

AUTHORITY FOR MUNICIPAL PROSECUTORS

Per Vill. of Palatine v. Regard, if the municipality adopts the Illinois Vehicle Code, then the municipal prosecutor may prosecute without specific permission or authority from the State's Attorney. This is because the municipal prosecutor is prosecuting an ordinance violation rather than a State charge.

The Illinois Vehicle Code provides: "The corporate authorities of a municipality may adopt all or any portion of the Illinois Vehicle Code by reference." 625 ILCS 5/20-204.

625 ILCS 5/16-102 merely sets forth who may prosecute violations of the Illinois Vehicle Code.

If the violations are violations of the municipality's Code of Ordinances, the violations can be prosecuted by the village's or city's attorney.

Vill. of Palatine v. Regard, 136 Ill. 2d 503, 557 N.E.2d 898, (1990)

Where they have chosen to delegate authority to prosecute Vehicle Code violations to a municipality, it is probable the State's Attorneys of the various counties do so in more than one way. Some may give such permission on a case by case basis; others do so by a general letter of permission to the municipality. (See, *City of Decatur v. Curry* (1976), 39 Ill.App.3d 799, 800, 804, 350 N.E.2d 816.) To require, as urged by defendant, that the municipal attorney offer proof in the record of each case that prosecutorial permission has been given by the State's Attorney appears to be an unreasonable and unnecessary burden to impose on the municipal attorneys and State's Attorneys and would also unduly burden the record keeping responsibilities of the circuit clerks. An analogous argument to that offered by defendant might be to require that the record establish that the prosecutor and trial judge hold their respective offices.

People v. Wiatr, 119 Ill. App. 3d 468, 472-73, 456 N.E.2d 686, 690 (1983)

Arrests--Investigations--Prosecutions.

(a) The Illinois State Police shall patrol the public highways and make arrests for violation of the provisions of this Act.

(b) The Secretary of State, through the investigators provided for in this Act shall investigate and report violations of the provisions of this Act in relation to the equipment and operation of vehicles as provided for in Section 2-115 and for such purposes these investigators have and may exercise throughout the State all of the powers of police officers.

(c) The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney.

(d) The State's Attorney of the county in which the violation occurs may not grant to the municipal attorney permission to prosecute if the offense charged is a felony under Section 11-501 of this Code. The municipality may, however, charge an offender with a municipal misdemeanor offense if the State's Attorney rejects or denies felony charges for the conduct that comprises the charge.

625 Ill. Comp. Stat. Ann. 5/16-102

We note that section 16–102(c) of the Illinois Vehicle Code (625 ILCS 5/16–102(c) (West 2008)) allows the State's Attorney to authorize with written permission a municipality's attorney to prosecute a violation. Section 16–102(c), however, does not divest the State's Attorney of his or her right to appear in the case even when the municipal prosecutor has been granted written permission to try the case. Thus, we conclude that the assistant State's Attorney, by stepping up when the Village prosecutor was not present, was representing the Village's interests such that service on the assistant State's Attorney was sufficient to stand as service on the Village's prosecutor. Accordingly, we reject the Village's argument and hold that the trial court erred in accepting this argument.

People v. Kohler, 2012 IL App (2d) 100513, ¶ 32, 968 N.E.2d 1132, 1140
