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**MUNICIPAL ORDINANCE - IOWA**

## Livingood v. City of Des Moines

**Supreme Court of Iowa - June 9, 2023 - N.W.2d - 2023 WL 3906367**

Vehicle owners brought suit to challenge city's use of state income offset program to collect automated traffic citation penalties not reduced to judgment in municipal infraction proceedings.

The District Court denied owners' motion for summary judgment and granted city's motion for summary judgment. Owners appealed.

The Supreme Court held that:

- City's use of state income tax refunds to offset automated traffic citation penalties did not constitute "taking";
- Statute governing municipal infractions did not preempt ordinances allowing city to use state's income offset program to collect automated traffic citation penalties not reduced to judgment in municipal infraction proceeding;
- Damages were not available for vehicle owners "claim" of preemption;
- Two owners were not entitled to declaratory and injunctive relief;
- City's attempts to enforce civil penalties for automated traffic citations did not violate vehicle owners' due process rights; and
- Penalties that city assessed and referred to income offset program were not legally enforceable.

City's use of state income tax refunds to offset automated traffic citation penalties did not constitute "taking"; city was not taking property for public use, but was instead collecting penalties allegedly owed for violation of its laws.

Statute governing municipal infractions did not preempt ordinances allowing city to use state's income offset program to collect automated traffic citation penalties not reduced to judgment in municipal infraction proceeding; ordinance provided that recipient of notice of violation could voluntarily pay penalty, ordinance provided that recipient of notice could request that city proceed with municipal infraction proceeding, and ordinance stated that city would file municipal infraction if recipient of notice did not pay citation and did not request that city file municipal infraction.

Statute governing municipal infractions preempted city ordinance providing that if vehicle owner did not request administrative hearing or municipal infraction proceeding following issuance of automated traffic citation, notice of violation would be deemed a debt subject to placement in city's debt offset program; ordinance's declaration that civil penalty was a debt due, owing, and payable without municipal infraction judgment was directly contrary to and irreconcilable with statute.

Vehicle owner was entitled to declaratory and injunctive relief following successful claim that statute governing municipal infractions preempted city ordinance deeming a notice of violation a debt subject to placement in city's offset program following issuance of automated traffic citation; owner would be entitled to assert preemption defense as to any claim of offset.

City’s attempts to enforce civil penalties for automated traffic citations did not violate vehicle owners’ due process rights, where owners were provided with notices of violation and afforded opportunity to request hearing, owners were provided notice of city’s intent to transfer matter to income offset program and opportunity to challenge transfer, owners were provided with notices of intent to offset, and owners failed to seek hearings in response to each of those notices.

Penalties that city assessed for automated traffic citations and referred to income offset program were not legally enforceable, where city failed to file municipal infraction proceeding as required by its own ordinance and instead proceeded to extrajudicial collection efforts.

Remand of vehicle owners’ claims against city for unjust enrichment, arising from city’s attempts to enforce civil penalties for automated traffic citations, was warranted for consideration of whether there were any defenses to claim of unjust enrichment and whether there were any disputed issues of material fact necessitating trial on that claim.

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