

land statute provides that a city is not liable unless the authorities had notice and also had the ability to prevent the injury. No recovery is allowed when it is satisfactorily proved that the civil authorities and citizens of said county, town or city have used all reasonable diligence to prevent or suppress mob action.²⁸ Maryland has been followed by the state of Kentucky, which enacted similar provisions.²⁷

Many of the statutes have certain distinctive features such as the number of persons required to qualify as a mob or in the designation of what cities or towns come within the statutory liability. The Illinois statute, for example, provides that a city, village, or incorporated town must have a population in excess of 5,000 persons in order to come within the provisions of the statute. Also, in order for an assemblage to constitute a mob for which liability could be imposed, the assemblage must consist of 20 or more persons.²⁹ The Pennsylvania statute applies only to Philadelphia County, Allegheny County and North Hampton County, specifically referring to liability caused by riot damage and mobs only in those enumerated counties. The statute also specifies that a mob is 12 or more persons armed with clubs or weapons or 30 or more armed or unarmed persons assembled together.³⁰ The Kansas statute defines a mob as an assemblage of five or more persons.³⁰

The statutes of Rhode Island,³¹ Maine,³² and Massachusetts³³ provide that in order for a claimant to recover, the damages to the property so destroyed or injured must exceed \$50.

Almost all of the statutes provide that the city which has to pay the claim of a citizen for damage caused by riots and mob action shall be subrogated to the rights of said citizen against the individual participants causing such damage. Most of the statutes also provide that the injured party may proceed against the individual causing the damage but may not have a double recovery.

CALIFORNIA LAW

One state seems to have gone in the opposite direction with respect to a municipality's liability for damage caused by riots and mob action. Prior to 1963, the state of California had an act known as the California Riot Damage Act, which followed the pattern of those set forth above.³⁴ However, in 1963, the California court in *Muskopf v. Corning Hospital District*³⁵ held that the doctrine of sovereign immunity was mistaken and unjust and would no longer protect governmental entities from civil liability for their torts. As a result of this decision, the California Law Revision Commission recommended repeal of the California Riot Damage Act on the basis that it was unnecessary, and this statute and others imposing liability were subsequently repealed. However, California thereafter enacted a statute providing that a public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.³⁶ The result of this repeal and enactment is that a California property owner whose property has been damaged by riot cannot now recover from his government on any theory. The Riot Damage Act has been repealed, and he has no claim based on the government's failure to enforce the laws since the aforementioned statute abolishes such liability.

PROGNOSIS

Thus far, we have established that historically there is no common-law liability on the part of the municipality for damage to person or property as a result of riots. We see, in addition, that in recent times many states have by statute imposed a liability and that these statutes lack uniformity as to the scope of the liability and the definition of terms. What of the future? What may reasonably be expected in this regard?

²⁸ Md. Ann. Code Art. 82, Sec. 3 (1957).

²⁷ Ky. Rev. Ann. Sec. 411.100 (1963).

²⁹ Ill. Ann. Stat. Ch. 24 Sec. 1-4-8 (1965).

³⁰ Pa. Stat. Ann. Tit. 16, Secs. 11821, 11825, 11826 (1956).

³¹ Kan. Gen. Stat. Ann. Sec. 12-201 (1949).

³² R. I. Gen. Laws Ann. Sec. 45-15-13 (1956).

³³ Me. Rev. Stat. Ann. Ch. 136, Sec. 8 (1954).

³⁴ Mass. Ann. Laws Ch. 269, Sec. 8 (1956).

³⁵ Cal. Stats. 1949, Ch. 81, Sec. 1. As codified this enactment was Cal. Gov't Code Sec. 50140-45.

³⁶ 12 NEGLIGENCE CASES (2d) 160, 55 Cal. 2d 211, 359 P. 2d 457 (1961).

³⁰ Cal. Stats. 1963 Ch. 1681.