

## OPINION NO. 70-119

## Syllabus:

1. Under Rule .18 of the Ohio Rules of Practice and Procedure in Traffic Cases promulgated by The Supreme Court of Ohio, a municipal court shall be the exclusive designator of the moving traffic offenses which are waivable and of the fines.

2. A city council cannot force a municipal judge to establish a Traffic Violations Bureau.

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To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
By: Paul W. Brown, Attorney General, September 4, 1970

I have before me your request for my opinion which asks the following questions:

"1. Can a Municipal Court issue an order designating the moving traffic offenses which are waivable and the fine therefor pursuant to Rule .18 of the Ohio Rules of Practice and Procedure in Traffic Cases promulgated by The Supreme Court of Ohio, or must the Municipal Court comply with a City Ordinance which designates which moving traffic offenses are waivable and the waiver fine therefor?

"2. Can a City Council force a Municipal Judge to establish a Traffic Violations Bureau under Rule .18 of the Ohio Rules of Practice and Procedure in Traffic Cases for all Courts Inferior to Common Pleas by passing a City Ordinance designating the offenses which are waivable and the penalty thereof even though the Court wants all persons guilty of moving traffic violations to appear in open court and even though Rule .18 (a) of the Supreme Court provides 'Under the conditions specified in subsection (b) herein a court may establish a Traffic Violations Bureau' (emphasis added)?"

Section 5, Article IV, Ohio Constitution, provides:

"(A) (1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

\* \* \* \* \*

"(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. \* \* \*"

Section 2937.46, Revised Code, provides:

"The supreme court of Ohio may, in the interest of uniformity of procedure in the various courts, and for the purpose of promoting prompt and efficient disposition of cases arising under the traffic laws of this state and related ordinances, make uniform rules for practice and procedure in courts inferior to the court of common pleas not inconsistent with the provisions of Chapter 2937. of the Revised Code, including, but not limited to:

"(A) Separation of arraignment and trial of traffic and other types of cases;

\* \* \* \* \*

The Ohio Rules of Practice and Procedure in Traffic Cases as promulgated by The Supreme Court of Ohio are, therefore, both provided by the Constitution and directed by statute. It is academic that the rules promulgated by The Supreme Court of Ohio refer to procedure since The Supreme Court of Ohio is the final arbiter of what is procedure.

Rule .18 of the Ohio Rules of Practice and Procedure in Traffic Cases states, in part:

"(a) Under the conditions specified in subsection (b) herein a court may establish a traffic violations bureau and constitute any appropriate person of the municipality or county in which the court sits as a violations referee for such traffic violations bureau. \* \* \*

"(b) Any court subject to these rules may by order, which may from time to time be amended, supplemented or repealed, designate the traffic violations within the authority of said bureau. \* \* \*

"(c) The court, in addition to any other notice, by published order to be prominently posted in the place where fines are to be paid in the violations bureau, shall specify by suitable schedules the amount of fines to be imposed for offenses, designating each offense specifically in the schedules, provided that such fines are within the limits declared by statute or ordinance. \* \* \*"

The Supreme Court of Ohio did not and could not make any provisions enabling a city council to establish or otherwise supervise a Traffic Violations Bureau. Such power would have to be authorized by statute.

The existence of a court-controlled Traffic Violations Bureau is by no means unprecedented. According to the American Bar Association, the Model Rules of Procedure for Traffic Cases as well as the Rules of Court promulgated by the New Jersey Supreme Court on September 15, 1948, and the Missouri Rules of Practice and Procedure in Municipal and Traffic Courts promulgated by the Missouri Supreme Court on April 1, 1960, all provide, in part, the following requirements for Traffic Violations Bureaus:

"It shall be established by the judge. \* \* \*  
The judge must state the offenses to be within the jurisdiction of the Traffic Violations Bureau.  
\* \* \* the judge must establish the schedule of fines to be imposed by the Traffic Violations Bureau. \* \* \*"

The legislature having given The Supreme Court of Ohio the power to enable municipal courts to establish and control Traffic Violations Bureaus as a means of prompt and efficient disposition of cases and having given no authorization to municipal corporations to establish a Traffic Violations Bureau or set fines for it or decide what are waivable offenses to be heard by it, any such action on the part of a city council would constitute an infringement upon the powers of the judiciary.

However, the waiver fines established by court order must be within the minimum and maximum limitations of the fines which the court is permitted to assess if the violator appears in court.

It is, therefore, my opinion and you are hereby advised:

1. Under Rule .18 of the Ohio Rules of Practice and Procedure in Traffic Cases promulgated by The Supreme Court of Ohio, a municipal court shall be the exclusive designator of the moving traffic offenses which are waiverable and of the fines.

2. A city council cannot force a municipal judge to establish a Traffic Violations Bureau.