The meeting was called to order at 2:02 p.m. in Room 323 in the Legislative Building.

Senator Blakemore in the Chair.

PRESENT: Senator Richard Blakemore, Chairman
Senator Wilbur Faiss, Vice Chairman
Senator Keith Ashworth
Senator William Hernstadt
Senator Lawrence Jacobsen
Senator Clifford McCorkle
Senator Joe Neal

OTHERS PRESENT: Harry McCool, Thrifty Rent-A-Car, Las Vegas/Reno
James C. Bailey, Catrala
Roy Roach, Dollar Rent-A-Car - Casino Limo
Don Kerr, Hertz Licensee, Reno
Dick Lee, Lee Bros. Leesing Inc., Reno
A.G. Reddick, Dollar Rent-A-Car, Las Vegas
Gene Phelps, Nevada Highway Department
Joe Souza, Nevada Highway Department
Sam Mamet, Clark County
Judge Miriam Shearing, Clark County Justice Court
Ron Jack, City of Las Vegas
Andy Grose, Legislative Council Bureau
Rick Rabak, Avis Rent-A-Car, Reno

S.B. 301 MAKES AUTOMOBILE RENTAL AGENCIES LIABLE FOR CERTAIN TRAFFIC CITATIONS.

Mr. Sam Mamet, Clark County, introduced Judge Miriam Shearing, Clark County Justice Court, and handed out written testimony for her (see Exhibit A). Judge Shearing spoke in favor of S.B. 301 and gave some preliminary remarks. She stated that S.B. 301, as drafted, did not do anything to the existing law. She said that basically the original proposal was that the registered owner would be liable for non-moving violations. She said the way it is now the registered owner is not liable for moving violations which is the present law. She said they would like to make a change to meet problems they are having at the McCarran Airport particularly, but she thought were applicable in other areas. Judge Shearing stated that at McCarran Airport many people come in, park illegally, get tickets and the tickets are ignored because probably a majority of them are from car rental agencies. She said this was not the car agencies' fault but people do not return the cars where they are supposed to and then the rental agencies have to pick them up. The car rental agencies deny liability for the tickets and as the law is at present, they are not liable. She said there is no way to enforce the parking lot regulations if people are not paying any attention to parking tickets. Judge Shearing said that basically Clark County's position is that they have no way of enforcing the parking regulations unless the registered owners are made liable for the

non-moving violations. She said at present they have thousands of bench warrants outstanding for parking tickets that are being ignored, losing over a half-million dollars in revenue.

Mr. Mamet stated that attached to the written testimony (Exhibit A) is the Illinois State Supreme Court decision which the U.S. Supreme Court upheld last October. What the Illinois State Supreme Court decision did was uphold a Chicago city ordinance which states that the owner of the car is liable for a parking violation irrespective of whether the owner was in the car at the time the violation was committed. He stated there are three other states, Ohio, Missouri and Iowa, whose Supreme Courts have said the same thing. Mr. Mamet felt that this gave Clark County the legal authority to seek this legislation because of the action of the U.S. Supreme Court as well as the State Supreme Court decisions that he had just reviewed.

Senator Hernstadt asked if the law now totally absolved rental car agencies. Mr. Mamet said yes, they are totally absolved.

Judge Shearing stated that basically they were talking about the practical matter of collection. She stated that for a $2.00 ticket it is not worth spending funds to try and track down the driver of a particular car that was left; whereas the car rental agencies are in a position to collect it up front and then to refund to the county.

Senator Hernstadt said they could not collect it up front since they may not know about it for several months after they are written to by the County Courthouse or the City of Las Vegas Municipal Police Department or whoever sends out these notices. He asked Mr. Mamet if there is any kind of enabling language that is required since 99 percent of the rental car patrons have a credit card to authorize the rental car agency to process a charge on the charge account of the person who rented the car so the agency is not stuck for it.

Judge Shearing answered that she felt this would be very dangerous legislation. She said what she was suggesting was a refundable deposit. Senator Hernstadt said that they do that now for people who do not have credit cards but said the point is you cannot leave them stuck in the middle for irresponsible people who create illegal actions.

Senator Neal said he did not see where the disagreement was since this bill allows them to collect fines on parking violations. Judge Shearing stated she did not disagree but she did not think this touches a non-moving violation. She said that in law something has to be expressly stated and not implied.

Senator Ashworth stated that what he understood from this testimony was the problem of parking violations at McCarran Airport and he felt this bill did not represent the problem.

Senator Blakemore stated that he read in Exhibit A that Chicago had accumulated a little over $198,000 in one year's time and since Clark County has accumulated a half million, this suggested to him that this was more than in one calendar year. Mr. Mamet said he believed it was over two years and they have over 21,000 tickets outstanding now and it is still growing. He felt this shows the magnitude of the problem.

Senator Ashworth asked if this legislation were passed making rental car agencies responsible, would they raise their rates in order to accommodate the cost of paying parking tickets. He wondered if some other method could be arrived at asking the agencies to cooperate with the justice departments and traffic people without making them responsible.

Senator Hernstadt asked if Clark County had the authority to tow cars away that are illegally parked particularly at McCarran Airport. Mr. Mamet said that under the Supreme Court decisions now that they would have the legal right to ask for this lost revenue but they would be amenable to working out any compromise or accommodation with the car rental agencies, but from a point of law, they feel they need some very clearly specified intending law.

Senator Ashworth said if Clark County had clear authority to tow a car away that is parked illegally and it was a rental car agencies', the reason they don't tow it away is because they would be sending $10 after a $2.00 ticket. Mr. Mamet said that was right, but he would have to check on the ordinance to see if they did have this authority.

Senator Neal asked Mr. Mamet why they did not just have the police pick up the ticket and tie it up. Mr. Mamet did not see what that would accomplish.

Mr. Ronald Jack, Deputy City Manager of Las Vegas, spoke in favor of S.B. 301. He stated there is an excess of 40,000 parking tickets which amount to close to $750,000. He said costs have been incurred in writing these tickets. He did not see an easy alternative. He suggested that when a person turns in a car at a rental agency that on their bill they could certify whether or not they have received parking tickets. This statement would include the fact that they would be responsible and liable for claims made against that automobile while it was in their use.

Senator Blakemore asked Mr. Jack what it costs the city to write a parking ticket. Mr. Jack replied with the labor and processing it probably costs about $1.00 but they would double in fines in ten days so that a $2.00 ticket would go to $4.00 and then they would double again. He said the fines on parking tickets could vary in fines according to the specific parking violation. He stated he feels that most people do not avoid paying for their parking tickets on purpose. He said the 40,000 tickets that he

spoke of, none of them were at the airport but all were in the jurisdiction of the city.

Senator Blakemore asked if these were all rented cars. Mr. Jack said a vast majority of them are. Senator Blakemore asked how these cars were identified as being rental cars. Mr. Jack said there are a lot of California plates and other out-of-state plates, but he was not sure how it was decided which were rental cars. He said that he supposed most of the rental cars that would be in Las Vegas would come from California, Arizona and Utah. Senator Ashworth said that was not a fair statement to say that because the cars are foreign and are illegally parked they are rental cars. He said he would like to find out how a rental car is identified.

Senator Blakemore asked how they determined whether it was rented or not. Mr. Jacka said if the car has a Nevada license they could check it out but if it's an out-of-state license then they would have to check with California or whatever the respective state was. He was not sure if this was a standard operational procedure.

Senator Ashworth said that if they are going to put in some strong legislation such as this they have to identify the portion of the problem that the rental car agencies have and see if it's the majority of the problem. Mr. Jack said he would check out the percentage that rented cars have and see what their procedures are in identifying them.

Mr. James C. Bailey, who is associated with Lee Bros. Leesing Inc., Hertz Truck Rental franchise and Catrala of Nevada, spoke in opposition to S.B. 301 as it is written. He said he feels the industry performs a great service to the communities of Reno and Las Vegas. He said they do not like the wording of the bill, they feel the wording that is left out is much more important than the wording that was put in. He said a moving violation is a very easy thing to check on since the arresting officer has the information from the individual driver's license. He said he knows of no definition of a "rental agency." He said the closest thing to a definition such as that is "short-term leasing." He said under this bill every bank that has a leasing organization, every dealer that has a leasing department in his agency and every leasing company would be liable under this bill. He said his industry is willing to work with any of the municipalities and are not against their problem. Mr. Bailey said in the leasing industry they went to work to change the dealer's report in which the lessee has his address to make it easier for the department to find the individual who has a ticket coming to him.

Mr. Roy Roach, Dollar Rent-A-Car and Casino Limousine, spoke in opposition to S.B. 301. He stated he set up a program in Reno for this particular problem several years ago. What they did in Reno was to get together with the city, and the rental agencies now all turn in a list of all their license plates for the vehicles

that are in their fleet each month. This information goes in a computer along with all tickets and then they are sent an affidavit which they sign and have notarized if it is an out-of-state individual that has rented the vehicle. He said rented cars are towed and this costs them $25.00. He said that when a customer comes back without a key, the car is towed in and then the agency is able to collect the money for any outstanding parking tickets from the customer. He said the airport does have a problem but they have their own tow trucks, they work very closely with the police and they have a two-way radio so if they have a vehicle that is not where it's supposed to be, they are given a call and if it is not moved within ten minutes they are cited and they do pay the ticket.

Senator Blakemore asked Mr. Roach how many parking tickets did his agency usually receive a month. Mr. Roach said a vehicle of his averages one ticket per month. Senator Blakemore asked what the average was for out-of-state customers for parking tickets. Mr. Roach replied that 97 percent are out-of-state.

Senator Hernstadt asked what happens when someone from out-of-state comes here, rents a car, gets a ticket and then goes home, what happens to that ticket. Did he get this computer printout once a month and then he just signs an affidavit that a ticket was for an out-of-state driver and that's the end of it and the ticket gets torn up? Was an attempt made to collect the money? Mr. Roach answered yes, that was right. He said they have tried to collect but they only have had about 2 percent collection. He said they have tried to collect by way of the credit card and the only company that is only half way cooperative is American Express. Mr. Roach stated he had $27,000 in losses on accidents last year on his rented cars. He said if he can't catch the customer here he cannot collect.

Senator McCorkle asked Mr. Roach what percentage of his customers use charge cards. Mr. Roach replied they all use credit cards.

Mr. Harry McCool, Thrifty Rent-A-Car, Las Vegas/ Reno, spoke in opposition to S.B. 301. He said he thought the hub of the problem is the identification of the people who are getting parking tickets and the notification that they have had tickets. He said all the information is utilized in Reno but in Las Vegas it is not. Las Vegas and Clark County make no attempt to cooperate with rental agencies although the agencies do have all information available; but since they do not have an administrative procedure in the city or county, this information cannot be put to good use. Mr. McCool said that when they have gone to the administrative offices it's like stepping into a hornets' nest and they make no attempt to process the information.

Senator Blakemore asked Mr. McCool what the City of Reno does when the information is turned into them. Mr. McCool answered that he presumed the City of Reno makes an attempt to collect. Mr. McCool said his agency cars get no more then one ticket

in two months per car.

Senator Hernstadt asked Mr. McCool if he could add the cost of a ticket on a credit card. Mr. McCool said that once a credit card has been filled out, no attempt to alter them can be made or the whole bill is void. He said you have to collect from the customers before they leave.

Senator Hernstadt asked if statutory authority were given to them to make such a charge on a credit card and since they have the records that would enable them to do it, would it bother him to get after these scofflaws. Mr. McCool said theoretically it's great but practically, forget it. He said a very small percentage of his customers pay by cash--it's practically a standing rule in the car rental business that you don't rent a car unless it's by credit card.

Mr. Gary Reddick, Dollar Rent-A-Car, Las Vegas, spoke in opposition to S.B. 301. He stated he is seldom advised of tickets for his cars by the county or city. He said they send in about $100 a month for tickets they have found themselves for their cars.

Mr. Dick Lee, Lee Bros. Leesing Inc., Reno and also the Hertz licensee for Hertz Rent-A-Truck, spoke in opposition to S.B. 301. He gave a brief history of parking problems. He said they do not have a problem in Washoe County, He said once the affidavits are completed by the rental car agencies, they are forwarded to the city clerk's office. The disposition of the information from there is unknown to them whether the tickets are pursued or not. He felt this problem could not be dealt with by changing the state law. He said this is a local problem in Las Vegas and must be resolved in their local government.

Mr. Rick Rabak, Avis Rent-A-Car, Reno, said that in California (around Lake Tahoe), the information is sent to ElDorado County as it is in Reno.

Mr. Don Kerr, Hertz Rent-A-Car franchise owner, Reno, spoke in opposition to S.B. 301. He said he wanted to clarify some points brought up by Senator Hernstadt. He said in reference to the affidavits that were referred to in previous testimony by Mr. Roach, they do not know what the City of Reno does with the tickets for out-of-state drivers but there is a section in the affidavit dealing with Nevada residents and the agency does provide the individual's name and address on the affidavit. He said that in the last 15 months his agency has averaged about 35 tickets per month in a fleet of about 550 cars.

Senator Ashworth asked Mr. Mamet if the half-million dollars outstanding in tickets in Clark County were a year old or longer than a year. Mr. Mamet said he believed they are all a year old. Senator Ashworth asked him if he could get him the amount of money outstanding that is a year old and the amount of revenue

that has been collected in the same period of time. Mr. Mamet said he could.

Senator Hernstadt asked if there were any suggestions to stop this scofflaw. Mr. Kerr replied that he thought the method in Reno best addresses itself to that question. He said possibly the best thing to do would be to have the regional entities in Clark County meet with their Clark County rental car owners and/or managers in an effort to resolve this problem.

Senator McCorkle asked why is this a state issue. Mr. Mamet replied that Clark County feels this is a state issue because of the current statute that was adopted in 1973 that absolves car rental agencies from any traffic violations and since the U.S. Supreme Court upheld the Illinois Supreme Court decision, they felt the proper legal remedy was to address it in the legislation of S.B. 301.

Chairman Blakemore closed the hearings on S.B. 301.

A.B. 76 PROVIDES UNIFORM STANDARDS FOR REGULATION OF CHARGES AND PRACTICES OF MOTOR CARRIERS.

Mr. Andy Grose, Legislative Council Bureau, spoke on A.B. 76. He said it was the first of several bills to clean up the statutes. It combines subsections 1 and 2 of Chapter 706 to make it more readable, usable and clear.

Chairman Blakemore closed the hearing on A.B. 76.

A.B. 308 PROVIDES FOR REGULATION OF ROADSIDE PARKS.

Mr. Joe Souza and Mr. Gene Phelps, Nevada Highway Department, addressed A.B. 308. Mr. Souza said at the present time there is an 18-hour posting in roadside rests and they have been having problems with squatters, dope peddlers, people trying to collect fees and other illegal actions. The Highway Department has been having problems enforcing the 18-hour provision and they don't have the authority to evict people who have been staying for weeks or even months at a roadside rest and the resulting crime.

Senator Blakemore asked if there are conflicting regulations with the federal government. Mr. Phelps replied the basic problem is that although they do get help from local law enforcement and the Nevada Highway Patrol, there is no basis for this help in enforcing any kind of regulation. This is an attempt to provide that basis for local and highway patrol enforcement.

Mr. Souza stated they do get help from local law enforcement when there is crime of any type, but they do not have any enforcement at all when it comes to squatters.

Mr. Phelps said that Section 3 authorizes the Highway Patrol

specifically to enforce the laws and regulations.

Senators Jacobsen and McCorkle asked if there are any other states that have regulations as to what was in mind. Mr. Souza said he would get some regulations from California. He said in some states the tourists are assessed for roadside rest privileges.

Senator Blakemore closed the hearing on A.B. 308.

Committee Action:

Senator Hernstadt moved that A.B. 76 "Do Pass."

Seconded by Senator McCorkle.

Motion carried unanimously.

There being no further business, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Jane A. King

Jane A. King, Secretary

APPROVED:

Richard E. Blakemore

Richard E. Blakemore, Chairman

EXHIBIT A

MR. CHAIRMAN AND MEMBERS OF THE TRANSPORTATION COMMITTEE, FOR PURPOSES OF THE RECORD I AM JUDGE MIRIAM SHEARING REPRESENTING THE CLARK COUNTY JUSTICE COURT. THIS AFTERNOON I AM HERE TO TESTIFY IN SUPPORT OF SB 301. THIS LEGISLATION IS INTENDED TO MAKE CAR RENTAL AGENCIES LIABLE FOR NON-MOVING VIOLATIONS ARISING OUT OF THE USE OF THE AUTO.

UNDER CURRENT STATUTE, NRS 484.262, SUCH AGENCIES FOR ANY TRAFFIC VIOLATIONS INCURRED WHILE DRIVING HAVE NO LIABILITY ON THE USE OF THE CAR. THIS LAW WAS ENACTED IN 1973 THROUGH AB 269.

LAST OCTOBER THE U. S. SUPREME COURT IN THE CASE OF CHICAGO V. HERTZ, ET AL, UPHELD AN ILLINOIS SUPREME COURT DECISION (AT 375 N. E. 2d 1285) BY DENYING CERTIORI ON THE CASE. ILLINOIS' DECISION DEFINITIVELY SUSTAINED A CHICAGO ORDINANCE WHICH HELD THE REGISTERED OWNER, AND IN THIS CASE A CAR RENTAL AGENCY, LIABLE FOR PARKING VIOLATIONS WHETHER OR NOT THE REGISTERED OWNER WAS IN POSSESSION OF THE CAR AT THE TIME OF THE OFFENSE. THIS DECISION (ATTACHED) IS CONSISTENT WITH THREE OTHER RECENT STATE SUPREME COURT DECISIONS (OHIO, MISSOURI, IOWA) WHICH HAVE UPHELD SIMILAR MUNICIPAL ORDINANCES OR STATE STATUTES.

STATISTICS

THE LATEST FROM OUR COURT INDICATES AT LEAST 21,000 OUTSTANDING PARKING TICKETS AT OUR AIRPORT. WHILE WE CANNOT INDICATE AT THIS TIME EXACTLY HOW MANY OF THESE CONSTITUTE ILLEGALLY PARKED RENTAL CARS, WE CAN TELL YOU THAT UNQUESTIONABLY A MAJORITY ARE RENTALS. CLARK COUNTY IS LOSING NEARLY $525,000 A YEAR FROM THESE UNPAID TICKETS.

WE REALIZE THAT THE RENTAL AGENCIES WILL ARGUE THAT THIS WILL CAUSE THEM ADMINISTRATIVE PROBLEMS TO TRACK DOWN THE DRIVERS. FURTHERMORE, THAT THEY SHOULD NOT BE MORALLY RESPONSIBLE FOR SUCH VIOLATIONS.

ON THE OTHER HAND, OUR COUNTY IS NOW LOSING THOUSANDS OF DOLLARS TO WHICH THE SUPREME COURT SAYS WE ARE LEGALLY ENTITLED. WE ARE WILLING TO WORK OUT ANY ACCOMMODATIONS NECESSARY WITH THE RENTAL AGENCIES RELATIVE TO SB 301; HOWEVER, WE DO FEEL RATHER STRONGLY ABOUT THIS LOSS OF REVENUE.

IF IT IS THE DESIRE OF THE COMMITTEE TO PROCESS THIS LEGISLATION, THEN WE WOULD SUGGEST THE FOLLOWING AMENDMENT TO THE BILL:

LINE 2: [NO] AN AUTOMOBILE RENTAL AGENCY IS LIABLE FOR ANY <u>NON-MOVING</u> VIOLATION .....

THIS MAKES THE INTENT VERY CLEAR AND IS THE BILL DRAFT REQUEST WE

EXHIBIT A

INITIALLY SUBMITTED.

THANK YOU FOR YOUR ATTENTION TO THIS MATTER.

EXHIBIT A

Lewd Tue Reg., 10-30-78

High Court upholds law making rental firms pay parking fines

WASHINGTON (AP) — The Supreme Court today left intact a Chicago ordinance that forces car rental companies to pay for their customers' parking tickets.

The justices turned aside arguments by the Hertz and Avis rental agencies and Chrysler Leasing Corp. that the ordinance making them liable for such fines is unconsitutional.

Numerous cities nationwide have identical or similar laws, which appear safe, for the time being at least.

Car rental car agencies now apparently must pay the City of Chicago millions of dollars in parking fines dating back to 1966.

In 1967, Chicago took Hertz, Avis and Chrysler Leasing to court on charges of being the registered owners of cars that had been ticketed for a total of 13,267 parking violations in 1966.

The city charged that the three companies owed unpaid fines — $37,395 for Chrysler, $73,425 for Avis and $88,185 for Hertz.

Chrysler leases fleets of cars to Avis, but the vehicles are registered in Chrysler's name.

A state trial judge ruled that the rental agencies were not responsible for parking violations while their cars were rented out to customers, but he was overruled by an appeals court and the Illinois Supreme Court.

The state's highest court ruled last April that the only defenses available to a registered owner of a ticketed car is to show that he is not the registered owner or that the violation did not occur.

The appeals court had ruled that Chicago's ordinance imposes a permissible "vicarious liability" on the rental agencies and the state Supreme Court upheld that ruling.

During the protracted legal fight over the 1966 fines, violations for the last 11 years have been held in abeyance.

Lawyers for Avis and Chrysler — former Supreme Court Justice Abe Fortas and Phil Neal, former dean of the University of Chicago Law School — told the court: "Assuming only a number of violations for later years no greater than in 1966, the claims against the defendants based on the Chicago ordinance would be more than $2 million."

CAR OWNER RESPONSIBLE

Parking Ticket: A Losing Battle?

BY LEONARD GROUPE
The Chicago Sun-Times

CHICAGO—Did you ever stop to think about how many constitutional issues might be involved in a simple parking ticket?

If the owner of the car may be convicted without any evidence that he was the one who committed the violation, where is the presumption of innocence which is supposed to be one of the very foundation stones of our legal system?

Is it a matter of having to prove your innocence rather than the city having to prove your guilt?

No, it's worse than that. It is now virtually impossible to prove your innocence in a Chicago parking case. The Illinois Supreme Court recently interpreted the parking ordinance of the city of Chicago (similar to those in many other cities) to mean that the owner of the car is responsible for the violation regardless of whether he committed it.

The ordinance states: "Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation."

Until the high court decision came down, many lawyers, including me, thought the ordinance did not make the owner responsible without regard to who actually parked the car. We thought it only shifted to the owner the burden of overcoming a presumption or natural inference that the car had been parked by him. We thought that evidence establishing that you did not park the car (such as proof that you were in Europe or in jail at the time) would cause the presumption to fail and you would be in the clear.

But we were wrong. The Illinois Supreme Court says (as has previously been said by the supreme courts of Ohio, Missouri, and Iowa) that such an ordinance creates a "vicarious liability" on the owner for a violation committed by someone he let use his car—and it is constitutional.

It cited a U.S. Supreme Court case that upheld the total forfeiture of a borrowed car that had been carrying illegal liquor unknown to the car's owner, who was, in fact, innocent of any wrongdoing. Tough.

Fair or not, that's the law. The vicarious liability under this parking ordinance doesn't deny a defendant his day in court and the opportunity to defend himself. The court says his constitutional rights are protected because he has the opportunity to contest the case two ways, on the ground that the car was not illegally parked or that he was not the owner of the car at the time of the violation.

One parking ticket case got up to the Supreme Court of Illinois. The city of Chicago sued Hertz and Avis to collect a $15 fine on each of 13,267 unpaid parking tickets that had been hung on cars leased from the two companies. The tab came to more than $199,000.

★ Los Angeles Times Sun., Nov. 12, 1978—Part VIII 11

EXHIBIT A

SEC TO MAKE ALLEGED BRIBES PUBLIC

High Court Allows Disclosure in ITT Case

WASHINGTON (AP)—The Supreme Court Monday cleared the way for public disclosure of allegations that International Telephone & Telegraph Corp. may have paid $9 million in foreign bribes.

The court turned down ITT's request to bar disclosure despite the company's claim that publication of charges by the Securities & Exchange Commission would "threaten substantial commercial injury to the corporation's business."

The decision, which was made without comment by the justices, allows U.S. Dist. Judge George Hart Jr. in Washington to permit the SEC to release details of the charges.

Last May, Hart had refused to seal the SEC's proposed complaint against ITT, although the company at that time said public disclosure of its contents could lead to a takeover of several ITT manufacturing subsidiaries in Western Europe. The company immediately appealed the ruling to the high court.

At issue in the case was whether the SEC may disclose facts in a complaint that might harm a company when adequate disclosure of the facts is itself the point of the charges.

In other decisions, the court:

—Agreed to decide, in a case involving Oscar Mayer & Co., whether employes who sue employers in federal court for age discrimination must first turn to a state court or agency.

—Left intact a Chicago ordinance that requires car rental companies to pay for their customers' parking tickets. The ordinance, which is similar to laws in some other cities, had been challenged by Hertz, Avis and Chrysler Leasing Corp.

—Refused to hear arguments that Massachusetts regulatory authorities illegally limited the size of rate increases granted to Boston Edison Co.

—Set aside a ruling that barred Baylor University Medical Center employes from soliciting union support in the Dallas hospital's cafeteria. The justices ordered a lower court to review its decision in light of a previous high court ruling involving a hospital in Boston.

—Left intact the way Vermont collects its gift tax. The court turned down a challenge by the estate of the late Fred Pabst Jr. of Manchester Center, Vt., which claimed the tax was unconstitutional and sought refunds of nearly $397,000.

The ITT ruling came on an appeal by the company after Hart and an appeals court refused to block disclosure of SEC charges the company violated federal securities laws by not telling its stockholders about the payments.

ITT said the SEC charges involve "alleged questionable payments made . . . to foreign commercial or government buyers or their intermediaries for the purpose of facilitating sales abroad," and said disclosure could subject the firm's subsidiaries to adverse actions by foreign governments.

The Justice Department urged the court to allow disclosure, saying ITT "has not demonstrated how this harm is in any way distinguishable from the harm suffered by any company subject to governmental enforcement action, which necessarily involves an accusation of wrongdoing in a public forum."

In the age bias case, the court agreed to review a decision by the 8th U.S. Circuit Court of Appeals that Oscar Mayer hog buyer Joseph Evans could sue the company under the 1967 federal age discrimination law.

Evans claimed the company illegally forced him to retire at age 62 after being with the company for 23 years. The company said the suit should be barred until Evans exhausts his remedies in state courts.

The parking ticket case involved Chicago efforts to collect nearly $200,000 in fines from the companies for parking violations in 1966. The high court refused to review a state court ruling upholding the ordinance.

The Vermont gift tax law sets the state tax at one-third of the federal gift tax. Pabst's estate claimed that was unconstitutional because the amount of such a tax was based partly on actions prior to 1971, when the Vermont law was passed. But the court rejected that claim.

AIRCRAFT

Continued from 13th Page

line at minimal expense to itself because they require only a very small down payment.

All the planes ordered or optioned Monday would be delivered in the 1980s.

Chicago-based United, the largest airline in the world outside the Soviet Union, said it currently projects capital spending—mostly for new planes—of $504 million this year and $571 million in 1979, compared with 1977's $201 million.

But there was one minor sour note in the clatter of ringing cash registers for the aircraft builders. El Al, Israel's national airline, canceled two options to buy Airbuses because the government failed to guarantee the loans needed to buy the planes.

Los Angeles Markets

Transactions for Monday, Oct. 30.

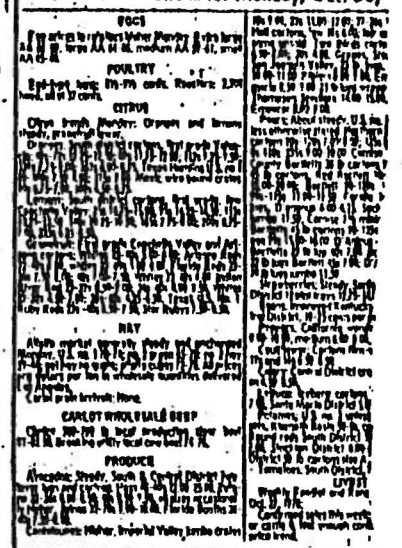

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EXHIBIT A

71 Ill.Dec. 1
17 ILDec. 1

The CITY OF CHICAGO, Appellee,

v.

HERTZ COMMERCIAL LEASING CORP., et al., Appellants.

No. 48699.

Supreme Court of Illinois.

April 3, 1978.

Rehearing Denied May 26, 1978.

City brought action against rental car owners to recover payment of fines for alleged parking ordinance violations. The Circuit Court, Cook County, Nathan Kaplan, J., entered declaratory judgment finding that rental car owners were not responsible for parking violations by vehicles registered in their names but in possession of their lessees, and city appealed. The Appellate Court, 33 Ill.App. 835, 349 N.E.2d 902, reversed and remanded with directions. Rental car owners filed petition for leave to appeal. The Supreme Court, Moran, J., held that: (1) city ordinance providing that whenever any vehicle shall have been parked in violation of any ordinance prohibiting or restricting parking, registered owner shall be prima facie responsible for such violations imposes vicarious liability on registered owner with result that proof that vehicle was in possession of another at time of violation is irrelevant to substantive offense, and (2) such construction of such ordinance results in neither a constitutional denial of due process nor creation of an irrebuttable presumption, nor denial of equal protection, nor retroactive creation of penal offense, nor creation of a conflict with various sections of Vehicle Code.

Affirmed judgment of Appellate Court and remanded to trial court.

1. Automobiles ⇐354, 355(7)

Words "prima facie" as used in city ordinance providing that whenever any vehicle shall have been parked in violation of any ordinance prohibiting or restricting parking, registered owner shall be "prima facie" responsible for such violation mean that city has established its case against a defendant by proving existence of an illegally parked vehicle and registration of that vehicle in name of defendant; after such proof, defendant, to absolve himself of responsibility, may show that vehicle was not parked illegally or that he was not registered owner of vehicle at time of alleged violation.

See publication Words and Phrases for other judicial constructions and definitions.

2. Automobiles ⇐354

Chicago ordinance providing that whenever any vehicle shall have been parked in violation of any ordinance prohibiting or restricting parking, registered owner shall be prima facie responsible for such violation imposes vicarious liability on registered owner with result that proof that vehicle was in possession of another at time of violation is irrelevant to substantive offense; words "prima facie responsible" merely clarify that defendant is not conclusively subject to penalty when city establishes its prima facie case of a violation and ownership, but that he can come forward with evidence controverting either element of case against him.

3. Constitutional Law ⇐292

Chicago parking ordinance, which imposes vicarious liability for parking violations on registered vehicle owner, who voluntarily relinquishes control of his vehicle to another whether for hire or otherwise, is not a constitutional denial of due process, inasmuch as public has right to expect that owner is in best position both to know identity and competence of person to whom he had entrusted vehicle and to deter commission of parking violations and, as to owners who rent vehicles for hire, contractual provision, such as express acknowledgement of lessee's personal liability to pay lessor on demand for all parking fines, serves to deter irresponsible commission of parking violations.

Cert. denied 78-319, 78-320
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EXHIBIT A

4. Constitutional Law ⇐256(7)

An irrebuttable presumption may be a constitutional denial of due process if it deprives a party of opportunity to prove nonexistence of an essential element of substantive offense.

5. Constitutional Law ⇐256(7)

Chicago ordinance providing that whenever any vehicle shall have been parked in violation of any ordinance prohibiting or restricting parking, registered owner shall be prima facie responsible for such violation satisfies constitutional requirement of procedural due process, inasmuch as a defendant is not precluded from rebutting either alleged parking violation or his alleged ownership of vehicle, which are the two elements of substantive offense; ordinance does not purport to incorporate presumption that owner was person who parked vehicle into substantive offense.

6. Constitutional Law ⇐250.1(2)

Chicago ordinance providing that whenever any vehicle shall have been parked in violation of any ordinance prohibiting or restricting parking registered owner shall be prima facie responsible for such violation does not violate the equal protection clause, inasmuch as ordinance does not create classification which distinguishes rental owners from ordinary vehicle owners who gratuitously lend their vehicles to friends or family members.

7. Criminal Law ⇐13.2

A criminal law must not be given retroactive effect if judicial construction of law is unexpected and indefensible by reference to law which had been expressed prior to conduct in issue.

8. Automobiles ⇐333

Rental car owners-defendants could have reasonably anticipated construction of city ordinance which imposed vicarious liability on owner of illegally parked vehicle irrespective of whether owner actually parked vehicle and thus construction did not create retroactive offense, inasmuch as ordinance on its face imposed liability on owner whenever his vehicle was illegally parked and construction of ordinance was entirely consistent with result reached in prior case as well as with recognized principles of vicarious liability for parking offenses in many other jurisdictions and one of defendants was party held vicariously liable in prior case interpreting ordinance which involved similar language.

9. Automobiles ⇐318

Construing city ordinance to impose vicarious liability for parking violations on registered vehicle owner, who voluntarily relinquishes control of his vehicle to another whether for hire or otherwise, does not place such ordinance in direct conflict with Vehicle Code section dictating that lessor-owner, after receiving notice of traffic violation and upon request, shall provide name and address of lessee, inasmuch as such section does not purport to limit liability to lessee, but, rather, to facilitate imposition of liability on either lessor or lessee. S.H.A. ch. 95½, § 11-1305(a).

10. Municipal Corporations ⇐122(2)

Statutory construction rules presume harmonious operation and effect of two laws, so that specific ordinances are presumed to be consistent with and independent of general state laws.

11. Automobiles ⇐318

Construing city ordinance to impose vicarious liability for parking violations on registered vehicle owner, who voluntarily relinquishes control of his vehicle to another whether for hire or otherwise, does not place such ordinance in direct conflict with Vehicle Code sections defining those persons who might be criminally liable for offenses committed under Code, inasmuch as it would be improper to apply a legislative policy against vicarious penal liability under Code for statutory traffic violations to municipal regulation of parking by imposition of fines, a province for which Code contemplates local autonomy. S.H.A. ch. 24, §§ 1-2-1, 1-2-1.1; ch. 95½, §§ 11-207, 11-208, 11-208(a), 16-201, 16-202.

Kirkland & Ellis, Chicago (Don H. Reuben, Lawrence Gunnels, Leo K. Wykell, and

EXHIBIT A

Shane H. Anderson, Chicago, of counsel), for appellant Hertz Commercial Leasing Corp.

Friedman & Koven, Chicago (Howard R. Koven, Phil C. Neal, Martin M. Ruken, and Lawrence M. Tempier, Chicago, of counsel), for appellants Avis Rent A Car System, Inc. and Chrysler Leasing Corp.

William R. Quinlan, Corp. Counsel, Chicago (Daniel R. Pascale and Richard F. Friedman, Asst. Corp. Counsels, Chicago, of counsel), for appellee.

MORAN, Justice.

This case involves the interpretation of a parking ordinance of the city of Chicago (City) with respect to an owner's responsibility for vehicles illegally parked by a person other than the owner. In August of 1967, the City brought three actions, consolidated in the trial court, against Hertz Commercial Leasing Corporation, Avis Rent-A-Car System, Inc., and Chrysler Leasing Corporation (defendants). In count I of its amended complaint, the City sought to recover payment of fines from the defendants as the registered owners of vehicles allegedly parked in violation of municipal ordinances during 1966. The City prayed for judgments of $88,135 against Hertz, charging 5,879 violations; $73,425 against Avis, charging 4,895 violations; and $37,395 against Chrysler, charging 2,493 violations. Count II requested a declaratory judgment, conceding that the violating vehicles were probably in the possession of lessees of the defendants at the time of the violations. The City, nevertheless, sought to have the applicable parking ordinance interpreted to preclude the defendants from raising the defense that the owner was not in possession of the vehicle at the time of the violation.

The trial court dismissed count I, finding that it did not sufficiently inform the defendants of the details of the alleged violations. The appellate court reversed and remanded count I for trial. (38 Ill.App.3d 835, 349 N.E.2d 902.) This aspect of the decision is not before us.

On count II, the trial court entered a declaratory judgment finding that the applicable parking ordinance creates a presumption that the registered owner was in possession of the vehicle at the time of the parking violation, that the presumption may be rebutted by a showing that the vehicle was not in fact in the possession of the registered owner, and, ultimately, that the defendants were not responsible for violations while the vehicles were in the possession of their lessees. A majority decision of the appellate court reversed, holding that the parking ordinance imposes vicarious liability on the registered owner and that an owner is not absolved of responsibility if, at the time of the parking violation, he had "voluntarily transfer[red] possession [of the vehicle] for hire." (38 Ill.App.3d 835, 844, 349 N.E.2d 902, 909.) We granted the defendants' petition for leave to appeal.

The adopted municipal ordinance in question provides:

"Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be *prima facie responsible* for such violation and subject to the penalty therefor." (Emphasis added.) Chicago Municipal Code, ch. 27, sec. 364(a).

We emphasize at the outset that the ordinance cannot be read to treat owners who lease vehicles for hire any differently from owners who gratuitously lend their vehicles to friends or family members. The issue, though framed differently by the parties in response to the appellate court's opinion, is whether the ordinance purports to impose liability on the owner as the presumptive driver of the vehicle at the time of the parking violation, or whether it purports to impose vicarious liability on the owner, regardless of who actually parked the vehicle. If the former, then an owner—any owner, not merely an owner who leases vehicles for hire—may absolve himself of liability by showing that he was not the person who parked the vehicle alleged to have been in violation of a parking ordinance.

EXHIBIT A

Parking ordinances similar to, and almost identical to, the above cited ordinance have been examined by courts throughout the country over the past 50 years. The controversy almost invariably emerges as a concerted attempt by the courts to discern the intention of the local authority in regulating parking. Some local authorities seek to impose liability ultimately on the driver and do so by summoning the registered owner to court, at which time the owner is presumed to have parked the vehicle. The owner may successfully rebut this presumption, in which case the local authorities are thrust into the dilemma of either securing personal jurisdiction over the driver, or dismissing the case.[1] Other local authorities seek to impose liability directly on the registered owner, in which case the owner is held vicariously responsible for the violation. In either case, the person subject to the penalty is strictly liable, in the legal sense that the owner or driver need not have intended to commit the offense to be responsible for the violation.

[1] The defendants vigorously argue that the plain meaning of the words "*prima facie* responsible" in the Chicago ordinance indicates that it was the municipality's clear intention to allow the registered owner to rebut the presumption that the vehicle was parked by the owner. The issue cannot be so facilely resolved. The words "*prima facie*" mean nothing more than "at first sight" or "so far as can be judged from the first disclosure" or "presumably" or "without more." (Black's Law Dictionary 1353 (4th ed. 1957); *Iowa City* v. *Nolan* (Iowa 1976), 239 N.W.2d 102, 105.) In its statutory context, the words "*prima facie*" mean that the City has established its case against the registered owner by proving (1) the existence of an illegally parked vehicle, and (2) registration of that vehicle in the name of the defendant. Such proof constitutes a *prima facie* case against the defendant owner. There is no indication in the ordinance that the owner, to be presumed responsible for the violation, must be presumed to have been the person who parked the vehicle. In practice, the defendant, to absolve himself of responsibility, may show that the vehicle was not parked illegally or that he was not the registered owner of the vehicle at the time of the alleged violation. The defenses are limited, but the plain meaning of the ordinance admits of no more.

A predecessor of the ordinance in question provided:

"Whenever any vehicle shall have been parked in violation of any of the provisions of this chapter prohibiting or restricting parking, the person in whose name such vehicle is registered shall be subject to the penalty for such violation." (Chicago Municipal Code, ch. 27, sec. 34.-1.)

This unambiguous language imposes both strict and vicarious liability on the owner whenever his vehicle is illegally parked, irrespective of whether the owner was the person who parked the vehicle.

The defendants assert that, because the present ordinance added the words "*prima facie* responsible for such violation," the City deliberately chose to incorporate into the ordinance the presumption that proof of ownership is *prima facie* evidence that the vehicle was parked by the owner. We interpret the development of the ordinance differently.

1. In 1968, the city of New York passed an ordinance which provided that an owner who rents or leases vehicles shall be jointly and severally liable with the customer or lessee for parking violations. A report which accompanied the ordinance stated: "This proposed local law, as amended, would make auto lessors jointly and severally liable with the lessees of the vehicle for violation abuses whereby scofflaws may avoid the payment of traffic fines. At present, New York City is losing millions of dollars annually in unpaid parking tickets issued against rented vehicles. Invariably, auto lessors plead in Traffic Court that the customer and not the auto rental firm, is responsible for the traffic tickets. The court traditionally will either lay over such cases, adding to the ever-increasing backlog, or else drop the matter as a general practice due to the difficulties in securing personal jurisdiction over the actual violator." *Kinney Car Corp. v. City of New York* (1968), 56 Misc.2d 363, 295 N.Y.S.2d 284, 290, *aff'd* (1971), 28 N.Y.2d 741, 321 N.Y.S.2d 121, 269 N.E.2d 529

210

EXHIBIT A

In [illegible] 319 Ill.App. [illegible] court [illegible] ordinance [illegible] whether an owner could be subject to the penalty for a parking violation which he did not commit or authorize. The trial court had found that an ordinance which "purports to make the owner of a car liable whenever the car is illegally parked * * * is completely without basis in law." (319 Ill.App. 623, 627, 49 N.E.2d 803.) The appellate court reversed, holding that the City established a *prima facie* case against the owner by proving that the defendant owned the car that was parked within 15 feet of a fire hydrant. The defendant had offered no evidence to rebut the *prima facie* case. In its opinion, the court cited cases from other jurisdictions which involved ordinances, all of which attached liability to the owner, but which differed in that they found the owner either liable as the owner or as the presumptive driver at the time of the violation. Because, in *Crane*, the owner did not introduce any evidence to rebut the *prima facie* case, the court was not called upon to determine if that Chicago ordinance imposed liability on the owner as owner or as the presumptive driver. It did, however, emphasize that the City had "made out a *prima facie* case." (*City of Chicago v. Crane* (1943), 319 Ill.App. 623, 631, 49 N.E.2d 802.) We can assume only that the City amended its ordinance to indicate, as intimated in the *Crane* decision, that proof of a violation and of registered ownership establishes the City's *prima facie* case against a defendant and that the defendant may rebut either element of the *prima facie* case. See K. Lavin, *Ownership as Evidence of Responsibility for Parking Violation*, 41 J.Crim.L. & Criminology 61, 62 (1950).

Our own research reveals four cases from other jurisdictions which interpret the words "*prima facie* responsible" in precisely the context presented in this case. In *City of Columbus v. Webster* (1960), 170 Ohio St. 327, [illegible], 164 N.E.2d 734, 735, the applicable ordinance read, in pertinent part:

"'If any vehicle is found * * * in violation of any * * * ordinance of this city, regulating the stopping or standing or parking of vehicles, and the identity of the driver cannot be determined, the owner, or person in whose name such vehicle is registered shall be held *prima facie responsible for such violation.*'" (Emphasis added.)

Ohio's supreme court, in holding the owner vicariously liable for the parking violation, expressly rejected the interpretation that the ordinance made "proof of illegal parking and registered ownership *prima facie* evidence that the vehicle was parked by the owner." It stated that the ordinance "merely places *prima facie* responsibility for the illegal parking of a motor vehicle on the public streets upon the owner of such vehicle. It thus places the responsibility upon the person who is in the best position to know the identity of the operator." *City of Columbus v. Webster* (1960), 170 Ohio St. 327, 331, 164 N.E.2d 734, 737.

The Supreme Court of Missouri reached the same conclusion in interpreting a Kansas City ordinance which provided that "the owner or person in whose name such vehicle is registered in the records of any city, county or state shall be held *prima facie responsible for such violation*, if the driver thereof is not present." (Emphasis added.) (499 S.W.2d 449, 451.) The court concluded that "[t]he words '*prima facie*', as used in this ordinance, do not mean that the owner is presumed to be the driver," and held that the ordinance "places responsibility upon the *owner* without any requirement that he be found to have been the *driver*, whether that finding is premised on a presumption or direct evidence." (Emphasis in original.) (499 S.W.2d 449, 452.) The court further noted that an ordinance "imposing liability for the parking violation fine on the owner as well as the driver may very well result in fewer violations and thereby assist in the reduction of traffic problems." (*City of Kansas City v. Hertz Corp.* (Mo.1973), 499 S.W.2d 449, 452–53.) We note that the case provided an identical factual context to this case, in that a rental company had leased its car to a person whose identity was known by the court and who assumedly committed the violation.

EXHIBIT A

In *Iowa City v. Nolan* (Iowa [illegible] N.W.2d 102, 103, the applicable ordinance provided similarly:

"If any vehicle is found stopped, standing or parking in any manner violative of the provisions of [applicable ordinances] and the identity of the operator cannot be determined, the owner or person or corporation in whose name said vehicle is registered shall be held *prima facie responsible for said violation.*" (Emphasis in original.)

Iowa's supreme court, citing the *Kansas City* case, held that, under the ordinance, a registered owner may be held vicariously liable for his illegally parked vehicle.

In a distinguishable case, an intermediate appellate court did reach a different conclusion. In *City of Portland v. Kirk* (1974), 16 Or.App. 329, 331 n. 1, 518 P.2d 665, 666 n. 1, the ordinance provided that "[t]he registered owner of the vehicle is *prima facie responsible for the violation* charged by the parking citation." (Emphasis added.) The court concluded that the ordinance established a permissive inference that the owner of the vehicle was the party who parked the vehicle. We note, however, that the Portland ordinance permitted imprisonment for up to six months for parking offenses. Although the court did not imply that it reached its conclusion in light of the possibility that an owner could be subject not only to fine but to imprisonment, it is recognized that vicarious liability should not be extended as readily to crimes which may subject a defendant to imprisonment. W. LaFave & A. Scott, Criminal Law sec. 32, at 221 (1972); F. Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv.L.Rev 689, 723 (1930).

[2] We are in accord with the results reached by the supreme courts of Ohio, Missouri and Iowa. We believe that the City intended, under both the previous and the present ordinances, to subject the owner of an illegally parked vehicle to the penalty for such parking violation. The incorporation of the words "*prima facie* responsible" merely clarified that the defendant is not conclusively subject to penalty once the City establishes its *prima facie* case of a violation and ownership, but that he can come forward with evidence controverting either element of the case against him. Accordingly, we hold that the Chicago parking ordinance imposes vicarious liability on the registered owner and that proof that the vehicle was in the possession of another at the time of the violation is irrelevant to the substantive offense.

[3] A question then arises as to whether the imposition of vicarious liability on an owner who rents a vehicle for hire, thereby voluntarily relinquishing the possession and control of the vehicle for the term of the lease agreement, is a constitutional denial of due process. The United States Supreme Court had occasion to consider the extent to which liability could be imposed on a vicarious party without depriving the party of its constitutional right to due process in *Van Oster v. Kansas* (1926), 272 U.S. 465, 47 S.Ct. 133, 71 L.Ed. 354. There a Kansas statute declared that a vehicle used in the illegal transportation of liquor was a common nuisance and subject to forfeiture. An owner voluntarily entrusted his vehicle to another who unlawfully used the vehicle without the owner's knowledge. In affirming the constitutionality of the statutory forfeiture procedure, the court stated:

"It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has intrusted it. * * * So here the legislature, to effect a purpose clearly within its power, has adopted a device consonant with recognized principles and therefore within the limits of due process." (*Van Oster v. Kansas* (1926), 272 U.S. 465, 467–68, 47 S.Ct. 133, 134, 71 L.Ed. 354, 355.)

Since that time, the United States Supreme Court has approved vicarious liability for violations which subject the vicarious party to criminal as well as civil liability. (*United States v. Dotterweich* (1943), 320 U.S. 277, 64 S.Ct. 134, 88 L.Ed. 48; *United States v. Park* (1975), 421 U.S. 658, 44 L.Ed.2d 489, 95 S.Ct. 1903.) Vicarious criminal liability has

EXHIBIT A

been found within the limits of due process to the extent that the person who is unaware of the wrongdoing stands "in responsible relation to a public danger." (*United States v. Dotterweich* (1943), 320 U.S. 277, 281, 64 S.Ct. 134, 136, 88 L.Ed. 48, 51.) The responsible relation of an owner of a vehicle to its operation and use is a natural one. The public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle and to deter the commission of parking violations. As one court has stated, "The knowledge of the ordinary user of another's car that the owner who permitted its use would have to respond to a summons and submit to a trial * * * would in all likelihood be a strong deterrent * * *." *Kinney Car Corp. v. City of New York* (1968), 58 Misc.2d 365, 295 N.Y.S.2d 288, 292, *aff'd* (1971), 28 N.Y.2d 741, 321 N.Y.S.2d 121, 269 N.E.2d 829.

As to owners who rent vehicles for hire, contractual provisions—such as an express acknowledgment of personal liability to pay the lessor on demand for all parking fines and court costs or the requirement of security deposits—would also serve to deter the irresponsible commission of parking violations. Therefore, the imposition of vicarious liability on an owner who voluntarily relinquishes control of his vehicle to another is constitutionally permissible. Accord, *Commonwealth v. Minicost Car Rental, Inc.* (1968), 354 Mass. 746, 242 N.E.2d 411.

We do not have occasion, under the facts of the instant case, to decide whether a vehicle owner can be held vicariously liable for a violation committed by a person, such as a thief, to whom the owner may have no "responsible relation" and no means of deterring such violation.

In an attempt to respond to the appellate court's opinion, the defendants rely on three distinct constitutional arguments based upon (1) the creation of an irrebuttable presumption, (2) the denial of equal protection, and (3) the retroactive creation of a penal offense.

[4, 5] An irrebuttable presumption may be a constitutional denial of due process if it deprives a party of the opportunity to prove the nonexistence of an essential element of the substantive offense. The defendants' position assumes that an essential element of the ordinance is the presumption that the owner was the person who parked the vehicle. As we have previously stated, the ordinance does not purport to incorporate that presumption into the substantive offense. The two elements of the substantive offense are rebuttable by a showing that a violation was not committed or that the defendant was not the owner at the time of the violation. The constitutional requirement of procedural due process is satisfied because the defendant is not precluded from rebutting either element of the substantive offense.

[6] The defendants' contention that the ordinance denies them equal protection under the law must also fail. As we emphasized at the outset, we do not interpret the ordinance to impose vicarious liability only upon owners who rent their vehicles for hire. Because the ordinance does not create a classification which distinguishes rental owners from ordinary vehicle owners, no equal protection issue is involved.

[7, 8] Similarly, we find no merit to the defendants' argument that by construing the ordinance to impose vicarious liability on vehicle owners we have retroactively created an offense which could not have been reasonably ascertained from a reading of the ordinance. The fundamental principle is that a criminal law must not be given retroactive effect if judicial construction of the law is " 'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.' " (*Bouie v. Columbia* (1964), 378 U.S. 347, 354, 84 S.Ct. 1697, 1703, 12 L.Ed.2d 894, 900.) On its face, the ordinance imposes liability on an owner whenever his vehicle is illegally parked. Our construction of the ordinance is entirely consistent with the result reached in *City of Chicago v. Crane* (1943), 319 Ill.App. 623, 49 N.E.2d 802, as well as

EXHIBIT A

with recognized principles of vicarious liability for parking offenses in many other jurisdictions. Supreme courts in three neighboring jurisdictions have specifically interpreted the words "*prima facie* responsible" to have the meaning which we ascribe to them. Moreover, one of the defendants here was the party held vicariously liable in one case interpreting an ordinance which involved similar language. (*City of Kansas City v. Hertz Corp.* (Mo. 1973), 499 S.W.2d 449.) We therefore, conclude that the defendants could have reasonably anticipated a construction of the ordinance which imposes vicarious liability on the owner of an illegally parked vehicle irrespective of whether the owner actually parked the vehicle.

The defendants also contend that construing the ordinance to impose vicarious liability on the owner places it in direct conflict with sections 11–1305(a), 16–201, and 16–202 of the Illinois Vehicle Code (Ill. Rev.Stat.1973, ch. 95½, pars. 11–1305(a), 16–201, 16–202), which, in 1966, were part of the Uniform Act Regulating Traffic on Highways (Ill.Rev.Stat.1965, ch. 95½, pars. 188a, 236, 237). Section 11–1305(a) applies specifically to vehicle owners who lease their vehicles to others, and declares that such owners, "after receiving written notice of a violation of this Article or a parking regulation of a local authority involving such vehicle, shall upon request provide such police officers as have authority of the offense, and the court having jurisdiction thereof, with a written statement of the name and address of the lessee at the time of such offense and the identifying number upon the registration plates of such vehicle." (Ill.Rev.Stat.1973, ch. 95½, par. 11–1305(a).) Sections 16–201 and 16–202 state, in essence, that a person who commits a violation of the Code or an owner or other person who directs or knowingly permits a vehicle to be operated on a highway in a manner contrary to law is guilty of an offense under the Code. (Ill.Rev.Stat.1973, ch. 95½, pars. 16–201, 16–202.) The defendants argue that the ordinance is inconsistent with section 11–1305(a) in that the statutory provision contemplates that lessor-owners be absolved of liability for parking violations by providing the names and addresses of the lessees who possessed the vehicles at the time of the offenses. They argue that the ordinance is also inconsistent with sections 16–201 and 16–202, in that those statutory provisions, by exclusion, contemplate that vehicle owners cannot be found guilty of vehicle-related offenses merely because they own the vehicle at the time of an offense.

[9] Section 11–1305(a) is wholly consistent with a municipal ordinance which imposes vicarious liability on any owner of a vehicle. The section is absolutely silent regarding allocation of liability. It dictates only that, *upon request*, a vehicle lessor shall provide the name and address of the lessee. We find no basis for defendants' assertion that the section contemplates that lessors-owners be absolved of liability for traffic violations by providing the name and address of the lessee who possessed the vehicle at the time of the offense. On the contrary, the section does not purport to limit liability to the lessee, but, rather, to facilitate the imposition of liability on either the lessor or the lessee. A municipality which permits liability to be imposed only upon the person who parked the vehicle might request the information in an effort to pursue the lessee. Another municipality, which provides for the imposition of liability directly on the owner as well as on the person who parked the vehicle, might invoke this section in an effort to attach liability on either the lessor or the lessee. The intention of section 11–1305(a) is to leave the decision of the allocation of liability to those law-enforcement officials who have authority over the prosecution of the specific offenses. The section is not in conflict with the ordinance in question and certainly does not repeal it by implication.

Sections 16–201 and 16–202 define those persons who might be criminally liable for offenses committed under the Illinois Vehicle Code. The sections do not expressly exclude vicarious liability as a basis for holding a person responsible for vehicle-related offenses. The defendants contend,

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however, that the sections clearly evince a legislative policy which precludes the imposition of vicarious penal liability. Assuming *arguendo* that such a legislative policy exists, we must still confront the narrower question of whether the imposition of vicarious liability for municipal parking violations is inconsistent with a legislative policy which pertains to penal offenses. To answer that, we must examine the statutory scheme embraced by the Illinois Vehicle Code.

Section 11–207 of the Code (Ill.Rev.Stat. 1975, ch. 95½, par. 11–207), like its predecessor (Ill.Rev.Stat.1965, ch. 95½, par. 122), provides for the uniform enforcement of traffic laws throughout the State and in all municipalities therein. It also provides that no local authority shall enact or enforce any ordinance in conflict with the provisions of the Code unless expressly authorized in the Code, but that local authorities may adopt additional traffic regulations which are not in conflict with the Code. (Ill.Rev.Stat. 1975, ch. 95½, par. 11–207.) Section 11–208 of the Code (formerly section 26 of the Uniform Act Regulating Traffic on Highways (Ill.Rev.Stat.1965, ch. 95½, par. 123)) authorizes local authorities to enact and enforce ordinances regulating, among other things, the parking of vehicles. It reads, in pertinent part:

> "(a) The provisions of this Chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:
>
> (1) Regulating the standing or parking of vehicles * * *." Ill.Rev.Stat. 1975, ch. 95½, par. 11–208(a).

Section 11–207 and its predecessor have been interpreted on numerous occasions by this court and by the appellate courts. The section has been consistently construed to allow local authorities to adopt traffic ordinances to the extent that they are not inconsistent with State law. The section does not attempt to preempt the field to the exclusion of local authorities. (*Ayres v. City of Chicago* (1909), 239 Ill. 237, 87 N.E. 1073; *City of Rockford v. Floyd* (1968), 104 Ill.App.2d 161, 169–70, 243 N.E.2d 837.) Section 11–208 underscores the State's policy of allowing local authorities to adopt traffic ordinances by specifying areas in which local autonomy will be preserved. It is no coincidence that the Illinois Vehicle Code does not purport to extensively regulate parking. The purpose of this statutory scheme is apparent. Although the Code expresses the general preference for uniform traffic regulations throughout the State, it also contemplates limited areas, such as the regulation of parking, for which statewide uniformity is wisely sacrificed in deference to the problems endemic to the individual municipalities.

[10, 11] This statutory scheme of separating municipal traffic violations from statutory traffic violations is reinforced by statutes indicating that the punishment of municipal traffic offenders is limited to fines (Ill.Rev.Stat.1975, ch. 24, para. 1–2–1, 1–2–1.1) and by regarding such violations as "quasi-criminal," endowed with many of the aspects of noncriminal cases, *e. g.*, proof by a preponderance of evidence rather than proof beyond a reasonable doubt. (*City of Chicago v. Joyce* (1967), 38 Ill.2d 368, 372–73, 232 N.E.2d 289; *Village of Maywood v. Houston* (1956), 10 Ill.2d 117, 119, 139 N.E.2d 233.) In this regard, we have held that, in the absence of clear statutory language expressing an intention that State law subsume those areas of local regulation, we will not construe local ordinances to be in conflict with State law. (*City of Chicago v. Joyce* (1967), 38 Ill.2d 368, 373, 232 N.E.2d 289.) Moreover, recognized rules of statutory construction presume the harmonious operation and effect of two laws, so that specific ordinances are presumed to be consistent with and independent of general State laws. (1A Sutherland, Statutes and Statutory Construction secs. 23.10, 23.18, 30.05 (4th ed. 1972).) We do not read sections 16–201 and 16–202 to impliedly establish a policy that an owner cannot be vicariously liable for municipal parking violations. The sections apply only to criminal violations of the Illinois Vehicle Code. As

EXHIBIT A

we noted earlier, it is understandable that a legislative policy would preclude the imposition of vicarious penal liability under the Vehicle Code because statutory traffic violations, unlike municipal traffic violations, are criminal in nature and may subject a defendant to severe punishment, including imprisonment. In light of this bifurcated statutory scheme, we feel that it would be improper to apply a legislative policy against vicarious penal liability to the municipal regulation of parking, a province for which the Vehicle Code contemplates local autonomy. Accord, *Kinney Car Corp. v. City of New York* (1968), 58 Misc.2d 365, 295 N.Y.S.2d 288, 292-93, *aff'd* (1971), 28 N.Y.2d 741, 321 N.Y.S.2d 121, 269 N.E.2d 829.

We agree with the results reached by the appellate court, but do so for the reasons stated above. We, therefore, affirm the judgment of the appellate court and remand to the trial court for proceedings consistent with this opinion.

Affirmed and remanded.

71 Ill.2d 318
17 Ill.Dec. 10

Billie GILLESPIE, Appellant,

v.

R. D. WERNER CO., INC., Appellee.

No. 49214.

Supreme Court of Illinois.

April 3, 1978.

Rehearing Denied May 26, 1978.

Electrician brought action to recover against manufacturer and lessor of aluminum five-way combination ladder for injuries sustained during fall from ladder while it was being used as a stepladder, on theories of strict liability in tort, breach of implied warranty of merchantability and negligence. The Circuit Court, Madison County, Victor J. Mosele, J., entered judgment on verdict in favor of electrician as to manufacturer but against electrician as to lessor, and denied manufacturer's motion for judgment notwithstanding the verdict, and the manufacturer appealed. The Appellate Court, Fifth District, 43 Ill.App.3d 947, 2 Ill.Dec. 760, 357 N.E.2d 1203, reversed and electrician was granted leave to appeal. The Supreme Court, Clark, J., held that there was sufficient evidence to establish a prima facie case of strict liability in tort.

Appellate Court reversed; Circuit Court affirmed.

1. Products Liability ⇐83

In action brought by electrician to recover against manufacturer and lessor of aluminum five-way combination ladder for injuries sustained in fall from ladder, evidence was sufficient to establish prima facie case of strict liability in tort.

2. Products Liability ⇐75

For manufacturer to be liable for injuries resulting from use of its product, plaintiffs must prove that their injury or damage resulted from a condition of the product, that the condition was an unreasonably dangerous one and that the condition existed at the time product left manufacturer's control.

3. Products Liability ⇐83

In action against manufacturer to recover damages for injuries resulting from fall due to collapse of aluminum ladder, evidence sustained jury finding that there was an absence of abnormal use and that the ladder failed to perform in the manner reasonably to be expected in light of its intended function.

4. Products Liability ⇐54

For manufacturer to be liable for injuries sustained in fall due to collapse of aluminum ladder, it was not necessary that defect manifest itself before ladder left manufacturer's control.