the "judicial power of the state" inheres in municipal courts, it is nonetheless plain from a more detailed examination of the judicial article of the constitution, when compared with current practices relating to municipal courts, that these are not regarded as full-fledged members of the state's judicial system. For not only is no further mention made of municipal courts in the constitutional article, but the other sections relating generically to courts and judges are not considered as being applicable to municipal courts. It may be, then, that the inclusion of municipal corporation courts as being vested with the judicial power of the state came only as an afterthought to the draftsmen of the state constitution.³

Specifically, three constitutional provisions relating to "courts" or to "judges and magistrates," are wholly ignored insofar as municipal courts are concerned. The constitution directs that "The fees of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."⁴ Although many municipal courts impose costs in each conviction, it is clear that the fees so collected are not paid into the state treasury. A cogent argument can be made that the constitutional purpose is to return fees to the political entity which pays the judge's salary, as partial reimbursement. Since municipalities pay their judges' salaries, it is they who should be repaid. But if municipal courts are indeed "courts" in the full constitutional sense, why was no special mention made of them here, directing such fees to be paid to the municipality?

Likewise, although the judicial officers of municipal courts are designated "judges" or "police judges," it is clear that constitutional sections relating to the qualifications of the state judiciary are not applied to municipal judges. Thus the constitution provides that, excepting certain probate judges and magistrates, "Every judge and magistrate shall be licensed to practice law in this state. . . ."⁵ At the present time, twenty years after this constitutional provision became effective, well over half of

2. Mo. CONST. art. V, § 5.

3. Some weight is added to this proposition by the fact that while the constitutional article, with the exception of the first section, is silent as to municipal courts, it spells out rather carefully the jurisdiction of the other courts mentioned.

4. Mo. CONST. art. V, § 24.

5. Mo. CONST. art. V, § 25.

the hundreds of municipal judges in Missouri are not licensed to practice law, but are laymen.

In addition, the constitution envisions that all judicial positions shall be full-time jobs, for it states "No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms."⁶ Plainly the state's municipal judgeships are in almost every case part-time jobs, paying only a small salary and requiring only a few hours' work each week or month. And where a licensed attorney does hold the position as municipal judge, this fact is not considered to prevent him from engaging in law practice.

Have these constitutional provisions wrongfully been ignored where municipal courts are concerned? Or, with the exception of the grant of judicial power, should municipal courts and judges be regarded as not falling within the constitutional language? The question has never been judicially answered, although if it were raised it is evident that the weight of twenty years' "practical construction" would be difficult to overcome. Nevertheless, the question is troublesome, and should certainly be resolved in the drafting of any proposed revisions of the judicial article of the Missouri Constitution.

One basic issue for determination will be whether it is desirable to permit non-lawyers to continue to serve as municipal judges. Certainly there has been much valid criticism of the lay judges who sit in many of the state's municipalities.⁷ All too often these judges, no matter how well-intentioned they may be, lack an adequate understanding of their judicial role. Clearly, to require all municipal judges to be licensed attorneys would improve substantially the administration of these courts. However, the matter is complicated by the fact that in many Missouri municipalities there is no licensed attorney who could serve as municipal judge. It would plainly be impossible to require these judges to be licensed to practice law while at the same time retaining municipal courts in their present form. In this connection, consideration must also be given to the possible abolition of municipal courts and the placing of their jurisdiction in the magistrate courts of the state.

Some appreciation of the wide variations in quality which exist between

6. Mo. CONST. art. V, § 24.

7. See, e.g., Huston, *A Lay Judge Looks at our Municipal Courts*, 18 J. Mo. B. 192 (1962).

Missouri municipal courts may be gained from an examination of the manner in which municipal judges are selected. In Missouri towns and villages, the chairman of the board of trustees acts as conservator of the peace and has "exclusive original jurisdiction to hear and determine all offenses against the ordinances of the town."⁸ In cities of the fourth class, the mayor has similar powers,⁹ unless the mayor and board of aldermen have adopted an ordinance providing for the election of a police judge at regular city elections.¹⁰ In cities of the third class, the police judge, who is elected for a two-year term,¹¹ acts as such conservator of the peace with exclusive original jurisdiction to hear and determine all ordinance offenses.¹² In all of these municipalities there are no requirements that the municipal judge be licensed to practice law. Missouri charter cities, on the other hand, have chosen a wide variety of provisions relating to the selection of municipal judges. Thus in Columbia, the municipal judge is selected by the city council for a four-year term, and must have been a licensed attorney for at least three years prior to his selection.¹³ And in Kansas City, the municipal judges are elected by the people for four-year terms, and must have been licensed attorneys in Jackson County for at least five years prior to their election.¹⁴

II. THE MUNICIPAL OFFENSE

A. *Municipal Ordinances*

Almost without exception, Missouri municipal courts exist solely for the adjudication of alleged municipal ordinance violations.¹⁵ These courts possess exclusive original jurisdiction in such actions.¹⁶ The function of

8. § 80.260, RSMo 1959.

9. § 98.510, RSMo 1959.

10. § 98.500, RSMo 1959.

11. § 77.370, RSMo 1959.

12. § 98.320, RSMo 1959.

13. CHARTER OF THE CITY OF COLUMBIA § 115.

14. CHARTER OF KANSAS CITY § 395.

15. Kansas City provides the exception. Section 207 of the Kansas City Charter states that condemnation proceedings by the city shall be initiated in the municipal court. This charter provision was upheld in *State ex rel. Graham v. Seehorn*, 246 Mo. 541, 151 S.W. 716 (En Banc 1912), and *Kansas City v. St. Louis & Kansas City Land Co.*, 260 Mo. 395, 169 S.W. 62 (En Banc 1914), *aff'd*, 241 U.S. 419 (1916). There was a strong dissent in the *Seehorn* case, which seems logically to have been more sound than the majority opinion. Historically, some municipal courts have also handled small claims. See *Cake v. White*, 91 Mo. 79, 3 S.W. 486 (1887); *Summons v. Beaubien*, 36 Mo. 307 (1865).

16. One exception exists. In St. Louis, the court of criminal correction has concurrent jurisdiction with the municipal court in prosecutions for all offenses

the municipal court and its place in the state legal system, then, are governed by the nature of the ordinances which may be adopted by Missouri municipalities.

In Missouri as elsewhere, municipalities are public corporations created by the state for the purpose of exercising public and governmental functions within designated territorial limits. They provide a means whereby persons living closely together in communities may exercise at least limited powers of local self-government. To achieve this result, municipal corporations are granted power by the state to adopt ordinances or by-laws regulating local affairs.

Municipal power to enact ordinances regulating human activity within the corporate limits must necessarily derive from the state. It is clear that municipalities themselves are not sovereign in any sense, and that they have no powers which are necessarily inherent from the mere fact of their existence. The state is the sovereign, and to the extent that the municipal corporation exercises any public or governmental power, it is exercising state power which has been delegated to it.

In Missouri there are two sources of such delegation. The constitution grants to the City of St. Louis the power to govern itself by a charter "with the powers, organization, rights and privileges permitted by this constitution or by law."¹⁷ The constitution further permits any city whose population exceeds ten thousand to "frame and adopt a charter for its own government, consistent with and subject to the constitution and laws of the state."¹⁸ The General Assembly has by legislation incorporated several municipalities by the grant of a special charter, and also makes general provision for the powers of cities and towns of various classes.¹⁹

While the constitutional grant of power is extremely broad, the statutes relating to incorporated municipalities are quite specific in their grant of power to enact ordinances and regulations. However, these statutes enumerate a very extensive list of subjects upon which a munic-

"which may be declared to be misdemeanors under any law of the state, and which may also be in violation of any ordinance of the city of St. Louis." § 479.100, RSMo 1959.

17. Mo. CONST. art. VI, § 31.

18. Mo. CONST. art. VI, § 19.

19. The Missouri Constitution directs that there shall not be more than four classes of municipalities, "and the powers of each class shall be defined by general laws so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions," art. VI, § 15.

ipality may legislate. It follows that the number and variety of municipal ordinances in force in Missouri municipalities is astonishing. Not only do these ordinances deal with matters of peculiar local importance, but in many cases ordinances have been enacted which parallel or duplicate the state law, particularly in the area of lesser crimes. Thus the typical Missouri municipality will have ordinances relating to bad checks, prostitution, concealed weapons, gambling, and the publication of obscene literature, although on each of these subjects there is also a state criminal statute of general applicability throughout the state.

Municipalities operating under constitutional charters depend upon the broad constitutional grant of power to enact ordinances punishing conduct which is proscribed also by the state criminal statutes. Towns and villages likewise possess a broad statutory grant of power.²⁰ On the other hand, municipal authority to duplicate state criminal statutes is often specifically set out. Thus cities of the third²¹ and fourth²² class are empowered to prohibit the carrying of concealed weapons. Other statutes provide that in cities of the third²³ and fourth²⁴ class, the council *shall* enact certain ordinances in the nature of police regulations, including those dealing with prostitution, gambling, assault and battery, and petit larceny. The language of these statutes appears mandatory, not merely directory or permissive.

Without doubt, municipalities require power to legislate as to matters of peculiar local importance. If municipalities are to have power to regulate businesses, to collect license taxes, to adopt zoning regulations, they must also be able to shape these laws to meet local needs and conditions and to enforce them. Yet it may cogently be inquired whether it is necessary or even desirable to permit municipalities to enact ordinances which are identical to state criminal statutes, which are of general application throughout Missouri.

There is no doubt that Missouri municipalities may lawfully adopt ordinances which duplicate state criminal statutes. Since *Ex parte Hollwedell*²⁵ in 1881, it has consistently been held that the existence of a general state statute does not defeat the power of the municipality to enact

20. § 80.090, RSMo 1959.

21. § 77.580, RSMo 1959.

22. § 79.460, RSMo 1959.

23. § 77.570, RSMo 1959.

24. § 79.450.1, .2, RSMo 1959.

25. 74 Mo. 395 (1881).

a similar ordinance.²⁶ Statutes providing that cases shall be transferred from the municipal court to the magistrate court when it appears to the municipal judge "that the accused ought to be put upon trial for an offense against the criminal laws of the state and not cognizable before him as police judge,"²⁷ have been held to be merely directory, and not to require the municipal judge to transfer a cause even when it appears that it involves a felony under the state criminal law.²⁸ This doctrine is bolstered, perhaps, by the fact that where conduct constitutes an offense under both a statute and an ordinance, prosecution under one will not bar a subsequent prosecution under the other. The basis for this doctrine of "double prosecution" is discussed in the next subsection. It is sufficient to point out here that its effect is to prevent municipal law enforcement from prejudicing the power of the state to prosecute under its general criminal statutes.

Why do we have this duplication? Two related reasons suggest themselves. Originally, the legislature may have considered municipal corporations, as political subdivisions of the state, proper instrumentalities to assist in the enforcement and administration of the state law. In so doing, it may not have been contemplated that there might be two prosecutions, one state and one municipal, for a single act, but instead it may have been believed that one prosecution by either should suffice. Second, it may have been felt that state officers such as the sheriff and prosecuting attorney, and state courts, principally the justice of the peace courts then existing, were unable to enforce the state laws with sufficient diligence in large communities, and therefore local enforcement powers were created in the interest of improved public peace and good order within municipalities.

As far as petty offenses are concerned, such as peace disturbance, it is plain that these may best be enforced at the local level by municipal authorities, provided that there is no double prosecution. However, some question may be raised as to whether a good reason exists to permit municipal corporations to legislate concerning serious offenses, such as

26. See also State *ex rel.* Reid v. Walbridge, 119 Mo. 383, 24 S.W. 457 (1894); City of St. Louis v. Schoenbusch, 95 Mo. 618, 8 S.W. 791 (1888); City of Lebanon v. Gordon, 99 Mo. App. 277, 73 S.W. 222 (St. L. Ct. App. 1903).

27. §§ 98.410, RSMo 1959 (3d class cities), 98.580, RSMo 1959 (4th class cities).

28. City of Poplar Bluff v. Meadows, 187 Mo. App. 450, 173 S.W. 11 (Spr. Ct. App. 1915).

the carrying of concealed weapons, which the state has denominated a felony.²⁹ Here, the municipality's power to deal with the offender may be sharply restricted because of limitations upon its power to fine or imprison. For example, a person prosecuted under the state concealed weapon statute is liable to imprisonment for two years, while one prosecuted in a city of the third or fourth class may only be imprisoned for three months.³⁰

Moreover, at the present day the facilities for the prosecution of offenses against state law are adequate to guarantee that all serious state crimes could be diligently enforced and prosecuted in the magistrate and circuit courts. The abolition of justice of the peace courts and the creation of a statewide system of magistrate courts adds much weight to the position that municipal courts are not needed for the enforcement of state laws.

Could this duplication, then, be abolished without impairing the effective administration of justice in Missouri? As to matters such as concealed weapons, prostitution, stealing and bad checks, which are clearly and adequately covered by state criminal statutes, the answer would seem to be affirmative. To do so would serve greatly to clarify the law of Missouri relating to the prosecution of minor criminal offenses which occur within municipal boundaries. One prosecution for each offense is surely enough, and where possible it should be on behalf of the state.

It must be recognized, however, that in bringing about this reform it may be necessary to overcome substantial resistance on the part of municipalities which will be reluctant to lose their power over offenses defined by state law. Not only would this reform diminish the importance of the municipal court, but more importantly it would cause a loss of revenue to municipalities, in that municipal fines, which are now paid into the municipal treasury, would become state fines to be paid to the school fund.

B. *Nature of the Municipal Ordinance Prosecution*

Is a prosecution by a municipality for violation of an ordinance a civil or a criminal proceeding? The procedure to be used, the rights of the accused, and the consequences of a conviction will depend upon whether the action is considered civil or criminal.

As an original proposition, there is much to be said for the view

29. § 564.610, RSMo 1959.

30. §§ 77.590, 79.470, RSMo 1959.

that this is a criminal proceeding. The municipality has been delegated power by the state to enact ordinances proscribing or requiring certain behavior. The accused offender may be arrested and detained in jail awaiting trial. Violation of these ordinances may be punished by a fine or imprisonment. The ordinances themselves often are copied verbatim from the criminal statutes of the state.

Early Missouri decisions, holding that a person who had been convicted of violating a municipal ordinance could not be subsequently prosecuted under the state criminal laws for the same offense,³¹ seemed to indicate that ordinance violations would be treated as crimes. However, at the same time it was held that a proceeding alleging a municipal ordinance violation was properly brought in the form of a civil action for debt.³² The issue was finally decided in 1878 in *City of Kansas v. Clark*, where Judge Sherwood said:

Nor do we regard the violation of the ordinance under consideration as a *crime*, since "a crime . . . is an act committed in violation of a *public law*;" 4 Black. Com., 5; a law co-extensive with the boundaries of the State which enacts it. Such a definition is obviously inapplicable to a mere local law or ordinance, passed in pursuance of, and in subordination to, the general or public law, for the promotion and preservation of peace and good order in a particular locality, and enforced by the collection of a pecuniary penalty.³³

Subsequent Missouri decisions have consistently held that an ordinance prosecution is not a criminal matter, but is a civil action, even though "its primary object is to punish."³⁴ Nor does the fact that the defendant is imprisoned rather than fined for the ordinance violation require the prosecution to be conducted as a criminal action.³⁵

One might quarrel with Judge Sherwood's declaration; he has rather plainly misread Blackstone, who was not speaking of a general statute when he used the term "public law," but instead was speaking of a law

31. *State v. Thornton*, 37 Mo. 360 (1866); *State v. Cowan*, 29 Mo. 330 (1860); *State v. Simonds*, 3 Mo. 414 (1834).

32. *City of St. Louis v. Smith*, 10 Mo. 438 (1847). See also *City of Gallatin v. Tarwater*, 143 Mo. 40, 44 S.W. 750 (1898), for the form of complaint used.

33. 68 Mo. 588, 589-90 (1878).

34. *City of Clayton v. Nemours*, 237 Mo. App. 167, 173, 164 S.W.2d 935, 937 (St. L. Ct. App. 1942).

35. *City of St. Louis v. Von Hoffmann*, 312 Mo. 600, 280 S.W. 421 (En Banc 1926).

directed against public wrongs as distinguished from private wrongs.³⁶ It is difficult to comprehend how municipal ordinances can be said not to be directed against public wrongs; surely they are not concerned merely with private wrongs. Moreover, it is plain that a criminal law need not be "coextensive with the boundaries of the State which enacts it."³⁷

Denominating the municipal ordinance prosecution a civil action rather than a criminal one gave rise to numerous problems. Did this mean that although the defendant could be fined or imprisoned, he would nevertheless be denied the safeguards long associated with criminal prosecutions? In the decades which have passed since the *Clark* decision, the courts have gradually added to the defendant's safeguards, until now the procedure in a municipal ordinance prosecution is much like that in a criminal prosecution involving a violation of a state statute.

The *Clark* case itself dealt with whether a municipality had a right of appeal from a judgment of acquittal in a municipal ordinance prosecution. Holding that the prosecution was a civil action, the court found no difficulty in determining that the city had a right to appeal.³⁸ This ruling has been consistently followed by other Missouri courts.³⁹

In 1881, in *Ex parte Hollwedell*,⁴⁰ it was argued that imprisonment for nonpayment of a municipal fine was in effect imprisonment for debt, and therefore contrary to the express provisions of the Missouri Constitution.⁴¹ The court held that imprisonment for nonpayment of a municipal fine was not within the constitutional prohibition. Thirty-five years later in *Kansas City v. Pengilly*⁴² this holding was reaffirmed, but the court struck down an ordinance making it unlawful for a person hiring a vehicle

36. 4 BL. COMM. *5: "[P]ublic wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity."

37. As an example, see the county zoning law enacted by the 1965 Missouri General Assembly. There, county planning and zoning are optional with the people of each county, and the counties are free to adopt their own regulations. However, any violation of the planning or zoning regulations adopted by any county is declared to be a misdemeanor. § 64.895, RSMo 1965 Supp. Clearly these regulations are far less than "coextensive with the boundaries of the State."

38. The right of appeal by either party in these cases is statutory, and might lawfully be denied in certain cases. *Wertheimer v. Mayor of Boonville*, 29 Mo. 254 (1860) (act incorporating Boonville gave right of appeal in all cases above the sum of five dollars).

39. See, e.g., *City of St. Louis v. Mikes*, 372 S.W.2d 508 (St. L. Mo. App. 1963); *City of St. Louis v. Penrod*, 332 S.W.2d 34 (St. L. Mo. App. 1960); *City of Clayton v. Nemours*, *supra* note 34.

40. 74 Mo. 395 (1881).

41. MO. CONST. art. II, § 16 (1875), now Mo. CONST. art. I, § 11.

42. 269 Mo. 59, 189 S.W. 380 (En Banc 1916).

to refuse to pay therefor, saying that the constitutional prohibition cannot "be evaded by the device of declaring a simple breach of contract a crime."⁴³

The consequences of treating a municipal ordinance violation as a civil matter are vividly illustrated by *State ex rel. Kansas City v. Renick*,⁴⁴ which held that the Governor of Missouri has no power to pardon a person convicted of an ordinance violation. It was held that the constitutional language relating to the governor's power to reprieve, commute and pardon "all offenses" meant criminal prosecutions only. In Missouri municipalities the power to pardon is granted to the mayor.⁴⁵

In several important respects, the rights of the defendant in a municipal ordinance prosecution are similar to those of defendants in criminal cases. Thus under Missouri Supreme Court Rule 37.85, the defendant's right to counsel is recognized, and Rule 37.86 requires the presence of the defendant at a trial or plea of guilty unless the court consents to the absence of the defendant.⁴⁶ Generally, the court rule provides that in municipal court trials the same practice shall be used as governs the trial of criminal cases in the circuit court.⁴⁷

The defendant in a municipal ordinance prosecution does not have a constitutional right to trial by jury.⁴⁸ In *Kansas City*⁴⁹ and perhaps in one or more other constitutional charter cities there is no right to jury trial in the municipal court. Likewise, in towns and villages no jury trial seems contemplated by the statutes.⁵⁰ On the other hand, in cities of the third⁵¹ and fourth⁵² class, express provision is made for trial by jury upon

43. *Id.* at 61, 189 S.W. at 381.

44. 157 Mo. 292, 57 S.W. 713 (En Banc 1900).

45. § 77.360, RSMo 1959, empowers the mayor of third class cities "to remit fines and forfeitures and to grant reprieves and pardons for offenses arising under ordinances of the city." § 79.220, relating to fourth class cities, is similar. Section 43 of the Charter of Kansas City grants the mayor the power to parole and pardon municipal offenders.

46. The rule requiring defendant to be personally present clearly eliminates the possibility of entering judgment by default against the defendant, as seems to have been done in *In re Moore*, 282 S.W.2d 856 (St. L. Mo. App. 1955), and *City of St. Louis v. Fitch*, 238 Mo. App. 725, 187 S.W.2d 63 (St. L. Ct. App. 1945). See also *City of St. Louis v. Moore*, 288 S.W.2d 383 (St. L. Mo. App. 1956), holding it improper to try defendant in his absence, unless he has consented.

47. Mo. SUP. CT. R. 37.51.

48. *Delaney v. Police Court*, 167 Mo. 667, 67 S.W. 589 (En Banc 1902).

49. KANSAS CITY, MO., REV. ORDINANCES § 35.300 (1956), provides that all trials for municipal ordinance violations shall be before the court and without a jury.

50. See §§ 80.260, .300, .350, RSMo 1959.

51. § 98.380, RSMo 1959.

52. § 98.550, RSMo 1959. This statute specifically overcomes the holding in *City of Marshall v. Standard*, 24 Mo. App. 192 (K.C. Ct. App. 1887).

defendant's request. Where a jury trial is provided, conviction can only be upon the unanimous verdict of the jury, as in criminal cases, and not on a three-fourths verdict as in civil cases.⁵³ Moreover, in such cases the defendant is entitled to an instruction that guilt be proved beyond a reasonable doubt.⁵⁴

A good example of the quandary into which the Missouri courts have been thrown by the early unfortunate characterization of municipal prosecutions as civil cases appears in *City of Webster Groves v. Quick*,⁵⁵ where the defendant, convicted of speeding, contended that because an electric timing device had been used, he had been denied his right to confront and cross-examine the witnesses against him. In an elaborately reasoned opinion, the Missouri Supreme Court unnecessarily concluded that the constitutional requirement of confrontation and cross-examination does not apply to ordinance prosecutions, thus ignoring earlier holdings that the rules of criminal procedure are applicable in ordinance cases.⁵⁶

Finally, it has been held on numerous occasions that a conviction of a municipal ordinance violation will not bar a subsequent criminal prosecution by the state for a similar offense based upon the identical act. The double jeopardy provisions in the constitution and statutes have no application to "civil" cases. Initially, at a very early date, it was held that there could be only one prosecution, by either the city or the state, upon a single wrongful act.⁵⁷ These early cases were expressly overruled in 1901

53. *King City v. Duncan*, 238 Mo. 513, 142 S.W. 246 (1911). In that case, defendant appealed to the circuit court and was there convicted upon a verdict agreed to by ten of the twelve jurors. It was contended that this verdict was sufficient, inasmuch as the constitutional amendment of 1900 permitted a three-fourths verdict in civil cases in courts of record. The court held, not without some inconsistency, that the rules of criminal procedure apply in appeals from city courts, and therefore the constitutional provision was inoperative in such cases. This is perhaps as good an answer as can be given, in view of earlier decisions denominating these cases as "civil." However, here they are treated as something other than civil cases; and if there are but two categories, civil and criminal, then the ordinance violation case must be denominated "criminal." But can we conceive of a class of actions that is civil for some purposes, but criminal for others? It is to this uncertain position that we are led by the evolving judicial decisions in this area.

54. *Ibid.*; *City of Stanberry v. O'Neal*, 166 Mo. App. 709, 150 S.W. 1104 (K.C. Ct. App. 1912).

55. 319 S.W.2d 543 (Mo. 1959).

56. Here the court could have avoided making bad law by simply holding, as plain sense would dictate, that the electric timer was not a "witness" against the defendant.

57. See cases cited *supra* note 31.

in *State v. Muir*,⁵⁸ where defendant contended that an ordinance conviction for gambling acted as a bar to a subsequent state prosecution on the identical facts. The court said:

In a plea in bar to the prosecution of the State, the defendant must allege and prove that he is prosecuted for the *same crime* of which he had been *autre fois convict*, or *autre fois acquit*, in a prior prosecution by the city. But this he cannot prove, if the proceeding instituted by the city was but a *civil action*.⁵⁹

Subsequent decisions have followed the reasoning of the *Muir* case.⁶⁰

These holdings, permitting dual prosecutions and double punishment where a particular act is proscribed both by a state statute and a municipal ordinance, thoroughly violate the principle of fair play insofar as the enforcement of criminal or penal law is concerned. In principle, legal or ethical, they have little redemptive quality about them. The argument that there are two sovereigns or two jurisdictions involved is plainly fallacious; the power to declare an act unlawful and to fine or imprison therefor must be derived from the state, and hence there is only one jurisdiction and one sovereign. On principle, the decision of Judge Wagner in the early case of *State v. Thornton*⁶¹ has far more to commend it than more recent pronouncements, technically sound though they may arguably be:

No doubt is entertained about the power of the Legislature to create municipal corporations, and invest them with authority to pass ordinances for police regulations, and to punish persons for their violation. And where a properly constituted court, acting under the authority of an ordinance of a municipal corporation, punishes a person for violation of that ordinance, he cannot be again punished for the same offense, under the general laws of the State.⁶²

Any future revision of municipal court procedure or proceedings relating to ordinance prosecutions should abolish this anomaly.

Thus we have seen that while the municipal ordinance prosecution has been characterized as civil, it has increasingly come to incorporate

58. 164 Mo. 610, 65 S.W. 285 (1901). See also *State v. Muir*, 86 Mo. App. 642 (St. L. Ct. App. 1901). This decision was foreshadowed by a dictum of Gantt, P.J., in *State v. Gustin*, 152 Mo. 108, 53 S.W. 421 (1899).

59. 164 Mo. at 615-16, 65 S.W. at 286.

60. See, e.g., *State v. Garner*, 360 Mo. 50, 226 S.W.2d 604 (1950); *State v. Jackson*, 220 S.W.2d 779 (St. L. Mo. App. 1949).

61. 37 Mo. 360 (1866).

62. *Id.* at 361.

certain of the safeguards of the criminal law, although there is a good deal yet to be accomplished. In its present state, this action can indeed be characterized as "quasi-criminal, yet civil in nature."

III. REFLECTIONS ON MUNICIPAL COURT PROCEDURE

Does the person prosecuted for an ordinance violation in a municipal court in Missouri enjoy the full safeguards of due process of law? Or does the appellation "kangaroo court" too often validly apply to municipal court proceedings? Missouri Supreme Court Rule 37 sets forth procedures which must be followed in the municipal courts of the state. These procedures, if adhered to both in form and in spirit, clothe the defendant with a protective mantle; yet if either form or spirit is ignored, the rules are of little avail.

The importance of the manner in which justice is administered in municipal courts cannot be overemphasized, yet it is here that these courts are most vulnerable to criticism. In spite of the adoption of a uniform rule of procedure, applicable to all municipal courts in the state, even the most cursory observation of these courts in action discloses that there exist very substantial differences between them, both as to procedure, and as to the spirit in which justice is administered. Some of these differences may arise through the evolution of peculiar local practices, some through the inadequacy or a misunderstanding of the laws and rules relating to municipal courts, and some through simple ignorance.

Unfortunately, these serious discrepancies in local procedure have long been ignored. The importance of proceedings in municipal courts has been minimized; after all, petty ordinance violations are small stuff in the entire judicial scheme of things if we overlook the great significance of each case to the individual who has been accused. Furthermore, these courts tend to rely upon established ways of doing things which seem to work passably well, or at least cause no overt disturbance. Why rock the boat?

Over the years there has been too little communication between municipal judges (and municipal attorneys) in the various cities and towns of Missouri concerning the administration of municipal courts. Too often one judge does not know how court is conducted in a sister city only a few miles away. Standards vary widely from city to city. Better communication and exchange of information between municipal judges is vital to the improvement of their courts. It is true that there is a

statewide association of municipal judges, and also one in the St. Louis area, both of which have worked diligently to improve conditions in municipal courts. But their efforts must be increased tenfold if we are to cast off the poor habits of decades and begin to make courts of law of these tribunals.

More specifically, there are a number of areas in which municipal court procedure could be improved in many, if not most, cities and towns. The list of these below does not purport to be definitive or exhaustive but merely suggestive of the kinds of problems which need immediate solution.

1. *The city attorney.* The municipal ordinance prosecution is an adversary proceeding, and in it the city attorney or city prosecutor plays an important role. Yet it appears that in many municipalities ordinance violation cases are handled by the court in the absence of such attorney. This is unfortunate, particularly when the defendant is unrepresented also, for it compels the judge to act as counsel for both sides as well as judge; and it is not surprising that the results of such efforts are not always successful. Furthermore, there is very real concern that in the absence of the city attorney the judge himself may assume the prosecutorial function, siding with the complaining officer against the defendant.

The city attorney also plays an important role in screening complaints and exercising discretion in determining which ones should, and which should not, be prosecuted. He should exercise an independent judgment in this regard, and should refuse to prosecute those complaints which appear unjust, unfounded, or subject to substantial doubt. In this, he is fulfilling his duty of protecting the rights of accused persons, and is acting to the end that justice be done.⁶³ To the extent that the municipal attorney fails to participate in the municipal court process, or to the extent that he acts simply as a "rubber stamp" for the local police department and fails to exercise his discretion not to prosecute, or to dismiss cases which appear questionable or unfounded, he is derelict in his duty as an officer of the court.

2. *Benefit of counsel.* Unquestionably, the accused in a municipal ordinance prosecution enjoys the right to counsel.⁶⁴ In fact, however, few defendants actually have the benefit of counsel in these actions. It may

63. Mo. Sup. Ct. R. 4.05 states: "The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done."

64. Mo. Sup. Ct. R. 37.85.

be that most ordinance prosecutions are not of sufficient moment to justify retention of counsel by the accused, particularly when the amount of fine and costs is usually somewhat less than would be a reasonable attorney fee in such a case.⁶⁵ On the other hand, where the defendant is faced with a jail sentence or a large fine, the benefits of counsel are apparent.

In this connection, some study should be made to determine whether some of our municipal judges do not consider representation by counsel to be a "nuisance," which they discourage openly or by implication. Inquiry should be made to ascertain whether the defendant is adequately informed of his right to counsel. If he proceeds without counsel, are his rights properly safeguarded? Are pleas of guilty coerced by the court's manner in arraigning the defendant? If the defendant does plead guilty does he have an opportunity to explain mitigating factors, or is he frightened or shamed into silence? Does the court explain to the defendant his right to withdraw a plea of guilty when it appears from his statements after the plea that he is contesting the validity of the charge? What happens when the defendant pleads not guilty?

A comparison should be made of cases where the defendant is represented by counsel with those where he is not. How much more frequent are dispositions in favor of the accused when he is represented by counsel? Here should be considered the relative number of acquittals, dismissals, and reduced charges, and also the amount of the fines or the severity of jail sentences imposed.

Moreover, it is disgraceful that we do not appoint counsel in our municipal courts to represent indigent persons accused of ordinance violations.⁶⁶ Here, where the liberty of the accused may well be at stake, there seems to be no right to appointed counsel because we do not

65. It is doubtful whether services of an attorney could be secured in the municipal court for less than \$25.00, which is probably at least equal to the amount of fine and costs in the majority of municipal cases. The *Recommended Schedule of Missouri Legal Fees* published by The Missouri Bar would specify \$50.00 for such a court appearance. The matter is complicated by the fact that the services of counsel do not guarantee an acquittal, and therefore in many cases the defendant would be required to pay both an attorney fee and a fine.

66. Mo. Sup. Cr. R. 29.01 requires appointment of counsel only in felony cases. The Missouri Supreme Court Committee on the Defense of the Indigent Accused recommended that counsel be appointed in misdemeanor cases as well, but made no recommendation as to municipal courts as it felt that "consideration of this problem is beyond the scope of the duties assigned to it, since under Missouri law these cases are in the nature of civil proceedings." Committee Report, p. 11. The Committee did, however, note that the problem is a serious one and recommended a separate study of municipal court practices.

consider the case to be "criminal" in nature. The power of the municipal court to appoint counsel is uncertain at best, and municipal judges have been extremely reluctant to attempt to exercise this power. A rule change is imperative to permit such appointment, particularly in serious cases where a jail sentence is indicated.

3. *Warrant or summons?* Proceedings in the municipal court are initiated by the filing of an information or complaint alleging the violation of a municipal ordinance.⁶⁷ Supreme Court Rule 37.08 provides that upon the filing of an information or complaint the court "shall immediately issue a warrant for the arrest of the accused." The warrant directs that the accused be arrested and taken into custody, where he is to be held until admitted to bail or until he is "discharged by due course of law."⁶⁸

Arresting the defendant in this manner seems to be the traditional procedure for dealing with ordinance violations. It is clearly a harsh process: the accused is taken from his home or place of employment and required to go to the local police station, there either to furnish satisfactory bail or to be held in jail until the charge is disposed of. To justify this procedure it should clearly be established that it is essential to the orderly and efficient administration of justice.

Is it necessary to arrest and confine a person who is accused of a municipal ordinance violation? Here it must be kept in mind that the only purpose for arresting an accused person and confining him or requiring him to post bail is to guarantee that he will appear in court to answer the charge against him. Three considerations seem basic: (1) the magnitude of the offense charged; (2) the likelihood that the accused will not appear in response to any other process, but will hide or flee the jurisdiction; and (3) the effect of the arrest upon the accused and the resulting inconvenience and loss to him.

From these considerations, it is clear that in the vast majority of municipal ordinance prosecutions, the use of the warrant is not at all justified. Most of these prosecutions involve petty offenses, punishable by a small fine. Moreover, most such prosecutions are against residents of the municipality, who clearly will respond to the charge by appearing in court at the appointed time, and who will not be difficult to locate in the event they fail to appear. Finally, in these cases the effect of an arrest and possible confinement upon an accused, psychologically and

67. Mo. Sup. Ct. R. 37.06.

68. Mo. Sup. Ct. R. 37.11.

otherwise, is many times traumatic, and the loss of time and money caused the defendant by being arrested and compelled to go to the police station is often greater than the ultimate fine will be if he is convicted. In most instances, the use of the warrant seems to ignore the presumption of innocence which runs in behalf of the accused, and inflicts upon the accused penalties which are out of all proportion to the offense charged.

The effect of Missouri Supreme Court Rule 37.08 is ameliorated somewhat by Rule 37.09, which provides that "A summons instead of a warrant may issue on the filing of a complaint or information charging the commission of an offense if the judge or prosecutor has good reason to believe that the accused will appear in response thereto." Upon the failure of the accused to obey a summons, a warrant may be issued.⁶⁹ Rule 37.09, if used, will reduce greatly the burdens imposed upon an accused by the use of an arrest warrant.

However, it is not clear how much use is made of this rule in Missouri municipal courts. Further, the rule itself falls short of being ideally stated. A summons "may issue" if there is good reason to believe the accused will appear. This language is weaker than that of the comparable rule relating to the issuance of a summons upon a criminal misdemeanor complaint; under that rule a summons instead of a warrant *shall* issue if there is reason to believe that the accused will appear in response thereto.⁷⁰ In view of the burdensome effect of the issuance of a warrant upon the accused, and further in view of the likelihood that accused persons will appear in response to a summons, Rules 37.08 and 37.09 should be revised to require that in all cases a summons instead of a warrant be issued unless there is reason to believe that the accused will not respond to the summons.

The same considerations apply to the procedure to be followed in case of an arrest by a police officer without a warrant. Such an arrest may be made when the ordinance violation occurs in the presence of the arresting officer. In these cases the usual procedure is to take the arrested person into custody, there either to post bail or to remain in jail until taken before the municipal judge. In many, perhaps most, cases there is little reason to confine the accused, and were the officer empowered and directed to issue a summons instead of to arrest the offender, the

69. Mo. Sup. Ct. R. 37.09.

70. Mo. Sup. Ct. R. 21.05. Unfortunately, the summons is too little used in magistrate courts also.

cause of justice would not be adversely affected. It is true that such power exists in the officer with regard to traffic violations;⁷¹ but there is no reason it should be so restricted, and probably it should be extended to all municipal violations.

4. *Appearance bonds.* If the above suggestions relating to the use of the summons rather than the warrant in municipal prosecutions are followed, the use of the appearance bond will be substantially reduced. Nevertheless in this area, too, some revision of existing rules seems to be indicated. Principally, provision should be made to permit release of the defendant upon recognizance in the majority of cases, without the necessity of posting cash or securities or a surety bond to guarantee his further appearance in the matter.

Again, it seems that many citizens of the state are being confined needlessly in our city jails for inability to post bail when in fact they could safely be released pending arraignment or trial. Existing procedures are often unnecessarily oppressive, and it is not sufficient justification that we are only following the ways established by our ancestors.

Our court rules now contemplate that in most cases the defendant will, in order to obtain his release, either deposit cash or securities, or execute a bond with sufficient sureties to guarantee appearance.⁷² A defendant is, however, permitted to execute a bond without sureties "in proper cases."⁷³ Unfortunately, the rule fails to state which cases are "proper." It should be rewritten to make it clear that unless the deposit of cash or securities or the promise of a surety seems necessary to insure that the accused will appear in further proceedings, the defendant shall be released upon his own recognizance. This change would be fully in keeping with the need to reduce the burden upon the accused of the arbitrary and needless imposition of municipal power.

5. *The problem of convenience.* For whose convenience are municipal courts run—that of the judge, the city attorney and the police officers, or of the defendants and witnesses who are summoned to appear?

By and large, municipal courts handle minor offenses, of a relatively petty nature. The defendants and witnesses in these courts are usually working people who are employed during normal business hours, and who cannot appear in court without some financial sacrifice. Further, municipal

71. Mo. Sup. Ct. R. 37.46-.485, 37.1162.

72. Mo. Sup. Ct. R. 37.15, .95, .96.

73. Mo. Sup. Ct. R. 37.96.

proceedings are generally of a summary nature, and the disposition of a case usually takes but a few minutes at most.

Unfortunately, in too many municipal courts the convenience of the defendant or of the witnesses seems not to be considered. Court is held during daylight business hours, when court appearance entails the greatest sacrifice to the most persons, court officers excepted. Furthermore, some courts seem to be run on the principle that there is some therapeutic value in court appearances for defendants, since several appearances are required in order to dispose of even the simplest case—unless, of course, the defendant wants to plead guilty and get it over with. Such practices also tend to require police officers to spend an inordinate amount of time attending court.

To what extent do these court practices coerce guilty pleas from accused persons? When the fine and costs will not exceed twenty or twenty-five dollars, what accused person will not feel tempted to plead guilty and pay the fine rather than lose two or three days' work in order to establish his innocence? Because it is more convenient for the court to hear a guilty plea than to try a contested case should not justify a policy of encouraging such pleas of guilty.

Procedures should be established throughout the state for shaping the operation of municipal courts to meet the needs and convenience of persons who must appear before them. This could be accomplished by holding some court sessions in the evening⁷⁴ or on Saturday mornings, by developing procedures to avoid repeated unnecessary appearances, and by scheduling court appearances to enable persons to come promptly before the court, thus avoiding unnecessary delays which on occasion extend "dead" waiting time to several hours' duration. An improvement of this nature in municipal court administration might go far toward improving public respect for these courts and for the ordinances which they enforce.

6. *The fund-raising function of the court.* To what extent are municipal courts conceived of as fund-raising devices by the judge, the city attorney, and the city council?

In a state criminal prosecution, where a fine is imposed, the money

74. Some Missouri municipal courts do hold evening sessions, particularly in the suburbs of our great cities. Clearly this is an aid to most persons required to appear in court. However, one may cynically inquire whether these night court sessions are held for the convenience of such defendants and witnesses, or for the convenience of the municipal judge and city attorney, who are employed in the central city during the day.

so paid is distributed to the schools of the county.⁷⁵ Fines collected from municipal ordinance violators, on the other hand, are paid into the treasury of the city or town.⁷⁶ In addition, costs collected from such municipal violators are paid into municipal coffers.

That the municipal judge is subjected to a conflict of interest between his duties to the municipality and to the system of law, under these circumstances, has long been recognized. At common law, according to Dillon, it was settled as to municipal courts "that the municipal corporation could bring no action therein against a stranger where the effect would be to benefit the corporation or increase its funds, for that would be to make the corporation itself both judge and party."⁷⁷ This doctrine has long since been abandoned, but the conflict which created it remains.

It is clear that many municipalities have at times conceived of their municipal courts in terms of their revenue-raising ability, and that local law enforcement and administration of justice have been run with disproportionate emphasis upon alleviating the burden upon the local taxpayers. Certainly speed traps are born from a desire for municipal income, rather than from any zealous effort to enforce the traffic laws for their own sake alone. Likewise, the practice of imposing overwhelmingly greater fines upon nonresidents than upon residents of the community is more the result of wishing to fatten the local purse at the expense of outsiders than of any sentiments of local chauvinism.⁷⁸

Doubtless the willingness of municipalities to enforce ordinances which merely duplicate state criminal statutes is based at least in part upon the benefit which such prosecutions and the resulting fines bestow upon the municipality.⁷⁹ Of course we should not here be concerned with the fact that the municipality derives such benefit, but with the effect that

75. Mo. CONST. art. IX, § 7. See also § 166.131, RSMo 1963 Supp. This section has been construed as forbidding the legislature to permit municipal courts to receive pleas of guilty in state misdemeanor cases, where the proceeds of fines levied in such actions would be paid into the city treasury. *State ex rel. Board of Education v. Nast*, 209 Mo. 708, 108 S.W. 563 (1908).

76. See, e.g., § 98.490, RSMo 1959 (3d class cities); § 98.660, RSMo 1959 (4th class cities); § 80.370, RSMo 1959 (villages and towns).

77. 2 DILLON, MUNICIPAL CORPORATIONS § 741 (5th ed. 1911).

78. This practice is not unknown in Missouri. See *Huston, A Lay Judge Looks at our Municipal Courts*, 18 J. Mo. B. 192, 193 (1962).

79. Some inquiry should be made to determine what proportion of municipal revenues in the various cities and towns in Missouri are derived through the operation of the municipal courts. According to a recent survey in one county in Florida 26.5% of municipal revenues come from fines and forfeitures. FLA. JUDICIAL COUNCIL, *A Summary of a Florida Traffic Court Survey* 24 (1965).

the desire for such revenue may have upon the administration of justice in the municipal court. What pressure, for example, is there upon the municipal judge to duplicate or surpass last year's income from fines and costs? Is the municipal court's financial contribution to the city conceived in terms of a "quota" to be met?⁸⁰

The effect of this function of the municipal court upon the quality of justice in Missouri should be carefully studied and any reform or revision of the municipal court structure should take into account the overriding need to eliminate any pressures upon the courts which might adversely affect judicial administration, while at the same time recognizing that municipalities may have a very real interest in fines which are collected for violation of municipal ordinances.

IV. TREATMENT OF THE MUNICIPAL OFFENDER

While our criminal law makes an increasing claim to adhere to the theory that rehabilitation of the offender is the proper end of criminal justice, municipal ordinance violators are dealt with almost as though the twentieth century had never happened: the offender is *punished* by the imposition of a fine or jail sentence. And failure to pay a fine will cause the offender to be remanded to jail, there to "lay it out."

But ordinance violations are trivial matters, we will say; they are only civil matters and surely the fine or imprisonment cannot amount to much. An examination of the statutes, however, discloses that in third⁸¹ and fourth⁸² class cities an offender may be punished by a fine of one hundred dollars and imprisonment in the "city prison or workhouse" for three months. Villages may not imprison, but apparently there is no statutory limit upon the amount of the fine a village may impose by ordinance;⁸³ and a failure to pay such fine will result in imprisonment.

Cities governed by constitutional or legislative charter have no general statutory limitation upon their power to impose penalties for ordinance violations. In Kansas City the charter limits punishment to a fine of one thousand dollars and imprisonment for twelve months.⁸⁴ The Columbia

80. The Florida survey indicated that such pressures do indeed exist, and quoted one annual city report as stating "fortunately our overall general fund receipts are close to original estimates in spite of disappointing income from fines, building permits and property sales." *Id.* at 25.

81. § 77.590, RSMo 1959.

82. § 79.470, RSMo 1959.

83. § 80.090(37), RSMo 1959.

84. CHARTER OF KANSAS CITY, Mo. art. I, § 1(40).

city charter contains no limitation, and while most ordinance violations are punishable by a fine of up to one hundred dollars and imprisonment not to exceed three months,⁸⁵ specific ordinances carry much heavier penalties. Thus for adultery and lewd behavior,⁸⁶ or possessing or distributing obscene literature,⁸⁷ the fine may be five hundred dollars and imprisonment one year; while for violating the noise ordinance the fine may be five hundred dollars and imprisonment six months.⁸⁸ These, then, are no trivial matters.

Fining or imprisoning persons who have violated municipal ordinances may be traditional, but is it consistent with our prevailing views relating to the treatment of offenders? It is no answer to point out that the legislature has authorized such punishment, or that the courts have upheld it. We must look deeper and ask what purposes are being served by the imposition of fines and jail sentences in these proceedings.

What, for example, does a fine accomplish? Of course it fattens the municipal purse and thereby alleviates the burden of the local taxpayers. Or we may treat a fine as a kind of modern wergild which the municipality exacts as recompense for affronting the corporate polity by breaking one of its ordinances. But what of the effect upon the offender? How many times does the fine punish not the offender, but his family instead? Should a twenty-five dollar fine imposed upon a workingman be considered as punishment of the offender himself, or should it be translated into four pairs of shoes his children will never receive? Simply because we have long imposed fines for ordinance violations does not provide justification for their continued imposition. Study of the practice of levying fines by municipal courts and the effect upon the offender is badly needed.

If the practice of levying fines is open to some question, grave doubt is created by the manner in which municipal ordinance violators are subjected to imprisonment. This imprisonment of the offender may result from either a jail sentence imposed by the municipal court, or the failure to pay a fine levied by the court. In either case, the offender is confined in the municipal jail, if such facilities exist, or in the county jail.⁸⁹

85. COLUMBIA, MO., REV. ORDINANCES ch. 7, § 187 (1952).

86. COLUMBIA, MO., REV. ORDINANCES ch. 7, § 104 (1952).

87. COLUMBIA, MO., REV. ORDINANCES ch. 7, § 154 (1952).

88. COLUMBIA, MO., REV. ORDINANCES ch. 7, § 95 (1952).

89. § 98.010, RSMo 1959. Does it not violate the sensibilities to think that our municipal *civil* offender may be transferred to the county jail and imprisoned there with criminals? Of course in most cases he will be better fed and housed in the county jail, and this may be sufficient justification.

Here again it may be inquired what purpose is being served by imprisoning the offender. Of course, he is being punished, and this may have some deterrent effect upon his future actions. While he is imprisoned, at least, he will be kept out of further trouble. But it is nonsense to contend that we seek to rehabilitate the prisoner at the municipal level. Our municipal jails are, in almost every case, nothing but calabozos suited at best for temporary detention. The worst of them are comparable with medieval dungeons of the average class; they are the shame of our cities.

The story is perhaps apocryphal that the seasoned offender would rather be sentenced to two years in the penitentiary than six months in the county jail, and further would prefer six months in the county jail to thirty days in the city jail. Nevertheless it exhibits a point of view which is very prevalent among those unfortunates who have dwelt among the pleasures of our penal institutions.

While the offender is imprisoned pursuant to a jail sentence or non-payment of a fine, he may be compelled to labor upon the local streets and public works, or upon a municipal farm.⁹⁰ This practice has been upheld against the charge that it constitutes cruel and unusual punishment.⁹¹ Should a prisoner refuse to perform such work, it seems to be a common provision that he shall "be kept on bread and water alone."⁹²

An offender imprisoned for nonpayment of a fine and costs is given credit against such sum for each day he spends in confinement. Usually the credit so allowed is one or two dollars per day. At one time, however, the City of St. Louis gave credit of only fifty cents per day, and then subtracted from that amount thirty cents for board, leaving a net gain of only twenty cents per day. Thus, where the defendant failed to pay a fine of ten dollars, plus three dollars in costs, he was held for sixty-five days. In such a case where a heavier fine was imposed, an alarmed Missouri Supreme Court observed:

Under the sentence imposed by the \$500 fine and the \$3 cost, petitioner would have had to remain in the workhouse for *two thousand, five hundred and fifteen days, or six years, ten*

90. See, e.g., COLUMBIA, MO., REV. ORDINANCES ch. 7, § 40 (1952); KANSAS CITY, MO., REV. ORDINANCES § 36.050 (1956).

91. *Ex parte* Bedell, 20 Mo. App. 125 (K.C. Ct. App. 1886).

92. See, e.g., COLUMBIA, MO., REV. ORDINANCES ch. 7, § 42 (1952); KANSAS CITY, MO., REV. ORDINANCES § 36.050 (1956). In Kansas City, such a recalcitrant prisoner may also be kept in solitary confinement and put in irons.

months and twenty-five days, a longer period than he would have had to remain in the penitentiary for the commission of many felonies.⁹³

Unfortunately, the statutes relating to the relief of insolvents confined on criminal process do not relate to municipal offenders.⁹⁴ However, St. Louis by its charter does have a six month maximum upon the time a prisoner may spend in jail; and where a female prisoner was kept in jail for nearly a year for failure to pay a fine, such confinement was held to conflict with the charter provision.⁹⁵

It may be suggested that no municipal offense should be punished by a jail sentence. If the offender has violated a law of such magnitude that he should be deprived of his liberty, then his act should be considered a crime and he should be proceeded against under the state statutes.

But if our municipal courts are to retain their power to impose severe fines and lengthy jail sentences, then doubtless more attention should be paid to the individual offender and the effect of the penalty upon him. Presentence investigation is almost nonexistent in municipal courts, and parole and probation services are lacking, with the result that the offense and not the offender furnishes the yardstick for sentencing. A particular offense tends to bring a standard fine or jail sentence, with only minimal regard to the personal and psychological character and background of the offender.

Here again we need a careful study of municipal court practices in Missouri. How many offenders receive jail sentences, and how many actually serve time? How many persons spend time in municipal jails because of inability to pay a fine or costs? Finally, a great deal more should be learned of the conditions which exist in our municipal jails.

93. *Ex parte Smith*, 135 Mo. 223, 229, 36 S.W. 628, 630 (1896).

94. Ch. 551, RSMo 1959.

95. *St. Louis to use of Duff v. Karr*, 85 Mo. App. 608 (St. L. Ct. App. 1900). This case also involved the validity of an ordinance provision permitting the workhouse superintendent to determine whether an inmate should be given credit against his fine for a day's work; here because Mary Duff had been a "riotous and disorderly prisoner," she was denied such credit. The court held that this was unlawful because it gave the workhouse superintendent the power to imprison, by lengthening the term which a prisoner would otherwise have to serve. It is not certain that the Kansas City ordinance does not contain the same objectionable mechanism, granting credit only for work and labor actually done. See KANSAS CITY, MO., REV. ORDINANCES § 36.050 (1956).

V. PROPOSED: A STUDY OF MUNICIPAL COURTS

From the preceding discussion, it is apparent that a reform of our municipal courts and the manner in which ordinance violations are litigated is needed. The real question may be the nature and extent of that reform, and how it is to be brought about.

Numerous proposals for reform may be put forth to solve all or a part of the problems and shortcomings of our municipal courts. The following are suggestive:

1. Abolition of the municipal court, with transfer to the magistrate court of the present jurisdiction of municipal courts. This is perhaps the most drastic change which could be suggested, but it is one which should be given careful study. Certainly in many counties the magistrate courts could handle the added load without an increase in personnel, and this change would guarantee that ordinance violation proceedings would be conducted in an impartial court presided over by a law-trained judge. Moreover, it is likely that in the immediate future the magistrate court will become a true court of law and of record, and that matters litigated in this court will no longer be subject to trial de novo on appeal.

2. Restriction of ordinance-making power of municipalities to matters of strictly local importance. This would eliminate the present senseless duplication of offenses, together with all of the problems which it has caused. Matters of a criminal nature should be dealt with as crimes against the state, in the magistrate or circuit courts, and not left to prosecution in the municipal courts. This reform would also clarify much of the present difficulty involved in treating the municipal offense as a civil proceeding.

3. Modification of the municipality's power to fine and imprison for violation of municipal ordinances. Certainly municipalities should have very limited power to punish ordinance violators, and the penalties which may now be imposed are much too severe. In most cases, imprisonment is not necessary, and fines of more than perhaps one hundred dollars are likewise not justified if ordinances are limited to matters of local interest and importance. Further, some thought should be given to the use of other, civil, remedies in ordinance violation cases. For example, in many ordinance prosecutions, the use of the injunction would be far more sensible than the imposition of a fine or imprisonment.

4. Revision and modernization of municipal court procedure. Here the law should be modified to improve the practices of municipal courts in such matters as issuance of a summons instead of a warrant for an alleged

offender, wider provision for release of accused persons on their own recognizance, and appointment of counsel for indigent accused persons. Also some consideration should be given to abolishing the right of the city to appeal from an adverse judgment in an ordinance prosecution. Procedural change in some degree seems to be necessary, regardless of whatever else may be done.

5. Requiring municipal judges to be licensed to practice law, at least in cities of certain classes.

Before any widespread reform can be undertaken, however, there is a crucial need for a detailed study of the municipal court and how it operates. We need first to examine carefully the law relating to municipal courts and ordinance violations, as this will provide the only sound basis for a complete understanding of what reforms are necessary.

Second, there must be a detailed factual study of the municipal courts of this state, in order to ascertain just what does happen in municipal courts. Here inquiry should be made of the number and kind of cases actually handled, what disposition is made of them, how prosecutions are initiated, the manner in which the court is run, the role of the judge and the city attorney, and the number of defendants who are represented by counsel. This study should include an examination of the various ordinances in force in the municipalities of the state, in order to learn how much duplication of the state statutes such ordinances actually contain. Further, something must be learned of the treatment of the offender, and what jail facilities are available in Missouri municipalities.

Third, there is a need to learn how municipal courts are run elsewhere, and what is believed to be the ideal method of administering justice in these courts. In this regard, the Traffic Court Program of the American Bar Association should provide much valuable information.

Fourth, we need to compare the real and the ideal, and to conclude how the municipal courts of this state should be modified to meet the needs of the present age. This determination should be made not only by lawyers and judges, but also by persons versed in political science, and by municipal officials. These conclusions, based upon as much factual information as can be gathered, should lead to sound proposals for concrete reform of Missouri's municipal courts.

It is imperative that such a study be made. The municipal court in this state is today too much an anomaly, too backward in its procedures, too arbitrary in its administration, to gain for it the respect by

the public which a court must have. The attitudes of many of our citizens toward the courts and the law are shaped by unhappy experience in these courts. But more important still, we cannot tolerate a court system which is anything less than the finest which man can devise. For it is through these courts that the ideal of justice under law must be sought.