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#94087
NO.
STATE OF NEBRASKA
OFFICIAL
NOV 10 1994
DEPT. OF JUSTICE

DATE: November 7, 1994

SUBJECT: Prosecution of Both Ordinance and Statute Violations in Same Criminal Complaint

REQUESTED BY: Joseph C. Steele, Court Administrator

WRITTEN BY: Don Stenberg, Attorney General
William L. Howland, Assistant Attorney General

The question presented for review is whether a city ordinance violation and a State statutory violation may be combined in a single complaint filed with the court.

The Constitution of the State of Nebraska provides that "[a]ll process shall run in the name of 'The State of Nebraska,' and all prosecutions shall be carried on in the name of 'The State of Nebraska.'" Neb. Const. Art. V, § 24. ***See also, Worthen v. County of Johnson***, 62 Neb. 754, 87 N.W. 909 (1901); ***City of Brownville v. Cook***, 4 Neb. 101 (1875). A prosecution under a city ordinance in the name of the city is void. ***City of Brownville***, 4 Neb. 101. Although an ordinance is limited in its operation to the city or village, the authority that gave the ordinance vitality and force, came from the people, and found expression in the act of the Legislature, under which cities and villages are organized. ***Id.***

Likewise, the authority to define crimes is vested in the Legislature. ***See*** Neb. Const. Art. II, § 1. Municipalities possess only such powers as are expressly conferred by statute, or as are necessary to carry into effect the powers enumerated. ***State ex rel. Ransom v. Irey***, 42 Neb. 186, 60 N.W. 601 (1894); ***See also,***

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Neb. Rev. Stat. § 16-202 and § 17-501 (1991). The Legislature has conferred authority to "cit[ies] of the first class [to] . . . impose fines, forfeitures, confinement, and penalties for the breach of any ordinance . . . "Neb. Rev. Stat. § 16-225 (1991).

Under the Constitution of the State of Nebraska, "the district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the Legislature may provide . . . " Neb. Const. Art. V, § 9. The Legislature has provided that "[t]he district courts shall have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal except where otherwise provided. Neb. Rev. Stat. § 24-302 (1989). Furthermore, each county court shall have exclusive original jurisdiction in any action based on violation of a city or village ordinance. Neb. Rev. Stat. § 24-517(6) (1989).

"The term prosecuting attorney shall mean any county attorney or any city attorney or assistant city attorney in a city of the metropolitan class when such attorney is prosecuting any violation designated as a misdemeanor or traffic infraction." Neb. Rev. Stat. § 29-104 (1989). "If the complainant be other than the prosecuting attorney or a city or village attorney prosecuting the violation of a municipal ordinance, he shall . . . have the consent of the prosecuting attorney . . . " The prosecuting attorney shall consent to the filing of such complaint if he is in possession of sufficient evidence to warrant the belief that the person named as defendant in such complaint is guilty of the crime alleged and can be convicted thereof. Neb. Rev. Stat. § 29-404 (1989). ***See also***, Neb. Rev. Stat. § 23-1201 (1991).

The prosecuting attorney may join issues arising out of the same set of facts for trial. In fact, different offenses and different degrees of the same offense may be joined in one information, in all cases where the same might by different counts be joined in one indictment. Neb. Rev. Stat. § 29-1603 (1989). Two or more offenses may be charged in the same indictment, information, or complaint in a separate count for each offense if the offense charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. Neb. Rev. Stat. § 29-2002(1) (Cum. Supp. 1994).

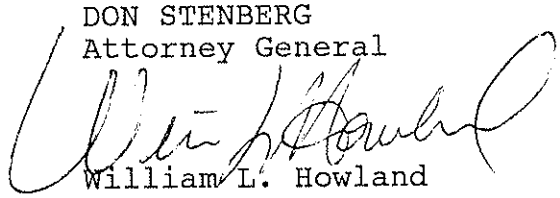
We are unable to find any constitutional or statutory authority that would limit or prohibit the combining of state and city violations in one complaint filed with the court. Conversely, the aforementioned constitutional, legislative and judicial authorities indicate that all prosecutions are creatures of the state regardless of whether charges are filed based on an alleged

violation of a city ordinance or a state statute. "local governments are in no sense independent of state authority, but in all things are strictly subject to the control of the legislature. ***City of Brownville, Id.*** The Legislature has taken special notice of the quantity of prosecutions that arise in metropolitan areas. ***See***, Neb. Rev. Stat. § 16-225 (1991) and § 29-104 (1989).

Having found no specific prohibition, we take note of the fact that the proposed activity should be permitted in view of the widespread desire to maximize the efficient use of judicial resources.

Sincerely,

DON STENBERG
Attorney General



William L. Howland
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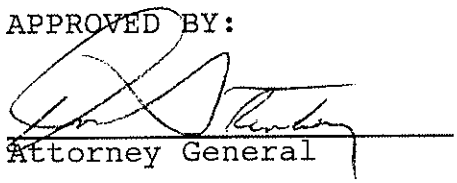

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