

now part of the Illinois Municipal Code. In this connection, it should also be pointed out that certain specific sections of the Municipal Code were repealed by the Tort Immunity Act,⁹ but the mob violence statute was not included in the repealer.

It may be noted in passing that the new tort immunity statute has not yet been tested or interpreted by the courts. However, a majority of cases from other jurisdictions have sustained statutory exemptions from tort liability, although in a few cases such statutes have been held to be unconstitutional.¹⁰ An Illinois statute which purported to give immunity to park districts was recently unconstitutional in the case of *Harvey v. Clyde Park District*.¹¹ The statute was declared void, however, because of an invalid classification of municipal corporations. The court pointed out that cities, villages, park districts, school districts and forest preserve districts all maintained similar recreational facilities and that if the plaintiff had been injured in a facility maintained by a school district or other governmental unit, recovery would have been permitted. Mr. Justice Schaefer, however, clearly left the door open to enact a valid tort immunity statute when he said:

"From this decision it does not follow that no valid classifications for purposes of municipal tort liability are possible. On the contrary it is feasible, and it may be thought desirable, to classify in terms of types of municipal function, instead of classifying among different governmental agencies that perform the same function. Capacity to distribute some kinds of risks through insurance may be thought to be a relevant consideration. Under the Federal Tort Claims Act, which waives the sovereign immunity of the United States, there are numerous exceptions, perhaps the most important of which relates to discretionary acts. (28 U.S.C. § 2680.) The recent California legislation carves out numerous areas of non-liability, the most important of which also relates to discretionary acts. (See Cobey, *The New California Tort Liability Statutes*, 1 Harv. J. Legis. 16 (1964).) These illustrations do not exhaust the possibilities."¹²

Thus, it may be concluded that the recent legislation which applies to all municipal corporations will probably be sustained against a constitutional attack, but it seems highly unlikely that it could be construed to, in effect, repeal the mob violence statute.

THE ILLINOIS EXPERIENCE

As indicated above, the original mob violence statute included in the old Criminal Code was sustained by the United States Supreme Court, as well as the Illinois Supreme Court, on several occasions.¹³ This statute, while permitting recovery for up to three-fourths of property damage sustained, was in the nature of an anti-lynching statute with respect to personal injury or death. As a result, in several Illinois cases, the court took a narrow view and held the city not liable for mob action when the rioters were not attempting to assume powers "lawfully authorized to other persons" or the victim had not been supposed to have committed a crime.

Thus, in the case of *Anderson v. City of Chicago*,¹⁴ the court held the city was not liable when the plaintiff was a mere bystander at the scene of a clash of police officers and strikers marching on a plant. In the case of *Brannock v. City of Chicago*,¹⁵ a Negro woman was hit by stones and rocks thrown by a group of 30 or 40 white men. Apparently several automobiles had been damaged and overturned in the same area and a number of similar incidents occurred. The court held, however, that the record failed to establish that the persons were congregated "for the purpose of exercising correctional powers over the plaintiff." The statute was regarded primarily as an anti-lynching or anti-vigilante enactment and, being in derogation of the common law, was strictly construed.

However, in the case of *Staton v. City of Chicago*,¹⁶ arising out of the Fernwood housing project riots in 1947 where there was attempted integration in a previously all-white public housing project, the Appellate Court, speaking through Judge Robson, took a much more liberal and perhaps realistic view of the mob

⁹ Ill. Rev. Stat. 1965, Ch. 85, § 10-101.

¹⁰ *Antieau, Municipal Corporation Law*, § 13.00.

¹¹ 32 Ill. 2d 60; 203 N.E. 2d 573.

¹² 203 N.E. 2d 573, 577.

¹³ *City of Chicago v. Sturges*, 222 U.S. 313; *City of Chicago v. Sturges*, 237 Ill. 46; *Dawson Soap Company v. City of Chicago*, 234 Ill. 314; *City of Chicago v. Manhattan Cement Company*, 178 Ill. 372.

¹⁴ 313 Ill. App. 616.

¹⁵ 348 Ill. App. 484.

¹⁶ 8 Ill. App. 2d 47.