

"If such legislation be reasonably adapted to the end in view, affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the provisions of the Fourteenth Amendment."⁵

The court went on to say that equal protection was not violated because liability was imposed upon cities for harm occurring within municipal boundaries while the counties were held responsible for acts outside the corporate limits. Section 25-3 of the Criminal Code does not now limit county liability to the unincorporated area but in view of the subsequent enactment of Section 1-4-8 of Chapter 24, such a construction may still be likely.

The arguments favoring such statutes usually include the desire to take the burden or loss off the innocent individual and spread it to the entire community. Moreover, the purpose is said also to insure the compensation of an injured party where civil recovery might otherwise be difficult, to encourage municipal authorities to maintain order, and to stimulate the taxpayer of the community to resist lawlessness.⁶ In the *Sturges case*, the Supreme Court also noted:

"Such a regulation has a tendency to deter the lawless, since the sufferer must be compensated by a tax burden which will fall upon all property, including that of the evil-doers as members of the community. It is likewise calculated to stimulate the exertions of the indifferent and the law-abiding to avoid the falling of a burden which they must share with the lawless. In that it directly operates on and affects public opinion, it tends strongly to the upholding of the empire of the law."

It is questionable, however, whether the court would seriously urge that proposition today. Certainly there is nothing to indicate that the recent participants in mob violence in our large urban areas were even slightly deterred through a fear that their taxes might go up.

The *Molitor* decision⁷ of 1959, of course, did away with the doctrine of sovereign immunity in Illinois and precipitated a flurry of legislative activity which culminated in what is known as the "Local Governmental and Governmental Employees Tort Immunity Act" of 1965.⁸

The legislation is an effort to replace the judicial doctrine of sovereign immunity with statutory immunity with respect to certain acts of governmental units and their employees. The act spells out specific areas where liability against the municipality and its officers shall not accrue. Exemption is granted for liability caused by the issuance, denial, suspension or revocation or failure to issue a license of permit; failure to make an inspection or the making of an inadequate or negligent inspection; an oral promise or misrepresentation; libel or slander; the granting or failure to grant public welfare, goods or moneys; the institution or prosecution of a judicial or administrative proceeding; and certain other specified acts with respect to the use of public property, police and correctional activities, fire protection, medical and hospital activities and the joint operation of functions or services between municipalities.

Local governments are defined to include counties, townships, municipalities, school districts, forest preserve districts, park districts, fire protection districts, sanitary districts and all other local governmental bodies. The statute offers a broad range of immunities to these entities for torts but does not specifically deal with riot damage. While it may be argued that Section 2-103 of the statute, which provides that "a local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law," grants some measure of immunity for mob damage, it is likely that such an interpretation would receive short shrift from the courts. Section 4-102 also provides that a local public entity is not liable for failure to establish a police department or otherwise provide police service or for failure to provide adequate police service. However, the Tort Immunity Act was approved on August 13, 1965, the same date on which the amendment to Section 1-4-8 of the Municipal Code was approved. It seems hardly likely that a court would render meaningless the specific statute relating to damage from mob violence because of general language in a statute which also includes an enumeration of specific acts for which immunity is provided.

I am thus of the opinion that the Tort Immunity Act of 1965 does not protect cities and villages from actions arising under the mob violence statute which is

⁵ 222 U.S. 313, 322.

⁶ Anteau, Chester James, *Statutory Expansion of Municipal Tort Liability*, 4 St. Louis Law Journal 378.

⁷ *Molitor v. Kaneland Community Unit District*, 18 Ill. 2d 11.

⁸ Ill. Rev. Stat. 1965, Ch. 85, § 1-101, et seq.