John E. C. Robinson

(June 22, 1865 – February 13, 1912)

(ca. 1909)

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After reading law in the offices of Taylor, Calhoun & Rhodes in St. Cloud, John Robinson was admitted to the bar by the District Court in 1890. He opened his own shop and began building a practice. He thrived on public service and was city assessor and a member of the library board. He was elected to four one-year terms as mayor of the city—in 1902, 1903, 1904 and 1906.[1] In 1904 he placed this portrait in a history of central and northern Minnesota:

> **Hon. J. E. C. Robinson, who enjoys an extensive and lucrative law practice, is one of the leading citizens of Stearns county, Minnesota. He is recognized by the legal profession as an able representative of the Minnesota Bar, and his successful practice is the result of his earnest efforts and sound judgment. He is the present mayor the city of St. Cloud, and is an efficient and popular city official.**
>
> **Mr. Robinson was born in Clomwell, Tipperary county, Ireland, in 1868 (sic). He came to America with his parents at the age of one year, and the family settled in Stearns county. Our subject was reared and educated in St. Cloud, attending the common schools, then St. Vincent's college, in Pennsylvania, later St. Thomas' Seminary, at St. Paul, and graduating from the classical course at St. John's University in 1888.**
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> **He began his study of law in St. Cloud, with the firm of Taylor, Calhoun & Rhodes. He was admitted to the bar in 1890 and at once began the practice of his profession. He has steadily pushed the front since the opening of his office in 1890, and has become one of the leading lawyers of that locality. He devotes his**

[1] **At this time, elections for city officers were held in the first week of April of each year. Robinson was elected mayor on April 7, 1902, April 6, 1903, April 4, 1904 and April 2, 1906. William Bell Mitchell, 2 *History of Stearns County, Minnesota* 1517, 1518, 1519 (1915).**

attention to the building up of his practice and has been successful to a marked degree, and is one of the rising young men of the state.

Mr. Robinson was elected mayor of the city of St. Cloud in April, 1902, and he is ably and faithfully discharging the duties of this office and gaining the confidence of the people with whom he has to do. He is a stanch Democrat and has attended numerous county and state conventions and was a member of the state central committee in 1898.

Mr. Robinson is a close, diligent, hard student. He is an English scholar of high repute, most thorough and profound in literature. His addresses are master-pieces of English and he has few equals as a public speaker.[2]

His boast that he "ably and faithfully discharg[ed] the duties of this office" was challenged by Reverend C. W. Stark after he was re-elected in April 1906 to his fourth term as mayor. When he campaigned he vowed not to enforce a law popularly known as the "lid law," which prohibited saloons from operating on Sunday and after 11 P.M. on other days of the week. It provided:

Section 1532. Sale, when forbidden—No person licensed to sell intoxicating liquors shall sell or otherwise dispose of such liquors at any of the following times:

1. On any day between 11 o'clock p. m. and 5 o'clock a. m.

2. On any general, special, or primary election day.

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[2] ***Compendium of History and Biography of Central and Northern Minnesota*** **327-28 (1904). A chapter on the Stearns County bench and bar in a county history published in 1915 had this sketch:**

> **John E. C. Robinson was born in Ireland in 1865. After coming to this country he served in the United States army; and in the Ute campaign in New Mexico and Colorado, he was made first sergeant of his company. He studied for the priesthood but decided to take up law instead, and registered in the office of Taylor, Calhoun & Rhodes. He was a member of the library board, city assessor, mayor of St. Cloud four terms, state senator and city attorney. He died in February, 1912.**

James E. Jenks, "Bench and Bar of Stearns County" 36 (MLHP, 2013) (published first, 1915).

3. At any hour on Sunday. [3]

The mayor was obligated to enforce the "lid law" by the following statute:

> **Section 1561. Duty of officers—Every sheriff, constable, marshal, and policeman shall summarily arrest any person found committing any act forbidden by this chapter, and make complaint against him. Every county attorney shall prosecute all cases under this chapter arising in his county. The president or mayor of every municipality shall make complaint of any known violation of the provisions of this chapter, and the chief of police and all policemen shall make arrests and complaints as in this section provided, anything in the ordinances or by-laws of such municipality to the contrary notwithstanding.**[4]

Stark and the "Law and Order League" filed a complaint against the mayor in Stearns County District Court demanding his impeachment, and this lead to a quo warranto proceeding by Attorney General Edward T. Young to remove the mayor from office for malfeasance—that is, his failure to enforce the lid law.[5] **After an initial defeat before Judge Luther Baxter, Robinson**

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[3] **Stat., c. 16, §1532, at 304 (1905).**

[4] **Stat. c. 16, § 1561, at 308 (1905)**

[5] **The attorney general possessed this authority under the following statute:**

> **Section 4545. For usurpation of office, etc.—Whenever the attorney general has reason to believe that a cause of action can be proved, he may bring an action in the name of the state, upon his own information or upon the complaint of a private person, against the person offending, in the following cases:**
>
> **1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office or any franchise, or any office in a corporation created by authority of the state;**
>
> **2. When any public officer does or suffers an act which by law causes a forfeiture of his office; or**
>
> **3. When an association or number of persons acts as a corporation without being duly incorporated.**

Stat., c. 86, §4545, at 969-970 (1905).

For a history of this extraordinary writ in Minnesota see, Jason Taylor Fitzgerald, "The Writ of Quo Warranto in Minnesota's Legal and Political History: A Study of its Origins, Development and Use to Achieve Personal, Economic, Political and Legal Ends" (MLHP, 2015).

appealed to the Supreme Court, which ruled on June 7, 1907, that the attorney general had authority to bring the malfeasance suit seeking his ouster.[6] He was not impeached, however, because he was no longer in office. In November 1906, he was elected to the state senate.

Running with Democratic endorsement he was elected to represent the Forty-seventh District in the state senate.[7] This was a four year term. Lynn Haines, a progressive reformer, published an analysis of the 36th Legislature, which convened in 1909. He said his book belonged to the "literature of exposure," avoiding the term "muckraker." He gave Robinson mixed grades:

> **J. E. C. Robinson, 47th District, St. Cloud—Voted for distance tariff and stood on progressive side of election measures except that he voted for repeal of the corrupt practices act; voted against tonnage tax.[8]**

Separately Haines listed the Senators and Representatives "who stood conspicuously for the public interests." [9] John Robinson was not listed.

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[6] Newspaper accounts of the lawsuit and the Supreme Court's decision are posted in the Appendix, at 9-28.

[7] The vote count on November 6, 1906 was:

> **William L. Sartell (R).....1.491**
> **John E. C. Robinson (D).....1,964**

1907 Blue Book, at 500. The Forty-seventh District covered all of Benton County, the Seventh Ward of St. Cloud in Sherburne County; and the City of St. Cloud, and Towns of St. Cloud and Le Sauk, in Stearns County.

His biographical sketch in the Legislative Manual provided:

> **FORTY-SEVENTH DISTRICT.**
> **John E. C. Robinson (Democrat) born in Clomwell, Ireland; settled in Minnesota in 1870; he was educated in the public schools of St. Cloud, St. Vincent College, Pennsylvania; St. Thomas College, St. Paul, and a graduate from the Classical Department, St. John's University, Minnesota, in 1888; admitted to the bar in 1890; member of the Democratic State Central Committee, 1896; he has been mayor of St. Cloud for four terms; thirty-eight years of age and single.**

1907 Blue Book, at 656. The photograph on the first page of this article is from the 1909 Blue Book, at 704.

[8] Lynn Haines, *The Minnesota Legislature of 1909: A History of the Session with an Inside View of Men and Measures* 124 (1910). It is posted in the "Legislature" category in the Archives of the MLHP.

[9] *Id.* at 9.

He did not seek re-election. On April 3, 1911, he was elected City Attorney,[10] but his last illness prevented him from completing the term. He died in Minneapolis on February 13, 1912, at age forty-six. The *St. Cloud Daily Times* carried the story:

DEATH SUMMONS
J. E. C. ROBINSON

_____

**CITY ATTORNEY DIES IN MINNEAPOLIS
THIS MORNING AFTER
LONG ILLNESS.**

_____

**HAD OCCUPIED THE OFFICES OF
MAYOR, SENATOR AND CITY ATTORNEY**

_____

Although the receipt of the sad intelligence had been expected for some times, this morning of the death of City Attorney, J. E. C. Robinson brought keen sorrow to his friends in this city. At an early hour this morning, Mr. Robinson answered the final summons at the home of Mrs. Robinson's parents in Minneapolis. Death was due to heart trouble and cancer from which Mr. Robinson has been ill for several months.

John E. C. Robinson was born in Clonmel, Ireland in 1865. When still a lad he came to this country and directly to St. Cloud, where he remained for several years. He then went to Melrose to reside with an aunt and later with her went south during the 70's. He served in Co. D. Nineteenth U. S. Infantry and was commissioned First Sergeant of Company D., under command of "Roaring Jake" Smith. His activities with his company were in the Yute campaign in New Mexico and Colorado.

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[10] **Id. at 1522. Several weeks after the election, he travelled to Hudson, Wisconsin for medical treatment. He never returned to St. Cloud. *St. Cloud Daily Times*, February 13, 1912, at 3.**

He attended school at Loretta, Pa., and later at a Catholic school near Pittsburg. Afterwards the deceased enrolled at St. Thomas ands finally in 1888 received his degree of Bachelor of Arts at St. John's. He studied law in the office of Taylor & Calhoun, in St. Cloud, and was admitted to practice in the state of Minnesota in 1891. Since that time he has practiced continuously in St. Cloud. Although not associated in a legal firm, he and Justice J. I. Donohue have been associated during his practice.

During his residence in this city, Mr. Robinson has held a number of important offices, the gift of the people signifying the exhalted (sic) position he held in the esteem of St. Cloud residents. He has been a member of the library board, city assessor, mayor four terms, state senator four years, and city attorney at the time of his death.

Four years ago Mr. Robinson was married to Miss Hedwig Gegascki, of Minneapolis. She and her little son nearly three years of age, survive. Mr. Robinson also leaves a sister in St. Paul, to half sisters and a half brother among whom are Mrs. Ambrose Wahl and Louis Wahl of this city.

Death occurred at the Gegascki home, 2009 Fifth avenue south, Minneapolis. Mr. and Mrs. Robinson left the city April 15, 1911, for Hudson, Wis., where the deceased remained for treatment two months. He then went to the Gegascki summer home at Lake Marian. There he remained until October and then went to the family home in Minneapolis, where death overtook him early today.

Mr. Robinson was a member of the Elks, Woodman and C. O. F. lodges. . . .[11]

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[11] ***St. Cloud Daily Times***, February 13, 1912, at 3 (photograph and funeral arrangements omitted). According to the obituary in the ***St. Cloud Journal-Press***:

> A power in local politics and a force in the Democracy of the state, Mr. Robinson has acquired a host of friends throughout Minnesota and the Northwest. Always kindly, always courteous and ever ready to hear a cry of affliction or distress, many of the friendships he had formed in his early days ripened in admiration and deep respect.

In its obituary *The Minneapolis Morning Tribune* referred to the Supreme Court's ruling in the "lid law" impeachment case.

J. E. C. Robinson. Is Called; Father of the Sunday "Lid"

———

Former Mayor of St. Cloud and State Senator Dies in Minneapolis, Aged 46 Years.

———

Impeachment Case Against Him Drew Supreme Court Ruling on Sabbath Closing.

———

J. E. C. Robinson, city attorney of St. Cloud, former mayor of that city and former member of the state senate, died Monday night in the home of his mother-in law, Mrs. Gagacki, 2009 Fifth avenue south. He had been ill for six months with heart trouble.

While mayor of St. Cloud Mr. Robinson became responsible for the Sunday lid in Minnesota. Impeachment proceedings were brought against him by Rev. C. W. Stark, at that time pastor of a Methodist church of that city and now a field agent for the Minnesota Anti-Saloon league, for his failure to enforce the state law which forbade saloons being open on Sunday. He was found guilty in the district court and an appeal was taken to the supreme court by his attorney. In the meantime Mr. Robinson's term as mayor expired and he went to the state senate.

In 1907 the state supreme court rendered a decision upholding the law forbidding keeping saloons open on Sunday. Before that time the Sunday lid had been ignored in practically every city in the state. Immediately following, the mayors throughout the state put Sunday closing into effect.

***St. Cloud Journal-Press*, February 13, 1912, at 1 (excerpt).**
A memorial by the county bar association has not been located.

Mr. Robinson was 46 years old. He leaves his wife, Mrs. Hedwig Robinson, and one child. Funeral services will be held Thursday morning in the St. Stephens church. Interment will be in St. Mary's cemetery.[12]

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APPENDIX

Newspaper articles about the "lid case" from its beginning in September 1906 to the decision of the Supreme Court on June 7, 1907, follow.

From the *Minneapolis Journal,* September 11, 1906:

MAYOR UNDER FIRE

_____

State Is Complainant In Impeachment Proceedings at St. Cloud.

_____

ST. CLOUD. MINN.—Another step has been made by Rev. C. W. Stark and other anti-saloonists to enforce the "lid" in St Cloud, and this time Mayor J. E. C. Robinson's office is the storm center.

Anti-saloon men are jubilant over the fact that they have succeeded in interesting other than local officials in the fight to compel the strict observance of the Sunday closing law. This time Attorney General Young has been brought into the case.

On complaint of Rev. C. W. Stark and others the attorney general is complainant in impeachment proceedings against Mayor Robinson. The matter is

[12] ***The Minneapolis Morning Tribune*, February 14, 1912, at 7. A bar memorial has not been located.**

brought up in quo warranto proceedings, and the mayor will be cited to appear in court and show cause why he should not be impeached for malfeasance in office.

The story of the fight against the saloons in this city is fresh in the memory of all citizens. On account of the expressed local sentiment in favor of keeping the saloons open on Sunday, it is thought it would be impossible to get a conviction in court. This was tried at Sauk Center, when A. Lindenburgh, who had been arrested on a charge of violating the Sunday closing law, was acquitted.

The anti-saloon men found they must select another remedy, and at last discovered a statute under which the attorney general could act, wherein it was complained that a public official had been derelict in his duty in enforcing the law.[13]

From the *Minneapolis Journal,* September 21:

ST. CLOUD'S MAYOR WILL FIGHT BACK

_____

Liquor Interests in Solid Array Behind Robinson Delay Is Hoped for.

_____

Special to The Journal.

St. Cloud, Minn., Sept. 21.—Mayor Robinson announces that he will fight the action brought by Attorney General Young in the district court in this county, charging him with malfeasance in office for allowing saloons to violate the Sunday-closing law.

The defense will be conducted by Judge Theo Bruener. What the line of defense will be is not divulged, but the mayor will have the active support of the liquor interests in the contest. The defense, it is

[13] ***Minneapolis Journal*, September 11, 1906, at 11.**

understood, hopes to be able to keep the matter in court until after the mayor's term has expired. Mayor Robinson is a candidate for state senator on the democratic ticket in this district and will, if elected, resign as mayor.

The Sunday-closing movement has never been popular in this city. Whenever the issue was fairly presented in any election those opposed to Sunday closing have always won.

W. L. Sartell is the republican opponent of Mayor Robinson for the state senate, and the Sunday-closing movement will naturally be made an issue in the campaign, with the result that a strong fight will be made for the mayor by those who are in sympathy with his policy.[14]

From the *Minneapolis Journal,* October 23:

STATE WINS FIRST ROUND

Defendant's Demurrer in "Lid" Case at St. Cloud Is Knocked Out.

Special to The Journal.

St. Cloud, Minn., Oct. 23.—Judge Baxter of the district court today filed an order overruling the demurrer of the defense in the proceedings brought by officials of the Law and Order league for the removal of Mayor Robinson of St. Cloud on the ground of his failure to regulate the saloons and resorts of the city.

Mayor Robinson demurred to the complaint, asserting that the court did not have jurisdiction. The defense now says it will go to the supreme court upon this issue. It is manifest that delay is its chief object at this time.[15]

[14] ***Minneapolis Journal***, **September 21, 1906, at 4.**
[15] ***Minneapolis Journal***, **October 23, 1906, at 6.**

On June 7, 1907, the Supreme Court upheld Judge Baxter's order. Two newspaper reports of that ruling follow and the entire decision of the Court concludes this article.

The Morris Tribune **carried the story on its front page:**

MUST ENFORCE SUNDAY CLOSE LAW

Supreme Court Decides the St. Cloud Case—Settles Question of Sunday Closing—Executives Can be Proceeded Against for Failure of Duty.

St. Paul, June 8—Minnesota's state supreme court says that mayors of cities and villages must enforce the law. In other words the bonnet must be fitted.

Attorney General E. T. Young has won the St. Cloud "lid" case in Supreme court. A decision by Justice Brown was filed today affirming the lower court in the quo warranto action against J. E. C. Robinson, former mayor of St. Cloud.

The decision holds that any mayor is under obligation to see that the state laws are enforced. If he fails, the attorney general may sue for civil damages, and may also bring proceedings to have the mayor ousted from office.

This is regarded as a sweeping decision of great importance in the efforts for law enforcement. It puts a powerful weapon in the hands of the temperance forces.

The Robinson case was appealed on a demurer and will now go back to the lower court for trial. Only the civil case will be tried, as Robinson's term as mayor has expired. He is now a member of the state senate.

The law makes it the specific duty of the attorney general to bring proceedings for the removal of an officer who is neglecting his duty.[16]

[16] ***The Morris Tribune*** **(Stevens County), June 15, 1907, at 1 (excerpt).**

From *The New Ulm Review*, June 12:

SIT UP AND TAKE NOTICE

———

Sweeping Decision Anent Liquor Laws Made by Supreme Court.

———

Gives Attorney General Power to Enforce the "Lid."

———

Cannot be Hampered by City Charters or Mayors.

———

It looks very much now as if the "lid" was no longer a matter of local choice. If, on petition, the attorney general decides to put it on in any community he has the power to do so.

The supreme court has said so, and that ought to settle it. The court's decision comes as the result of a case instituted against the mayor of St. Cloud last summer. The mayor had been requested to enforce the laws relating to the closing of saloons on Sunday, but refused to do so. Thereupon the attorney general was called upon to bring proceedings to have him ousted from office. In the lower court Mayor Robinson demurred to the proceedings on the ground that authority to remove him from office lay only with the council. The enforcement of the liquor laws and the bringing of prosecutions under them, he contended, rested solely with the county attorney. The lower court held differently and the supreme court now sustains its decision.

This means that for failure to enforce the laws or refusal to prosecute offenders when violations are properly sworn to, the mayor or executive of any city is liable to lose his official head. It also means that it

is up to the attorney general to assume the role of chief executioner.

The court says: The attorney general, as the chief law officer of the state, possesses and may exercise, in addition to the authority expressly conferred upon him by statute, all common law powers incident to and inherent in the office. Officers of municipal corporations organized under legislative authority are, in respect to all general laws having force and operating within their municipality, agents of the state and may be charged with the performance of such duties in the enforcement of the same as the legislature may from time to time impose. The general statutes of the state regulating the sale of intoxicating liquors operate and have force uniformly throughout the state, anything contained in municipal charters or ordinances to the contrary notwithstanding. The forfeiture of office and pecuniary penalty prescribed for the failure of the mayor or other officer to make complaint of known violations of the statutes regulating the sale of intoxicating liquor may be enforced by the attorney general through appropriate proceedings brought for that purpose.[17]

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State of Minnesota ex rel. Edward T. Young
v.
John E. C. Robinson,

101 Minnesota Reports 277 (1907)

[17] ***The New Ulm Review*** **(Brown County), June 12, 1907, at 9.**

STATE ex rel. EDWARD T. YOUNG v. JOHN E. C. ROBINSON.[1]

June 7, 1907.

Nos. 15,225—(22).

Attorney General.

The attorney general, as the chief law officer of the state, possesses and may exercise, in addition to the authority expressly conferred upon him by statute, all common-law powers incident to and inherent in the office.

Officers of Municipal Corporations.

Officers of municipal corporations organized under legislative authority are, in respect to all general laws having force and operating within their municipality, agents of the state, and may be charged with the performance of such duties in the enforcement of the same as the legislature may from time to time impose.

Sale of Intoxicating Liquor.

The general statutes of the state regulating the sale of intoxicating liquors operate and have force uniformly throughout the state, anything contained in municipal charters or ordinances to the contrary notwithstanding.

Forfeiture of Office—Duty of Attorney General.

The forfeiture of office and pecuniary penalty prescribed by R. L. 1905, §§ 1561, 1562, for the failure of the mayor or other officer named therein to make complaint of known violations of the statutes regulating the sale of intoxicating liquor, may be enforced by the attorney general through appropriate proceedings brought for that purpose.

Same.

The power conferred by the charter of St. Cloud upon the city council thereof, upon the subject of the removal of municipal officers for misconduct in office, does not exclude the power of the state, through the attor-

[1]Reported in 112 N. W. 269.

ney general, to effect a removal for a violation of the statute above referred to. The power and authority of each is concurrent.

Same.

Nor is the authority of the attorney general taken away or superseded by the provisions of section 1561, by which the county attorney of each county is required to prosecute violations of the statute.

Appeal by defendant from an order of the district court for Stearns county, Baxter, J., overruling a demurrer to the complaint. Affirmed.

Theo. Bruener, for appellant.

This action will not lie for the reason that there is another adequate and exclusive remedy at law provided for the alleged malfeasance in office by the charter of the city of St. Cloud. The charter is contained in Sp. Laws 1889, c. 6. Provisions here applicable are: section 11, subc. 2 (p. 136); section 7, subc. 14 (p. 194); section 15, subc. 14 (p. 195). R. L. 1905, § 747. Appellant claims that the remedy provided by the city charter is an exclusive remedy for removing officers for cause. (1) Section 7, subc. 14, provides that no state law concerning the provisions of the charter of St. Cloud shall be considered as repealing, amending or modifying the same, unless such purpose be expressly set forth in such law. (2) It is the general doctrine that general laws operate to repeal only such charter provisions as are inconsistent with the general laws. State v. Lindquist, 77 Minn. 540. (3) R. L. 1905, § 747, reaffirms all the provisions of the act creating the city of St. Cloud. (4) The power of a municipal body to remove from office is not discretionary, but only for cause, after notice and hearing. The proceedings are judicial in their nature and may be reviewed on certiorari. A special law governs the city of St. Cloud in this matter. (5) It is of prime importance that each department of government avoid anything like improper interference with another in the discharge of its functions. State v. Common Council, 53 Minn. 238. "Where the causes of removal from office are prescribed by statute, which also provides a special mode of procedure for such removal, the statutory remedy is the exclusive one." State v. McLain, 58 Oh. St. 313.

This action was not commenced under R. L. 1905, § 4545, but is an action for the enforcement of R. L. 1905, §§ 1561, 1562.

The complaint alleges that, by reason of the malfeasance of the de-

fendant, he has forfeited his right to hold said office as mayor, and has subjected himself to the penalty of R. L. 1905, § 1562. The relief asked for is the removal from office and the recovery of a forfeiture of $500. We contend therefore that this action is not brought under section 4545, but under sections 1561 and 1562, and for the enforcement of section 1562. There is no provision in the statute authorizing the attorney general to bring an action under section 1562. Section 1561 expressly provides: "Every county attorney shall prosecute all cases under this chapter arising in his county." Conceding that section 4545 provides a concurrent remedy, the attorney general has not brought that kind of an action, but an action under section 1562, for which he has no legal authority. In this connection see also R. L. 1905, § 4540.

Edward T. Young, Attorney General, and *Geo. W. Peterson,* for the State.

In State v. Langdon, 29 Minn. 393, the court said: The intention to abrogate the general law as respects a particular locality should be very apparent, to justify a construction of a special act leading to that result. See also State v. Langdon, 31 Minn. 316; State v. Nolan, 37 Minn. 16; Territory v. Webster, 5 Dak. 351; Black, Intox. Liq. §§ 225, 226; State v. Swanson, 85 Minn. 112; Tacoma v. City, 14 Wash. 288. No exclusive jurisdiction was given to the city of St. Cloud on this subject by its charter. By section 4 of chapter 4 of the charter all ordinances are required to be "not repugnant to the laws of the United States or of this state." Section 1, c. 3, provides that the mayor "shall take care that the laws of the state and the ordinances of the city are duly enforced and observed within the city." But if the power granted to regulate the liquor traffic had been exclusive, such grant would be subject to change and would be nullified by the enactment of the revised laws. A municipal charter is not a contract between the state and the city. In their governmental character municipal corporations are the agents of the state and local depositaries of certain limited and prescribed political powers. As to their private character, their rights and liabilities are governed by the same rules which control private corporations. Governmental powers delegated to them may be altered or repealed. State v. Swanson, supra. Section 1561, making it the

duty of every mayor to make complaints and cause arrests, concludes with these words, "anything in the ordinances or by-laws of such municipality to the contrary notwithstanding." But in this case no amendment of the charter is required to make the general laws operative in the city, because they were never abrogated there. The power granted in the charter expressly requires all ordinances to be consistent with the general laws of the state. Any ordinance of the city of St. Cloud which conflicts with the state law is void. Section 1562 declares the failure of the mayor to comply with R. L. 1905, c. 16, to be malfeasance in office, for which he may be removed, and disqualifies him for holding the office for the balance of the term for which he was elected.

What tribunal has jurisdiction of proceedings for his removal? Const. art. 13, § 2, authorizes the legislature to provide by law for the removal of inferior officers for malfeasance or nonfeasance in the performance of their official duties. It is the rule that if a statute defining an act as malfeasance prescribes the method of removal, that method is exclusive, and must be followed. State v. McLain, 58 Oh. St. 313, 322. That case does not justify the defendant's challenge of the jurisdiction of the court in this proceeding, in view of the fact that section 1562 provides no remedy for enforcing the forfeiture there declared. There is no way under our law of enforcing the forfeiture, except by quo warranto or by the civil action authorized by R. L. 1905, § 4545, by which the attorney general is expressly charged with the duty of bringing an action in the name of the state against the person offending, "when any public officer does or suffers an act, which by law causes a forfeiture of his office." Defendant's neglect to perform the duties prescribed by section 1561 constituted malfeasance under section 1562, and had worked a forfeiture of his office. At common law every corporation, municipal or otherwise, had the right, as an incident to its existence, to exercise the power of amotion for just and reasonable cause, arising under its charter. Kent, Com. 278, 279; Richards v. Clarksburg, 30 W. Va. 491; Willard's Appeal, 4 R. I. 597; Armatage v. Fisher, 74 Hun, 167. But the provision of our constitution vesting in the legislature the power to provide for the removal of all inferior officers guilty of malfeasance has abrogated the common-law rule as to officers guilty of such offenses as come within those terms. State v. McLain, supra. The state never intended to surrender to municipal

corporations its power to get rid of an officer who fails to perform a duty imposed by the general laws, even though he holds the office under the charter of a city; and no rule of the common law or statute ever invested municipalities with the power to punish or remove public officers for malfeasance or nonfeasance arising under general laws. The cause for which a municipal officer may be removed might be such a violation of his duty to the municipality as would in law amount to malfeasance, misfeasance or nonfeasance, but his removal would also be justified if the offense were below that grade, if in the honest judgment of the common council his continuance in the office would be in fact detrimental to the order and good government of the city. State v. Common Council, 53 Minn. 238, 244. The power of a motion possessed by the city of St. Cloud is distinct and local in its character and application, and in no way conflicts with the power of the state to remove from office the defendant mayor for malfeasance arising under the general laws of the state.

Defendant claims that the action is based on section 1562 alone. As to removal from office, section 1562 does not provide for its own enforcement. The action authorized by section 4545, and a proceeding in quo warranto, are the only forms of procedure for the purpose of which we know. If counsel desired to raise the question of the right to include the claim for a penalty under section 1562 with the action for removal, he should have included in his demurrer the objection that two causes of action were improperly united. The point, if there is anything in it, not having been raised by demurrer is waived. Counsel also says that the attorney general has no authority to enforce section 1562. Counsel evidently overlooked the fact that the common-law authority of the attorney general has not been taken away and that from time immemorial the attorney general has had authority to bring any action on behalf of the state necessary to enforce its laws.

BROWN, J.

This action was brought by the attorney general, under the authority conferred by section 4545, R. L. 1905, for the removal of respondent from the office of mayor of the city of St. Cloud for his alleged malfeasance in office and to recover the penalty provided by section 1562.

Defendant interposed a general demurrer to the complaint, and appealed from an order overruling it.

Section 1561, R. L. 1905, makes it the duty of the mayor of every municipality in this state, and other public officers named therein, to make complaint to the proper magistrate of any known violation of the laws of the state on the subject of the sale of intoxicating liquors; and section 1562 declares a neglect of that duty malfeasance in office, subjecting the guilty officer to removal and a penalty of not less than $100 and not more than $500.

The complaint before us charges a violation of this statute. It alleges that the defendant is, and at the time stated therein was, the mayor of the city of St. Cloud, an incorporated municipality of this state; that long prior to the date mentioned the city council thereof had duly licensed numerous persons to deal in intoxicating liquors within the city; that for a period of four months immediately preceding the commencement of the action the several holders of such licenses had openly, flagrantly, and continuously kept their saloons or places of business open for trade on Sunday, and often after the hour of eleven o'clock at night on other days, contrary to the provisions of the general statutes on the subject; that their business was so conducted and carried on with the full knowledge, approval, and consent of defendant, as mayor; and that he failed and refused to compel an observance of the law, by making complaint of known violations thereof or otherwise. Judgment is demanded that he be removed from his office, and that the state have and recover the penalty fixed by law for his neglect of duty.

It is contended by defendant (1) that the action cannot be maintained, for the reason that there is another exclusive remedy at law provided by the charter of the city of St. Cloud; and (2) that the attorney general cannot maintain an action to recover the penalty prescribed by section 1562, R. L. 1905, for the reason that the duty of enforcing the same is imposed by section 1561 upon the county attorney. The charter of the city of St. Cloud, on the subject of removal of municipal officers, provides as follows [2]:

> Any person holding office under this charter may be removed from such office by the vote of two-thirds of all the aldermen

[2] Sp. Laws 1889, p. 136, c. 6, subc. 2, § 11 (Reporter).

> authorized to be elected. But no officer elected by the people shall be removed except for cause, nor unless first furnished with a written statement of the charges against him, nor unless he shall have a reasonable opportunity to be heard in his defense.
> * * *

It further provides a course of procedure when charges are preferred seeking the removal of an officer, and empowers the council to compel the attendance of witnesses and the production of books and papers, and to hear and determine the matter on its merits. Section 7 (subc. 14) provides that no general law shall be construed as repealing or modifying any of its provisions, unless that purpose be expressly set forth in such law. R. L. 1905, § 747, continues in force all existing laws relative to municipal corporations. In view of these enactments applicable to the city of St. Cloud, it is urged by defendant that the remedy for the removal of delinquent city officers provided by the charter is exclusive, and that the state, through the attorney general, has no power to interfere.

We do not concur in this contention. A municipal corporation, on coming into existence, assumes a double character. As respects its business or proprietary functions, its local affairs, it is an independent corporation in no way subject to the control or supervision of the state, and may manage its internal affairs free from legislative interference. State v. Moores, 55 Neb. 480, 76 N. W. 175, 41 L. R. A. 624. It may, within the limitations of its charter, contract and be contracted with, and is solely responsible for its obligations. It may install various public utilities, and provide generally for the comfort and convenience of its inhabitants. For default in any of its obligations in this respect the state does not concern itself; but in so far as the general laws of the state operate and have force and effect within the municipality, and the officers thereof are charged with their enforcement, the municipality and its officers are the agents, and subject to the command and control, of the state government at all times. The legislature may impose upon the local officers specific duties in the matter of the enforcement of the laws of the state and prescribe penalties for a failure to perform the same. Indeed, the efficient administration of the law, adopted for the welfare of the state at large, renders it imperative that the state, as

guardian for the people as a whole, should possess and exercise this unqualified control. Its absence would lead to a failure of law enforcement, so essential to the good order of society and the protection of property and property rights. That the state, when creating a municipal subdivision for local self-government, retains this general supervisory control over the affairs thereof, except so far as expressly or by fair implication surrendered, there can be no serious question.

The city of St. Cloud is no exception to the rule, nor was it granted by its charter any exclusive authority respecting the removal of its officers for causes other than a violation of municipal duties. Authorities sustain the suggestion of the attorney general to the effect that the power of removal conferred upon the city vested in the council thereof such powers only as exist at common law, viz., power of determination and removal for causes involving a violation of duties to the municipality. 2 Kent, Com. 297; Richards v. Clarksburg, 30 W. Va. 491, 4 S. E. 774; Rex v. Richardson, 1 Burr. 517. In the last case cited it was laid down by Lord Mansfield that the power of removal vested in municipal corporations at common law, for causes other than misconduct toward the corporation, was dependent upon prior conviction of the offense charged by a court of competent jurisdiction; that while the corporation, through its governing body, has authority to hear and determine charges of official misconduct, it cannot hear and determine charges of other violations of law and make its determination thereof the basis of an order of removal. That decision was rendered nearly one hundred years ago, and has since been followed both in England and in this country, particularly as applied to private corporations.

But we are not disposed to place our decision in this case upon that ground. Whether, in the many evolutionary changes of the law respecting local municipal government, the rule stated has come down unimpaired, is unnecessary to determine at this time. It may be conceded in the case at bar that, in view of the relation existing between municipal corporations, their officers, and the state respecting the enforcement of the general laws, the power of amotion expressly conferred upon the city of St. Cloud authorizes a removal from office of any of its officers for any cause which would justify a like act by the state. But it does not necessarily follow that the power so conferred is ex-

clusive. There was no purpose on the part of the legislature in so granting the power to surrender or divest the state of its superior authority in the premises, or to deprive it of the right to call to account, in its own way, those of its agents who fail in the performance of their official duties with respect to the general law. Indeed, it is questionable, on principle, whether the legislature could, within constitutional limitations, surrender the authority of the state in this respect. It is charged with the duty of enforcing all laws designed for the public welfare, and its obligation to the people can neither be surrendered nor contracted away. 20 Am. & Eng. Enc. (2d Ed.) 1219; Philadelphia v. Fox, 64 Pa. St. 169. Essential to the complete performance of this duty is the unrestricted control and authority over all officers who are charged with the enforcement of the laws. This control necessarily includes power of removal for official misconduct, a surrender of which by the legislature would disable the state in a large measure from performing fully its obligations to the people. Its command to the local officers to proceed with the enforcement of the law might or might not be complied with, depending upon the nature of the law sought to be enforced and the temper and disposition toward it of the local removing power. This would result in the enforcement or the nonenforcement of wholesale regulations for the public weal, as suited the notions of those in local power. The fundamental principles of law will not justify a decision which would result in an indifferent administration of our laws naturally to follow from such a doctrine.

The section of the revised laws already referred to makes it the duty of the mayors of all municipalities of the state to enforce the liquor statutes, and declares a failure to perform that duty malfeasance in office, subjecting the delinquent to removal from office. Section 4545 expressly empowers the attorney general to enforce forfeitures of office, without restriction or limitation as to particular officers. No reason occurs to us why this authority may not be exercised concurrently with the power conferred upon the city council, conceding that its power extends to causes of removal other than those disclosing delinquency in the performance of duties to the city. The charter does not purport to confer the exclusive power upon the council, and we are not justified in presuming that the legislature so intended. There is nothing in the charter so indicating, and by the general rule applicable to the sub-

ject all general laws and regulations remain unimpaired by municipal charters, except to the extent expressly declared to the contrary.

This rule is illustrated by the case of State v. Lee, 29 Minn. 445, 13 N. W. 913, where the court held that a prosecution under an ordinance of the city of St. Paul for keeping a house of ill fame was not a bar to a prosecution for the same act under the general statutes. In discussing the subject the court said: "The constitution assumes and recognizes the existence and necessity of municipal corporations as bodies politic, having such powers of local self-government under grants from the legislature as are ordinarily conferred upon them, and such as they have usually possessed and exercised in the past, both in England and this country. City of St. Paul v. Colter, 12 Minn. 16 (41), 90 Am. Dec. 278; People v. Hurlbut, 24 Mich. 44, 96, 9 Am. 103; Greenwood v. State, 6 Baxt. 567, 32 Am. 539. Though its authority is derivative and local, the municipal corporation may be considered a separate government under its charter, which, subject to the general laws, stands for its constitution. The operation of the general laws remaining unimpaired, the local laws of the municipality are extra, and relate to matters which are properly of municipal cognizance. The local government simply enforces its own laws, for a purpose separate and distinct from that of the general laws, having special reference to the suppression and restraint of the elements of disorder and immorality. State v. Charles, 16 Minn. 426 (474). In view of the history, nature, and purposes of such corporations, it seems to be clear that the legislature has the power to grant such chartered privileges to them as bodies politic, without surrendering any of the jurisdiction of the state over offenses against it. State v. Oleson, 26 Minn. 507, 5 N. W. 959. It is essential to good government and the public welfare that the authority of the state and municipality should thus stand together." See also State v. Harris, 50 Minn. 128, 52 N. W. 387, 531. It is appropriate that the power of amotion be granted to all municipalities to aid in the government and control of their local affairs; but the orderly administration of such affairs does not require that the power should be exclusive of the general supervisory control of the state. Both powers may stand together without conflict. We so dispose of the question. State v. Smith, 35 Neb. 13, 52 N. W. 700, 16 L. R. A. 791.

It is further contended that the attorney general cannot maintain an action to recover the penalty imposed by section 1562, for the reason that the duty of enforcing all penalties resulting from a failure to observe the liquor statutes is cast upon the county attorney. In this we do not concur. The authority of the attorney general to maintain the action for a forfeiture under section 4545 is not questioned. The contention is that the county attorney alone may enforce the penalty provided for by section 1562. This question might be disposed of adversely to defendant on the ground that a misjoinder of causes of action is not raised by the demurrer. But we pass that point and dispose of the question upon its merits.

That the unrestrained traffic in intoxicating liquors is detrimental to the good order and welfare of the state and its citizens is conceded and declared by all courts where the subject has been under consideration, and statutes designed to restrain and regulate it are uniformly upheld. Such statutes find support in the police power, and the general subject is under the complete control of the legislature. Black, Intox. Liq. 24; City v. Whipple, 24 Minn. 61.

For many years prior to 1887 the laws of this state upon the subject were in a condition of much confusion. The legislature had practically surrendered control of the traffic to the municipalities of the state, which had in turn enacted ordinances regulating the same in harmony with the varying notions of the numerous local municipal councils and governing boards. This resulted in a total lack of uniformity in administrative regulations, and induced extremely lax enforcement of such restrictions as were imposed, creating discontent in the public mind and a strong demand for exclusive control by the state. In 1887 the legislature laid hold of the subject and asserted its authority in the premises by enacting the so-called "high license law." Chapters 5, 6, pp. 40, 41, Laws of 1887. These statutes were expressly made applicable to all cities, villages, and other municipal subdivisions to which the legislature had previously delegated the power of regulation, and all exclusive authority theretofore granted and delegated was thereby in effect repealed. Chapter 6 imposed many specific duties and obligations upon public officers in reference to the subject, including that which defendant is charged with neglecting, and prescribed severe penalties for a violation of any of its provisions. The prior statutes were

enlarged and made more specific by chapter 90, p. 211, Laws 1895, and the legislature therein again declared that the provisions thereof should apply to all municipal corporations of the state, anything in the charters or ordinances thereof to the contrary notwithstanding. Other similar acts have since been placed upon the statute books, all of which lead to but one conclusion, viz., that the legislature intended thereby for the future to restore to the state its superior authority respecting the regulation and control of the liquor traffic. State v. Swanson, 85 Minn. 112, 88 N. W. 416. This necessarily included a restoration of the authority of the executive officers of the state, who are charged with the duty of enforcing the law, which the prior statutes had in effect taken away. It restored the authority of the attorney general in the premises, and he may maintain this action, unless it be held that the legislature intended by the provision of section 1561, imposing the duty of prosecuting violations of the statute upon the county attorney, to commit to that officer exclusive authority in respect to proceedings to enforce that particular statute.

In view of this attitude of the legislature, and its evident purpose of re-establishing the supreme authority of the state in reference to this subject, the contention that the attorney general has no authority to prosecute the action does not require extended discussion. The office of attorney general has existed from an early period, both in England and in this country, and is vested by the common law with a great variety of duties in the administration of the government. The duties are so numerous and varied that it has not been the policy of the legislatures of the states of this country to attempt specifically to enumerate them. Where the question has come up for consideration, it is generally held that the office is clothed, in addition to the duties expressly defined by statute, with all the power pertaining thereto at the common law. State v. Village of Kent, 96 Minn. 255, 104 N. W. 948, 1 L. R. A. (N. S.) 826; 4 Cyc. 1028; Hunt v. Chicago, 20 Ill. App. 282; Parker v. May, 5 Cush. 336; People v. Miner, 2 Lans. 396; People v. Tweed, 13 Abb. Pr. 25. From this it follows that, as the chief law officer of the state, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may from time to time require. He may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the en-

forcement of the laws of the state, the preservation of order, and the protection of public rights. We have no statutory restrictions in this state.

The statute under consideration, imposing specific duties upon county attorneys in the matter of its enforcement, is in no proper view a limitation upon, nor does it exclude, the general authority of the attorney general upon the same subject. We have numerous instances where particular duties are expressly imposed upon the county attorney, yet it is clear that the attorney general has the right, in virtue of his office, to co-operate with or act independently of that official in all cases where the public interests justify it. The purpose of this statute was not to confer special exclusive authority upon the county attorney, but rather specifically to require of him the performance of an existing official duty. The authority to conduct proceedings there required to be brought is incidental to his office, and the statute was in effect but a command of the state to perform his duty. If the command thus made were to be held a vesting of exclusive authority, then with equal propriety it could be held that the duty imposed by the same statute upon mayors and other municipal officers to make complaint of known violations of the statutes would necessarily preclude complaints by others. The reason for so holding would apply with the same force to both cases. But that is not the law; and it is manifest that the legislature did not intend by the statute under consideration to vest the exclusive power in the county attorney for enforcing its various provisions. The authority conferred upon that officer and the general power of the chief law officer of the state may stand together without conflict; and we so hold.

The question is not affected by section 4540, which provides that actions for fines and forfeitures may be prosecuted by certain designated persons. That statute is permissive, and does not exclude the attorney general.

Our conclusion, therefore, is that the attorney general is authorized by law to maintain the action to enforce the pecuniary penalty in question, notwithstanding the fact that the county attorney might also maintain proceedings to recover it. The commencement of the action by him is in complete harmony with the attitude of the legislature in restoring

the exclusive authority of the state in the matter of regulating the liquor traffic, effected by the high license and other statutes on the subject, and the demurrer to the complaint was properly overruled.

Order affirmed.

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