

old Criminal Code,<sup>4</sup> the present statute was made part of the Municipal Code in 1963. As amended in 1965, to change the participating number of persons from a minimum of six to twenty persons, the statute is now Section 1-4-8 of Chapter 24 and applies to all municipalities over 5,000 population. It reads as follows:

"(a) Any person suffering material damage to property, injury to person or death as a result of any of the following unlawful activities shall have an action against the city, village or incorporated town in which such damage or injury is inflicted, but only if the city, village or incorporated town has a population in excess of 5,000:

"(1) Mob action, as defined in Section 25-1 of the 'Criminal Code of 1961', by 20 or more persons;

"(2) Lynching; or

"(3) Unlawful taking from the custody of any person legally exercising such custody.

"In the event of death of the person injured the action authorized by this subsection (a) shall survive to a spouse or if there is no surviving spouse then to any person dependent for support upon the victim. Recovery under this subsection (a) shall be limited to an amount not exceeding \$30,000.

"(b) A person may recover under subsection (a) providing:

"(1) He was not a participant in the mob action that produced the harm; and

"(2) Notice of suit and filing of suit comply with the requirements in Sections 1-4-1 and 1-4-2.

"(c) An action under subsection (a) shall not bar any injured party from maintaining an action or actions against any person or persons, participating in such mob action for recovery of damages sustained thereby. Any city, incorporated town or village which under subsection (a) has paid any monies shall have a lien to the amount of such sum on any monies recovered by the subsection (a) plaintiff against any persons participating in such mob action. Any city, incorporated town or village recovered against under subsection (a) or voluntarily settling any claim arising under subsection (a) shall have an action to recover any such sums with all costs paid by it from any persons participating in such mob action."

"Mob action," in turn, as defined in Section 25-1 of the Criminal Code consists of:

"(1) The use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law; or

"(2) The assembly of 2 or more persons to do an unlawful act; or

"(3) The assembly of 2 or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of the violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence."

Thus read together, it is clear that these statutes are not only anti-lynching and anti-vigilante enactments, but are an imposition of absolute liability without fault upon municipalities, if damage results from the use of force or violence disturbing the public peace by 20 or more persons without authority of law. Note, however, the very important condition that the injured party must not have been a participant in the mob action. The statute however apparently does not preclude recovery by one whose injury was precipitated by his own acts or his own negligence.

A similar statute imposing liability on counties is found in Section 25-3 of the Criminal Code. Under that section, however, a mob is defined as six persons.

The United States Supreme Court more than 50 years ago sustained the earlier Illinois statute. In *Chicago v. Sturges*, 222 U.S. 313, decided in 1911, the court held that the statute did not deny due process of law, even though liability was imposed without municipal fault. The court said:

<sup>4</sup>Until January 1, 1962 the Criminal Code contained Sections 518 through 524 of Chapter 38 which made the city, village, town or county in which property was destroyed by a mob composed of 12 or more persons liable for three-fourths of the damage sustained. The statute, however, barred recovery when the injury of the property was occasioned, aided or permitted by the negligence or wrongful act of the owner and the owner was required to have used all reasonable diligence to prevent such damage. Although there was an anti-lynching statute which allowed recovery up to \$10,000 for personal injury or death, this statute applied only in instances where the victim was supposed to have been guilty of a violation of the law or the mob's action was for the purpose of exercising correctional or regulative power without lawful authority.