

by Kenneth J. Heinz

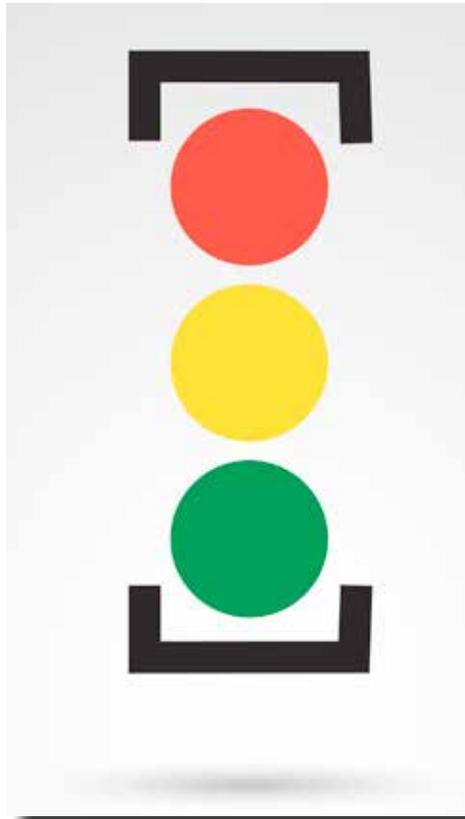
## SUPREME COURT LIMITS TRAFFIC CAMERAS IN THREE CASES

On Aug. 18, 2015, the Missouri Supreme Court issued three long-awaited decisions, limiting the use of traffic cameras by the cities in those cases. Most municipalities suspended using traffic cameras after decisions from the Court of Appeals that had held that the attempts of municipalities to use traffic cameras as a public safety solution at city intersections, and on city streets, conflicts with state statutes. The Supreme Court heard arguments on several of these cases in December 2014.

In *Moline Acres v. Brennan*, the only case involving speed cameras, the trial court found that the ordinance conflicted with state law, specifically Sections 304.009 and 304.010 RSMo pertaining to speeding by vehicle operators. The Supreme Court found the trial court erred in so dismissing because there was no conflict; however, the decision splintered into three directions on other issues, with several lengthy opinions.

Generally, municipalities are authorized to adopt ordinances that supplement state law, but may not pass ordinances that create an irreconcilable conflict with state statutes. The test for determining if a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits. Usually a state law does not expressly state what an irreconcilable conflict is.

Unlike state speeding statutes, the *Moline Acres* ordinance establishes a mechanism for placing responsibility upon the owners of motor vehicles for the unsafe manner in which their vehicles are operated. The fact that it involves vehicles travelling at excessive speeds does not place it in conflict with speeding statutes. An ordinance



holding the owner of a vehicle liable for unsafe operation by another does not conflict with a statute holding a vehicle driver responsible for the manner in which he/she operates the vehicle.

Traffic ordinances are enacted pursuant to a city's police powers. Courts presume that an ordinance enacted pursuant to a municipality's police power is valid, and the party contesting the ordinance bears the burden of proving its invalidity.

Cities have the authority to "enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good

government and welfare of the city . . ." and to "enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order . . . and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect . . ." Sections 546.902 and 79.110 RSMO.

While the majority of the Court found that the trial court had erred in dismissing the case on the ground that the ordinance conflicted with state statutes regarding speeding, the majority then proceeded to examine several other issues. The majority considered whether the ordinance was invalid for not requiring points to be assessed due to an infraction. The Court said that while points would have had to be assessed, it found no invalidity on this ground because it was not up to the City to assess the points and the City's ordinance was silent on this issue.

The majority then examined whether the ordinance unconstitutionally shifted the burden of proof of a violation. The majority stated that allowing the finder of fact to presume a violation because of ownership alone is unconstitutional. The majority distinguished this case from decisions that impose strict liability on owners due to parking violations. The Court, however, agreed that the City could still charge a violation if it did not rely on such a presumption at trial.

Finally, the majority decision examined the notice sent to the defendant and found that it was deficient because it did not include the information in Supreme Court Rule 37.

The majority distinguished the traffic camera notice from a traffic violations bureau. The Court rejected the City's argument that the notice was irrelevant because the defendant "thwarted the Notice process" by hiring counsel and contesting the ordinance.

The trial court's dismissal of the City's charges was affirmed with prejudice.

A concurring opinion stated that the ordinance was merely a "blatant money grab by the City," even though there had been no trial or evidence on this issue. The concurrence relied on allegations made against cities in other cases.

A dissenting opinion authored by the chief justice agreed with the majority that the ordinance did not conflict with state law but disagreed with the balance of the majority opinion because she believed the majority "ignored the standard of review" and went beyond the grounds for dismissal by the circuit court. She pointed out that practice of the Court in other cases "is to exercise judicial restraint." She also observed that the defendant suffered no prejudice from any defects in the notice, and that even if there were defects in the notice, the dismissal should not have been with prejudice.

In two other decisions issued the same day as the Moline Acres decision, the Court also ruled against the cities of St. Louis and St. Peters on red light camera ordinances. *Tupper v. City of St. Louis* (Mo. Banc 2015), and *City of St. Peters v. Roeder* (Mo. Banc 2015). All decisions are subject to Motions for Rehearing for 15 days.

In the Moline Acres case, the Supreme Court upheld the power of cities to enact ordinances for public safety, while finding the ordinance invalid. Cities contemplating use of traffic cameras must be careful, however, to write such ordinances to comply in all respects with the Supreme



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Court Rules on Notice, assessment of points, and may not be able to rely on presumptions stemming from vehicle ownership. A driver may have to be identified by facial recognition or some other method in order for these types of charges to be upheld, rather than just identify the vehicle. Further legal analysis would be required. □

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