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## Municipal Corporations - Statutory Liability for Mob Violence - Definition of Correctional Power

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MUNICIPAL CORPORATIONS—STATUTORY LIABILITY FOR MOB VIOLENCE—DEFINITION OF CORRECTIONAL POWER—On August 12, 1947 eight Negro families moved into a Chicago public housing development which was occupied largely by white families. On the evening of August 14, several thousand people, protesting the Negro intrusion, congregated in the area, blocking traffic and brandishing bats, bricks, and stones. A large number of policemen were on duty at the scene. The automobile of the plaintiff, a Negro, was intercepted at an intersection by the crowd which began throwing bricks at the occupants of the car. The plaintiff was struck by one missile and suffered severe physical injury. He brought suit against the city under the Illinois mob violence statute, which gives a cause of action to any person injured by a "mob."<sup>1</sup> The statute defines a "mob" as ". . . any collection of individuals, five or more in number, assembled for the . . . purpose of exercising correctional powers or regulative powers over any person by violence, and without lawful authority. . . ."<sup>2</sup> The trial court directed a verdict for the defendant. On appeal, *held*, reversed. The huge crowd, by supplanting the lawful but comparatively powerless authority of the municipality in the streets around the housing development, had assumed powers lawfully vested in the local authorities. The attempt to expel the Negroes from the area, an object which the crowd believed to be within the community interest, constituted the exercise of "correctional powers" by violence and without lawful authority within the meaning of the statute. *Slaton v. Chicago*, 8 Ill. App. (2d) 47, 130 N.E. (2d) 205 (1955).

Although municipal corporations are not liable at common law for injuries to persons or property caused by mobs,<sup>3</sup> statutory liability is of ancient origin.<sup>4</sup> More than half of the states now have statutes which place the burden of indemnifying victims of mob violence upon the taxpayers of the community.<sup>5</sup> Influenced strongly by the long history of this statutory liability, the courts have uniformly upheld its constitutionality.<sup>6</sup> While some statutes do not expressly define the term "mob,"<sup>7</sup> leaving the difficult

<sup>1</sup> Ill. Rev. Stat. (1955) c. 38, §515.

<sup>2</sup> *Id.*, §512.

<sup>3</sup> *Marshall v. Buffalo*, 50 App. Div. 149, 64 N.Y.S. 411 (1900); *Iola v. Birnbaum*, 71 Kan. 600, 81 P. 198 (1905).

<sup>4</sup> See 1 REEVES, *HISTORY OF ENGLISH LAW*, 2d ed., 17 (1787).

<sup>5</sup> On the general subject, see 6 *Ford. L. Rev.* 270 (1937).

<sup>6</sup> As long as the legislation is reasonably adapted to the maintenance of public order it is valid. *Chicago v. Sturges*, 222 U.S. 313, 32 S.Ct. 92 (1911); *Darlington v. City of New York*, 31 N.Y. 164 (1865).

<sup>7</sup> See, e.g., Conn. Gen. Stat. (1949) §698.

task of definition to the courts,<sup>8</sup> five states define it in terms of an assembly which has the purpose of exercising correctional powers over a person by violence and without lawful authority.<sup>9</sup> The courts in these five states have applied to this legislation the dubious rule that statutes in derogation of the common law are to be strictly construed and, therefore, have seldom allowed recovery.<sup>10</sup> Typically, these courts require a showing that the mob employed its powers for the purpose of punishing the plaintiff's violation of a rule or regulation<sup>11</sup> which some group constituted by law could legally enforce.<sup>12</sup> The principal case departs from this judicial construction of "correctional powers" in two respects. First, the purpose of the crowd does not have to be, in fact, a public purpose; it need only be what the crowd assumes is a public purpose. The fact that the acts of the mob do not further the well-being of the community is not controlling.<sup>13</sup> Thus, the plaintiff need not show that he was punished by the crowd for some violation of an actual rule or law.<sup>14</sup> He need only demonstrate that his person or his conduct was somehow offensive to the peculiar views and desires of the crowd. Secondly, while it is still necessary that the mob assume functions which have been delegated to the local authorities,<sup>15</sup> the powers so assumed need only be incidental to the main purpose of the crowd. Thus, in the principal case, complete control of the area, including the regulation of traffic, was only incidental to the main purpose of inflicting harm on any Negroes in the area. This departure from previous cases is the result of a basic difference in the court's conception of the intent of the legislature in enacting the statute. Former cases have held that the statute was designed to spur the local authorities to greater efforts at maintaining social order.<sup>16</sup> The city, however, is liable whether it has been negligent or not,<sup>17</sup> and since it may be utterly powerless to quell the mob

<sup>8</sup> *Marshall v. Buffalo*, note 3 *supra*.

<sup>9</sup> Ill. Rev. Stat. (1955) c. 38, §512; Ind. Stat. Ann. (Burns, 1956) §10-3304; Ohio Rev. Code (Baldwin, 1953) §3761.01; W.Va. Code (1955) §6038; N.J. Stat. Ann. (1952) §2A:48-8.

<sup>10</sup> See, e.g., *Meadows v. City of Logan*, 121 W.Va. 51, 1 S.E. (2d) 394 (1939).

<sup>11</sup> Where a strikebreaker was seized and beaten by a group of hostile strikers, recovery was denied on the basis that the plaintiff had a right to continue working during the strike. *Shake v. Board of Commissioners*, 210 Ind. 61, 1 N.E. (2d) 132 (1935).

<sup>12</sup> In *Anderson v. Chicago*, 313 Ill. App. 616 at 623, 40 N.E. (2d) 601 (1942), the court denied that a group of armed strike sympathizers constituted a mob within the statutory definition: ". . . it is inconceivable . . . that the strike sympathizers here could be lawfully empowered to use violence to coerce non-strikers to conform."

<sup>13</sup> See *Meadows v. City of Logan*, note 10 *supra*. *Lexa v. Zmunt*, 123 Ohio St. 510, 176 N.E. 82 (1931), supports the view that the purpose of the mob may be to punish persons who violate its own peculiar standards of conduct and may still fall within the statutory language. See also the dissent in *Shake v. Board of Commissioners*, note 11 *supra*.

<sup>14</sup> *Anderson v. Chicago*, note 12 *supra*.

<sup>15</sup> See *Hailey v. Newark*, 22 N.J. Misc. 139, 36 A. (2d) 210 (1944); *Anderson v. Chicago*, note 12 *supra*.

<sup>16</sup> *Butte Miners Union v. City of Butte*, 58 Mont. 391, 194 P. 149 (1920).

<sup>17</sup> See *Chicago v. Sturges*, note 6 *supra*; *Marshall v. Buffalo*, note 3 *supra*. As to the efficacy of this type of legislation, see CHADBOURN, LYNCHING AND THE LAW 50-57 (1933).

(as it may have been in the principal case) it is difficult to see how this statutory liability would achieve the hoped-for result. A more realistic interpretation of the legislative intent, suggested by the principal case, is that the act is designed to impress on the taxpaying public the cost of mob violence to the individual and thus bring the sobriety of the disgruntled taxpayer to bear on the less responsible members of the community.<sup>18</sup>

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<sup>18</sup> See Borchard, "State and Municipal Liability in Tort—Proposed Statutory Reform," 20 A. B. A. J. 747 (1934).