

IN THE SUPREME COURT OF MISSOURI

---

NO. SC94085

---

CITY OF MOLINE ACRES  
Plaintiff/Appellant

v.

CHARLES W. BRENNAN  
Defendant/Respondent

---

Appeal from the St. Louis County Circuit Court  
Honorable Mary B. Schroeder

---

BRIEF OF *AMICUS CURIAE*  
THE MISSOURI MUNICIPAL LEAGUE

---

B. Allen Garner, # 26532  
3808 S. Coachman Court  
Independence, MO 64055  
Telephone 816.478.3848  
Facsimile 816.326.0898  
allen@allengarnerlaw.com

ATTORNEY FOR *AMICUS CURIAE*  
THE MISSOURI MUNICIPAL LEAGUE

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**..... iii

**CONSENT OF ALL PARTIES** ..... 1

**STATEMENT OF JURISDICTION** ..... 1

**STATEMENT OF INTERESTS OF *AMICUS CURIAE*** ..... 1

**STATEMENT OF FACTS**..... 2

**POINTS RELIED ON**..... 2

    I. THE COURT ERRED IN HOLDING THAT THE ORDINANCE CONFLICTS WITH SECTIONS 304.009 AND 304.010 AND THE ORDINANCE IS AUTHORIZED PURSUANT TO MOLINE ACRES’ POLICE POWERS. .... 2

    II. THE COURT ERRED IN SUGGESTING THAT THE ORDINANCE CONFLICTS WITH STATE LAW ON REPORTING REQUIREMENTS AND THE ASSESSMENT OF POINTS BECAUSE THE ORDINANCE IS SILENT ON THOSE ISSUES. .... 2

    III. THE COURT ERRED IN SUSTAINING PLAINTIFF’S MOTION TO DISMISS BECAUSE THE ORDINANCE IS CIVIL, NOT CRIMINAL IN NATURE, AND THEREFORE DOES NOT REQUIRE HEIGHTENED DUE PROCESS PROTECTIONS. .... 2

**ARGUMENT** ..... 3

    I. THE COURT ERRED IN HOLDING THAT THE ORDINANCE CONFLICTS WITH SECTIONS 304.009 AND 304.010 AND THE ORDINANCE IS AUTHORIZED PURSUANT TO MOLINE ACRES’ POLICE POWERS. .... 3

II. THE COURT ERRED IN SUGGESTING THAT THE ORDINANCE  
CONFLICTS WITH STATE LAW ON REPORTING REQUIREMENTS AND THE  
ASSESSMENT OF POINTS BECAUSE THE ORDINANCE IS SILENT ON THOSE  
ISSUES. .... 7

III. THE COURT ERRED IN SUSTAINING PLAINTIFF’S MOTION TO DISMISS  
BECAUSE THE ORDINANCE IS CIVIL, NOT CRIMINAL IN NATURE, AND  
THEREFORE DOES NOT REQUIRE HEIGHTENED DUE PROCESS  
PROTECTIONS. .... 8

**CONCLUSION..... 10**

**CERTIFICATE PURSUANT TO RULES 84.06(C) AND 84.06(G)..... 11**

**CERTIFICATE OF SERVICE..... 12**

**TABLE OF AUTHORITIES**

**Cases**

*Babb v. Mo. Pub. Serv. Comm’n*, 414 S.W.3d 64, 70 (Mo. App. W.D. 2013)..... 4

*Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 229 (Mo. App. E.D. 1997)..... 4

*Brunner v. City of Arnold*, 427 S.W.3d 201, 233 (Mo. App. E.D. 2013) ..... 8, 9

*City of Davenport v. Seymour*, 755 N.W.2d 533, 535 (Iowa 2008)..... 5, 6

*City of St. Louis v. Liberman*, 547 S.W.2d 452, 457 (Mo. banc 1997)..... 7

*Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. App. W.D. 2013) ..... 8

*Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013) ..... 9

*Hewlett v. Womach*, 196 S.W.2d 809, 815 (Mo. banc. 1946)..... 4

*Jordan v. City of Kansas City*, 972 S.W.2d 319, 324 (Mo. App. W.D. 1998)..... 9

*Kansas City v. LaRose*, 524 S.W.2d 112, 117 (Mo. 1975) ..... 4

*Mendenhall et al. v City of Akron et al.*, 881 N.E.2d 255, 262-263 (Oh. 2008)..... 5

*Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. App. E.D. 2001)..... 4, 5

*Nottebrok v. City of Creve Coeur*, 356 S.W.3d 252, 257–58 (Mo. App. E.D. 2011)..... 8

*Smith v. City of St. Louis*, 409 S.W.3d 404, 424 (Mo. App. E.D. 2012)..... 4, 9

*State v. Ostdiek*, 351 S.W.3d 758 (Mo. App. W.D. 2011)..... 3

**Statutes**

§ 302.225 RSMO..... 7

§ 302.302 RSMO..... 7

§ 304.009 RSMO..... 3

§ 304.010 RSMO..... 3

§ 304.120.1 RSMO..... 6

Iowa Code § 321.235 ..... 6

**Rules**

Rule 37.33 ..... 9

### **CONSENT OF ALL PARTIES**

Pursuant to Rule 84.05(f) the Missouri Municipal League hereby notifies this Court that it has obtained the consent of all parties to file this brief.

### **STATEMENT OF JURISDICTION**

*Amicus Curiae* the Missouri Municipal League adopts and incorporates the Statement of Jurisdiction contained in the Appellant's Brief.

### **STATEMENT OF INTERESTS OF AMICUS CURIAE**

The Missouri Municipal League ("MML") is a non-profit association of approximately 672 Missouri municipalities. The MML formulates municipal policies to enhance the interests and welfare of Missouri municipalities and their citizens. This Appeal is one in a series of recent cases which address the validity of automated traffic enforcement ordinances. The specific issues raised in *Moline Acres*, and in other recent automated traffic enforcement cases, present a number of municipal law questions that are of critical importance to the MML. The Court's analysis in *Moline Acres* undermines the long-standing independent authority of municipalities to enact ordinances related to public safety and welfare. The opinion places municipalities in a state of uncertainty as to how they can properly enact and enforce any traffic ordinance that does not simply mirror state law.

The *Moline Acres* decision also raises questions regarding whether municipal ordinances, and in particular, automated traffic enforcement ordinances, are civil or criminal in nature. Until recently, courts have uniformly held that violations of municipal ordinances, including violations of red light camera ordinances, are generally civil in

nature with quasi-criminal aspects. However, some recent decisions, including the Court's opinion in *Moline Acres*, suggest that these ordinances are criminal. These recent decisions are contrary to long-standing municipal law, ignore the limits of municipal court jurisdiction, and have broad implications on all municipal ordinances.

**STATEMENT OF FACTS**

The MML adopts Appellant's Statement of Facts.

**POINTS RELIED ON**

- I. THE COURT ERRED IN HOLDING THAT THE ORDINANCE CONFLICTS WITH SECTIONS 304.009 AND 304.010 AND THE ORDINANCE IS AUTHORIZED PURSUANT TO MOLINE ACRES' POLICE POWERS.
  
- II. THE COURT ERRED IN SUGGESTING THAT THE ORDINANCE CONFLICTS WITH STATE LAW ON REPORTING REQUIREMENTS AND THE ASSESSMENT OF POINTS BECAUSE THE ORDINANCE IS SILENT ON THOSE ISSUES.
  
- III. THE COURT ERRED IN SUSTAINING PLAINTIFF'S MOTION TO DISMISS BECAUSE THE ORDINANCE IS CIVIL, NOT CRIMINAL IN NATURE, AND THEREFORE DOES NOT REQUIRE HEIGHTENED DUE PROCESS PROTECTIONS.

## ARGUMENT

### I. THE COURT ERRED IN HOLDING THAT THE ORDINANCE CONFLICTS WITH SECTIONS 304.009 AND 304.010 AND THE ORDINANCE IS AUTHORIZED PURSUANT TO MOLINE ACRES' POLICE POWERS.

The Court held that the Moline Acres ordinance was invalid because it conflicted with § 304.009 RSMO and § 304.010 RSMO. Those statutory provisions pertain to speeding by vehicle operators. In particular, the Court focused on Section 304.010 which makes operation of a moving vehicle in violation of speed limits a misdemeanor. In reaching its conclusion, the Court relied on *State v. Ostdiek*, 351 S.W.3d 758 (Mo. App. W.D. 2011). The Court interpreted *Ostdiek* to hold that municipal ordinance violations must impose an identical penalty as state law prohibiting the same conduct, and because the ordinance imposes a civil fine, the ordinance conflicts with state law. [L.R. at 33]. But, *Ostdiek* does not stand for this proposition. Instead, *Ostdiek* merely holds that where a municipality has enacted an ordinance regulating speed limits, the state highway patrol or county sheriff is not restricted from enforcing state speed laws. *Id.* at 766. Notably, municipal courts do not have jurisdiction over state law charges, only ordinance violations.

Moline Acres' decision to impose a civil fine on owners of vehicles liable for violations of its speed camera ordinance, does not create a conflict with state law. Instead, the ordinance is a permissible exercise of Moline Acres' police power. Pursuant to their police powers, municipalities have broad authority to enact supplemental rules

and regulations to meet their traffic needs. *Smith v. City of St. Louis*, 409 S.W.3d 404, 424 (Mo. App. E.D. 2012). These rules are presumed valid, and must be upheld if they have a rational relationship to the health safety, peace, comfort, and general welfare of the inhabitants of the municipality, and do not conflict with state law. *Bezayiff v. City of St. Louis*, 963. S.W.2d 225, 229 (Mo. App. E.D. 1997).

To determine whether there is a conflict, the court must “look to [the] specific substantive prohibitions and liberties in the statute...” *Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. App. E.D. 2001). If the statute “does not specifically grant a right, but is silent on the question,” then it is “permissible for the local government to establish prohibitions.” *Id.* Under this standard, Moline Acres’ ordinance does not conflict with state law because both Sections 304.009 and 304.010 are silent on whether vehicle owners can be liable when their cars violate the speed limit. Moline Acres is, therefore, permitted to establish additional requirements in its ordinance so long as these requirements do not conflict with state law. *Miller*, 62 S.W.3d at 438. The fact that the ordinance imposes a civil fine on the owner of a vehicle, does not alter state law.

This Court has long held that the mere fact that an ordinance imposes an additional or supplemental requirement does not create a conflict with state law. *Hewlett v. Womach*, 196 S.W.2d 809, 815 (Mo. banc. 1946); *Kansas City v. LaRose*, 524 S.W.2d 112, 117 (Mo. 1975); *see also Babb v. Mo. Pub. Serv. Comm’n*, 414 S.W.3d 64, 70 (Mo. App. W.D. 2013) (citing *Hewlett*). The Iowa and Ohio Supreme Courts have examined similar issues, also in the context of red light and speed cameras, and are instructive on this issue.

In *Mendenhall*, the Ohio Supreme Court examined whether Akron’s automated traffic enforcement ordinance, which imposes a civil fine on the registered owner of any vehicle identified by an automatic camera to be speeding in a school zone, conflicted with state law punishing drivers who violate the speed limit. *Mendenhall et al. v City of Akron et al.*, 881 N.E.2d 255, 262-263 (Oh. 2008). The Court found that the ordinance prohibits conduct identical to that prohibited by state law – speeding – the only difference being the party ultimately responsible for the violation (an owner versus a driver). *Id.* at 263. The Court held that the ordinance did not conflict with state law because the actual conduct prohibited in the Akron ordinance is identical to that prohibited by the state law. *Id.* The Court also addressed whether the ordinance conflicts with state law because it imposed a civil fine, and not a criminal infraction. *Id.* at 264. The Ohio Supreme Court found no conflict because the ordinance does not change or replace state traffic laws, it merely supplements them because a person who speeds in the presence of a police officer remains subject to the usual traffic laws. *Id.* It is only “when no police officer is present and the automated camera captures [a] speed infraction does the ordinance apply, not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle owner.” *Id.*

In *Seymour*, the Iowa Supreme Court examined whether state law exempts municipalities from enacting automated traffic ordinances which impose a civil fine on vehicle owners for failure to obey red light traffic signals and speeding regulations. *City of Davenport v. Seymour*, 755 N.W.2d 533, 535 (Iowa 2008). The Court held that Iowa

Code Chapter 321,<sup>1</sup> and other code provisions, do not preempt a municipality from establishing supplemental traffic enforcement ordinances because the “fact that state law does not authorize the state to enforce its statute through certain remedial options does not mean that it forbids municipalities from the same course of action . . . the silence of the legislature is not prohibitory but permissive.” *Id.* at 543.

Likewise, Section 304.120.1 expressly authorizes municipalities to enact by ordinance “reasonable speed regulations” within the limits of the municipality, so long as these regulations do not conflict with state law. § 304.120.1 RSMO [Appendix at A1]. The fact that the Moline Acres ordinance imposes a fine on the owner of the vehicle, who may or may not be the driver, does not create a conflict with state law, because the ultimate conduct prohibited is the same. Furthermore, the fact that the ordinance imposes a civil penalty, instead of a criminal one, does not create a conflict because the ordinance merely supplements state law regulating exceeding speed limits.

The Court’s holding has broad implications on all municipal ordinances and undermines the long-standing authority of municipalities to enact ordinances related to public safety. A municipality’s decision on what traffic laws it needs to meet its traffic needs should be left to the discretion of the municipal legislative body, and not the

---

<sup>1</sup> Iowa Code § 321.235 is similar to Mo. Rev. Stat. § 304.120 and states in part: “no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.”

judiciary. *City of St. Louis v. Liberman*, 547 S.W.2d 452, 457 (Mo. banc 1997) (courts “do not second-guess the judgment of the [municipal] legislative body as to the wisdom, adequacy, propriety, expediency or policy of the legislative act in question.”).

**II. THE COURT ERRED IN SUGGESTING THAT THE ORDINANCE CONFLICTS WITH STATE LAW ON REPORTING REQUIREMENTS AND THE ASSESSMENT OF POINTS BECAUSE THE ORDINANCE IS SILENT ON THOSE ISSUES.**

Although not expressly stated, the Court insinuated that the ordinance conflicts with state law governing reporting of moving violations and the assessment of points. [L.F. 33]. In particular, the Court noted that unlike *Nottebrok*, which upheld Creve Coeur’s red light camera ordinance on grounds that the ordinance did not create a moving violation, the Court here noted that “it would seem impossible and a violation of the laws of physics to have speed without motion.” [L.F. 33].

Section 302.225.1 delineates requirements for reporting moving violation offenses to the Department of Revenue. *See* § 302.225 [Appendix at A3]. In addition, Section 302.302.1(1) requires two points to be assessed to any *driver* who commits a moving violation. *See* § 302.302 RSMO [Appendix at A4]. Moline Acres’ ordinance is silent as to whether a speed camera offense is a moving violation and whether an offense is to be reported to the Department of Revenue. [L.R. at 21]. Therefore, the ordinance itself cannot be said to conflict with state law. At most, any issues pertaining to assessing and reporting points relate to the implementation of the ordinance by City employees, and not the ordinance itself as adopted by the Board of Aldermen.

**III. THE COURT ERRED IN SUSTAINING PLAINTIFF’S MOTION TO DISMISS BECAUSE THE ORDINANCE IS CIVIL, NOT CRIMINAL IN NATURE, AND THEREFORE DOES NOT REQUIRE HEIGHTENED DUE PROCESS PROTECTIONS.**

In sustaining Plaintiffs’ motion to dismiss, the Court alluded to the ordinance being criminal in nature, based on its interpretation of *Nottebrok*, which set forth seven factors courts should consider and weigh when examining whether an ordinance is civil. *Nottebrok v. City of Creve Coeur*, 356 S.W.3d 252, 257–58 (Mo. App. E.D. 2011); [L.R. at 33]. The Court focused solely on the fifth factor which examines whether “the behavior to which the sanction applies is not already a crime.” *Id.* at 258. Although the Court found that the specific behavior covered by the ordinance is prohibited in Sections 304.009, the Court did not address the other *Nottebrok* factors which weigh strongly in favor of the ordinance being civil. Further, the Court overlooked the fact that parallel ordinance violations are heard in municipal court, whereas statutory charges are not. Plaintiff was not charged with a misdemeanor violation of the statute.

The Court’s suggestion that the Ordinance may be criminal in nature continues a disturbing and unprecedented trend from two recent cases and is directly contrary to well-established Missouri law that municipal ordinance violations are generally civil in nature. *See Brunner v. City of Arnold*, 427 S.W.3d 201, 232-233 (Mo. App. E.D. 2013) (finding Arnold’s red light camera ordinance to be criminal in nature); *Damon v. City of Kansas City*, 419 S.W.3d 162, 190 (Mo. App. W.D. 2013) (in examining Kansas City’s red light camera ordinance the Court held “if the ordinance is determined to be criminal in nature,

then the rebuttable presumption is invalid”). These recent decisions conflict with other decisions of the Court of Appeals regarding, *inter alia*, the civil nature of ordinance violations. See *Smith*, 409 S.W.3d at 417 (prosecutions by municipalities for the violation of a municipal ordinance “are civil proceedings with quasi-criminal aspects”); *Nottebrok*, 356 S.W.3d at 257–58 (finding Creve Coeur’s red light camera ordinance to be civil), overruled on other grounds by *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013); see also *Jordan v. City of Kansas City*, 972 S.W.2d 319, 324 (Mo. App. W.D. 1998) (“violation of a municipal ordinance is a civil proceeding, not a criminal one.”).

Furthermore, although *Damon* and *Brunner* analyzed the criminality of the ordinance in the context of the owner/driver rebuttable presumption, these decisions have far-reaching implications for all municipal ordinances. This is especially true in light of the Court of Appeals holding in *Brunner* which found violations of Arnold’s red light camera ordinance to be criminal solely because of language in the Notice of Violation warning a violator of the possibility of incarceration for failure to appear in Court. 427 S.W.3d at 233. The Court in *Brunner* failed to recognize that the failure to appear is an entirely separate offense from the ordinance violation. If this Court does not reconcile and clarify this analysis, *Brunner* and similar decisions could render all municipal ordinances criminal because Rule 37.33 requires municipal notice of violations to contain language warning a recipient of possible further legal action, including incarceration for failure to appear. The contradictory state of the law regarding the nature of municipal ordinance violations leaves municipalities statewide in a state of uncertainty regarding

the classification of municipal ordinances, and the level of due process required to enforce violations of the ordinance.

**CONCLUSION**

For the foregoing reasons, the Missouri Municipal League, as *amicus curiae*, respectfully asks this Court to reexamine the conflict analysis applied by the Court in determining that the ordinance conflicted with state law. The MML also asks this Court to clarify the contradictory state of the law on whether automated traffic enforcement ordinances are civil in nature.

Respectfully submitted,

Allen Garner Law, LLC  
Of Counsel with Kapke & Willerth

/s/ B. Allen Garner  
B. Allen Garner, # 26532  
3808 S. Coachman Court  
Independence, MO 64055  
Telephone 816.478.3848  
Facsimile 816.326.0898  
allen@allengarnerlaw.com

Attorney for *Amicus Curiae*  
The Missouri Municipal League

**CERTIFICATE PURSUANT TO RULES 84.06(C) AND 84.06(G)**

The undersigned counsel for amicus curiae the Missouri Municipal League states:

1. Complies with the requirements of Mo. R. Civ. P 55.03;
2. Complies with the limitations set forth in Mo. R. Civ. P. 84.06(b); and
3. Contains 2,859 words, as determined by Microsoft Word Software

/s/ B. Allen Garner  
B. Allen Garner, # 26532  
3808 S. Coachman Court  
Independence, MO 64055  
Telephone 816.478.3848  
Facsimile 816.326.0898  
allen@allengarnerlaw.com

Attorney for *Amicus Curiae*  
The Missouri Municipal League

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using the Court's electronic filing system and that notice of such filing will be served upon the following counsel of record:

Kenneth J. Heinz  
Edward J. Sluys  
130 South Bemiston, Suite 200  
St. Louis, Missouri 63105

*Attorneys for Plaintiff/Appellant*

W. Bevis Shock  
Hugh A. Eastwood  
7777 Bonhomme Avenue, Suite 1300  
St. Louis, Missouri 63105

*Attorneys for Defendant/Respondent*

/s/ B. Allen Garner