



All-America City



2005 ANNUAL REPORT

**CITY
OF
WILLMAR**

Willmar



All-America City



2005

City Attorney

City Clerk-Treasurer

Community Ed & Recreation

Cultural Liaison

Finance

Fire

Planning & Development Services

Police

Public Works



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OF

WILLMAR CITY ATTORNEY

MAYOR AND CITY COUNCIL MEMBERS:

The City Attorney's Office works on legal matters that fall into two general categories, being civil matters and criminal matters. The criminal matters take up considerably more than 50% of the time of the City Attorney's Office. The criminal matters will be discussed first. The City Attorney's Office is responsible for prosecuting all adults who commit petty misdemeanors, misdemeanors, and many of the gross misdemeanors that occur in the City limits. In addition, a number of juvenile traffic offenses are also prosecuted by the City Attorney if they occur in the City limits.

SPECIFIC CRIMINAL CATEGORIES

Petty Misdemeanors

Petty misdemeanors are not considered a crime, but are considered a civil offense. There is no jail time for a petty misdemeanor offense and the maximum fine on a petty misdemeanor is \$300. The most common petty misdemeanors are minor traffic offenses and shoplifting. Since the only penalty is a fine and no jail time, the defendant is not entitled to a public defender. In addition, the defendant is not entitled to a jury trial. If a not guilty plea is entered, the matter is set for a bench trial. At the time of arraignment, the City Attorney has the right to designate a misdemeanor as a petty misdemeanor with the defendant's consent and the judge's approval. Petty misdemeanors are initiated by the Police Department issuing a tab charge. During 2005, court trials were scheduled for a total of 35 petty misdemeanor offenses. This compares to 2004 when there were 32 and to 2003 when there were 35 court trials for petty misdemeanors.

Misdemeanors

The maximum fine for a misdemeanor is \$1,000 and the maximum jail time for a misdemeanor is 90 days. Defendants are entitled to a public defender if they are indigent, and are entitled to a jury trial. Most defendants pleading not guilty request a jury trial. If a defendant pleads guilty at his/her first court appearance, the City Attorney's Office does not have a file on the matter and has no involvement in the case unless the defendant doesn't fulfill his sentence, in which case the City Attorney prosecutes the probation violation or unless there is a victim, in which case, victim information is sent out. If a defendant pleads not guilty at his or her first appearance,

the City Attorney's Office opens a file on the case if a file has not been previously opened. A file will be opened prior to arraignment if the defendant or the defendant's attorney contacts the City Attorney's Office prior to the arraignment and requests reports. Opening a file involves obtaining the police report; reviewing the police report; requesting further information (when necessary) from the arresting officer; furnishing reports and evidentiary notices to the defense attorney; ordering subpoenas on lay witnesses; and reviewing the statute involved and doing legal research, as necessary, on any unusual or complicated issues. An average of 1 to 1½ hours, exclusive of court time, is spent on each jury trial file. Most of the cases end up being disposed of without a jury trial. The City Attorney is at arraignment court each week to discuss the cases with defendants or the attorneys for defendants who are represented. Some of the cases are disposed of at arraignment court. Arraignment court continues on Wednesdays for all City criminal cases. All misdemeanor cases are now being set for pretrial conferences and accordingly, a minimum of one court appearance is required of the City Attorney's Office. In 2005, the City Attorney's Office opened 412 misdemeanor jury trial case files. This compares to 326 opened in 2004 and 356 opened in 2003. The most common misdemeanor offenses are:

- Assault (domestic and otherwise) (59) *[59 in 2004; 63 in 2003; 44 in 2002];*
- Underage consumption (9) *[18 in 2004; 20 in 2003; 29 in 2002];*
- No Insurance (50) *[41 in 2004; 40 in 2003; 32 in 2002];*
- Driving after Revocation (42) *[29 in 2004; 31 in 2003; 27 in 2002];*
- Theft (48) *[42 in 2004; 25 in 2003; 35 in 2002];*
- First offense DWI (22) *[24 in 2004; 30 in 2003; 28 in 2002];*
- Order for Protection/Harassment Order violations (19) *[23 in 2004; 21 in 2003; 22 in 2002];*
- Driving after Suspension/Cancellation (20) *[30 in 2004; 45 in 2003; 21 in 2002];*
- Disorderly Conduct (24) *[6 in 2004; 14 in 2003; 11 in 2002];*
- Criminal Damage to Property (26) *[15 in 2004; 9 in 2003; 4 in 2002];*
- School Bus Arm Violation (3) *[5 in 2004; 4 in 2003]*
- False Name/Obstructing Legal Process (20) *[11 in 2004]*
- Zoning Violations (4)

Gross Misdemeanors

Gross misdemeanors are crimes with a maximum penalty of \$3,000.00 and one year in jail. The rules of criminal procedure require a formal complaint to be issued in all gross misdemeanor cases. A tab charge from an officer is allowed at the first appearance in District Court for gross misdemeanor DWI cases but a formal complaint must be filed by the time of the second court appearance. For gross misdemeanors other than DWIs, the formal complaint must be prepared prior to the first court appearance. A formal complaint is a multi-page document prepared by the City Attorney's Office that sets out the facts supporting the alleged charges, specifically enumerating the charges, and maximum penalties and statutory citations. The City Attorney's Office goes through the same process with gross misdemeanor files as with misdemeanor jury files with the additional work of preparing the formal complaint. If a defendant is being held in custody, the formal complaint must be prepared within 36 hours. During 2005, the City Attorney's Office prepared 107 gross misdemeanor long-form complaints. This compares to 109 long-form complaints in 2004, 84 in 2003 and 89 in 2002. Virtually all gross misdemeanor cases are scheduled for jury trial and a pretrial conference. Most are disposed of without a jury trial actually being conducted. The most common gross misdemeanor charges are:

Aggravated DWI (53) *[63 in 2004; 52 in 2003; 71 in 2002]*;

Driving After Cancellation—IPS (17) *[13 in 2004; 17 in 2003; 7 in 2002]*;

Theft (more than \$250.00 and less than \$500.00 in value) (6) *[4 in 2004; 5 in 2003; 7 in 2002]*

School Bus Stop Arm Violations (30) *[24 in 2004; 8 in 2003; 2 in 2002]*;

No Insurance (1) *[5 in 2004; 7 in 2003; 3 in 2002]*.

To make room for felony DWIs, the nomenclature for gross misdemeanor DWIs has changed. The second offense DWI is a third degree DWI. The third offense DWI is a second degree DWI. Felony DWI is first degree DWI. A misdemeanor DWI is a fourth degree DWI.

Additional Court Hearings

Mondays, Tuesdays and Thursdays are City of Willmar criminal court days for the year 2005, with pretrials being scheduled on Tuesdays for miscellaneous criminal matters and Thursdays for gross misdemeanor criminal matters. Wednesday morning of each week is arraignment court for petty misdemeanor and misdemeanor cases. Appearances have increased significantly with 50-60 appearances on Wednesday being common. Gross misdemeanor appearances are scheduled every day of the week on an as needed basis. Bench trials, pretrials and evidentiary hearings are no longer scheduled at a set time on a set day, but are set when the court calendar allows. During 2005, the City Attorney's Office was scheduled for 686 court hearings, in addition to the jury trials that were scheduled. This compares to 741 in 2004; 604 in 2003 and 627 in 2002. These hearings consisted of the following:

- Bench Trials;
- Probation Violation Hearings;
- Pretrial Conferences;
- Evidentiary Hearings;
- Omnibus Hearings;
- Motion Hearings;
- Plea Hearings; and
- Sentencings.

Police Investigations

When the Police Department investigates a complaint and the investigating officer does not know whether charges should be issued, the police investigation is brought to the City Attorney's Office for review. During 2005, 62 police investigations were brought over for review. This is up from 55 in 2004. Of these, prosecution was denied on 40 files, 8 were accepted for prosecution, and the balance were returned to the Police Department for further investigation and evidence.

Victim Notifications

A significant amount of time is being spent contacting crime victims. As soon as the City Attorney's Office learns of a crime with a victim, notification is sent to the victim as to their rights. Also included with the notice is a restitution claim form and a questionnaire that a victim can

complete and send back if they want further information about the case as it progresses through the system. There were 65 victim notifications sent out during 2005. This compares to 62 in 2004, 84 in 2003 and 50 in 2002.

LEGISLATIVE CHANGES

Significant changes made by the legislature taking effect in 2005 included the following:

1. Alcohol content level reduced to .08 for noncommercial driving cases.
2. Lying to a police officer became an offense. It is a misdemeanor.
3. Fleeing a police officer on foot became an offense. It is a misdemeanor. Previously had to be fleeing in a motor vehicle.

CIVIL MATTERS

Falling under the category of civil matters is practically everything else done by the City Attorney that does not qualify as a criminal matter. These include the following:

Rental Housing Inspection and Zoning Enforcement

When the rental housing inspection ordinance is not being complied with, the matter is referred to the City Attorney. Prior to commencing an action in District Court to compel compliance, one and possibly two letters are sent to seek compliance without court action. If the housing owner does not comply, then a summons and complaint is issued and filed in District Court. A number of letters were sent ordering compliance and no lawsuits had to be commenced. Citations for failure to comply with the exterior storage ordinance did not increase significantly over 2004.

Civil Forfeitures

The 2000 Legislature changed the procedure for forfeitures. The burden is placed on the property owner to commence a court

action if the forfeiture is contested. If the property owner does not commence an action, the property is forfeited to the City without court action. At the time property is taken into custody, the owner is given a notice advising of their rights and the need to commence an action. They have 30 days to commence the action. Two actions were commenced during 2005 contesting forfeiture. Overall, a total of 9 vehicles were forfeited.

Bonds and Insurance Certificates

Every insurance certificate submitted to the City is reviewed by the City Attorney to insure compliance. Insurance certificates are required by the City for leases, City contracts, many permits issued by the City, liquor licenses, and users of the Civic Center. Close to 50% are rejected as being noncompliant when first submitted for review. In addition, performance bonds and labor and material bonds for all City projects are submitted for review by the City Attorney.

Human Rights Department Complaints

No new complaints were filed with the Department of Human Rights against any employee of the City.

Medical Malpractice

The City was named as a defendant in a medical malpractice case during 2005. This is a first in the thirty plus years I have been City Attorney. The City has no insurance coverage for medical malpractice and, accordingly, I have been defending on behalf of the City. It appears that Rice Memorial Hospital has adequate insurance coverage for this case.

Other Civil Matters

The City Attorney drafts numerous ordinances and resolutions for the City Council. In addition, numerous verbal and written opinions are issued every year to City department heads and police

officers. Collection letters are sent out to attempt to collect numerous unpaid accounts due the City. During 2005, 2 collection letters were sent out. Conferences are frequently held with the Zoning Administrator; the City Administrator; the City Clerk; and the Police Chief and Sergeants to discuss and hopefully resolve City issues. Numerous contracts and other documents are reviewed by the City Attorney when requested by City staff.

Other Litigation

During 2005, no civil litigation was commenced on behalf of the City. Compliance with various ordinances was achieved without resorting to litigation.

CONCLUSION

As the City continues to grow, contacts by the public with the City Attorney's Office and vice versa continue to rise. As you will note from this report, criminal court appearances increased for many types of offenses. With the hiring of six new police officers in the last twelve months, I would expect the criminal prosecution part of the City Attorney's work to increase also.

Respectfully submitted,

Richard L. Ronning
Willmar City Attorney