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Continued expansion of administrative adjudication authority

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Beginning January 1, 1998, pursuant to Public Act 90-777, nonhome rule municipalities will have the expanded power, under 65 ILCS 5/1-2.2, to establish a system of administrative adjudication for violations of municipal ordinances other than building code violations and moving motor vehicle violations. The new law, however, does not permit these municipalities to enforce their findings, decisions and orders by judgment, but requires them to commence proceedings in the circuit court of the county in which they are located to obtain an enforceable judgment. Most recently, the Illinois legislature expanded administrative authority to home rule municipalities by passing Public Act 90-516, effective on January 1, 1998. This Act, found at 65 ILCS 5/1-2.1, provided home rule municipalities with similar powers under the current legislation (P.A. 90-777). However, a significant distinction is that, for home rule municipalities, they were given the power to enforce their orders without filing a court action to obtain an enforceable judgment.

65 ILCS 5/1-2.2 et seq. entitled "Code Hearing Departments" establishes a system of administrative adjudication for violations of any municipal ordinance with the exception of (i) building code violations that must be adjudicated pursuant to Division 31.1 of Article 11 of the Municipal Code, and (ii) any moving motor vehicle violations under section 6-204 of the Illinois Vehicle Code.

The adoption by the municipality of a system of administrative adjudication does not preclude the municipality from using other methods to enforce municipal ordinances. The municipality may still proceed directly to court, if it so chooses.

A "Code Hearing Department" is established either within an existing municipal agency or as a separate agency in the municipal government. Hearings in the department must be presided over by hearing officers. Hearing officers must be attorneys licensed to practice law in the state of Illinois for at least three years. In addition, hearing officers must successfully complete a formal training program that includes the following:

1. Instruction in the rules of procedure of the hearing they will conduct;
2. Orientation to each subject area of the code violations they will administer;
3. Observation of administrative hearings;
4. Participation in hypothetical cases, including rules on evidence and issuing final orders.

The law does not further define what constitutes a "formal training program," and the only program that this author is aware of being offered at this time is through the law firm of Scariano Kula Ellch & Himes, Chicago, Illinois. This program offers a thorough treatment of the four qualifications referenced in the law.

A proceeding before the Code Hearing Department is instituted when a written pleading is filed by a police officer or another authorized official of the municipality. Service on the offender is by first-class mail with a summons commanding the defendant to appear at a hearing. Offenders may be represented by attorneys at the hearing, but whether they are represented or not, strict rules of evidence do not apply. At any time prior to the hearing date the hearing officer may direct witnesses to appear and give testimony at the hearing. If the defendant or his attorney fail to appear at the hearing, the hearing officer may find the defendant in default. Continuances may be authorized by the hearing officer, but only if they are absolutely necessary and in any event, they cannot exceed 25 days.

The new statute falls short in that it does not allow the code hearing officers to issue enforceable judgments. Both statutes, home rule and nonhome rule, fall short by not providing for the administrative adjudication of moving traffic violations. Obviously, in most municipalities, traffic appearances by police officers constitute a large expense, traffic matters substantially outweigh other ordinance violations, and a great deal of fine money is not paid to the local municipality.

Perhaps we should be grateful for what we have. However, at the annual Municipal League Conference in the fall of 1998, our council, which made a presentation on the new law, observed tremendous interest in disposing of complaints administratively. Municipalities have much to gain from this type of procedure, including moving vehicle violations, so long as they are handled professionally. The legislature needs to provide the same power to adjudicate to nonhome rule municipalities as home rule and both powers should be expanded to include moving traffic violations. ■