
THE INDIANAPOLIS ENVIRONMENTAL COURT

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The City of Indianapolis and Marion County, Indiana,¹ created an "Environmental Court" in May 1978 which exercises both criminal and civil jurisdiction over all matters related to land use controls. Many factors contributed to the creation of the court: a progressive city government, a strong and innovative mayor, an active Clean City Committee, and community awareness of the housing situation. The primary motivation, however, was the ineffective processing of municipal code violations. Jurisdiction over environmental cases was split between twenty-one different courts. The Indianapolis area needed a single court to handle the special problems of enforcing the tens of thousands of housing code and sanitation code violations.²

I. JURISDICTION OF THE COURT

The environmental court has jurisdiction over criminal violations of

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1. In 1970 the Indiana Legislature consolidated the city of Indianapolis and Marion County into a countywide government, commonly called Uni-Gov. See IND. CODE §§ 18-4-1 to -15 (Burns 1976).

2. Of 195,000 structures in the county, approximately 85,000 had housing code violations in 1976. That same year approximately 52,000 out of 218,000 premises had sanitation code violations. Despite these widespread violations the number of court actions in housing and sanitation matters decreased between 1976 and 1977 from 516 to 474. During the first six months of operation the environmental court heard 1,625 cases. Statistics of the Marion County Health and Hospital Corporation (unpublished).

state and local laws where the penalty does not exceed fines of one thousand dollars or one year in jail, or both.³ Local ordinances can not include incarceration as a criminal sanction. The court also has broad civil jurisdiction, including equity powers, limited only by an amount in controversy ceiling of ten thousand dollars and a lack of authority to partition, or impose liens upon, real estate.⁴

For purposes of assignment of cases to the environment court, environmental ordinances mean any and all ordinances which proscribe, limit, or otherwise impose controls upon the use of land, air, or waterways. These include ordinances governing air, litter, solid waste, animals at large, public safety, public health, buildings, signage, fire prevention, weeds, general nuisances, streets, noise, recreational areas, code enforcement, and zoning. All actions filed are prosecuted in the name of the city or state by the appropriate governmental agency. Private action between individuals, and private citizen complaints for ordinance violations are not permitted. Private parties may only report violations to the appropriate public enforcement agency.

There are three reasons for the prohibition of private actions in the environmental court. First, absent the ability to rapidly respond to violations, the court cannot function effectively. With a prohibition on private actions, the caseload is reduced. Second, the cases must be screened to prohibit the court from becoming a forum for resolution of problems between neighbors by allegations of ordinance violations. Third, purely administrative action achieves voluntary compliance in up to ninety percent of code violations. The administrative enforcement agencies only prosecute the remaining ten percent. Private actions, then, in many cases are unnecessary. Screening increases voluntary compliance because the court can swiftly prosecute violators.⁵

3. The presiding judge of the Marion County Municipal Courts ordered that one of the 14 municipal courts become the environmental court, effective July 15, 1978. The presiding judge has discretion over assignment of cases between the municipal courts. IND. CODE § 33-6-1-3(c) (Burns 1976). The jurisdiction of the municipal courts is set out in IND. CODE § 33-6-1-2 (Burns 1976).

4. IND. CODE § 33-6-1-2 (Burns 1976). A municipal court does, however, possess jurisdiction over possessory actions between landlord and tenant. *Id.*

5. The environmental court does not have jurisdiction over disputes between landlords and tenants. Other courts hear those cases as private civil litigation. Landlord-tenant litigation is not frequent in Indiana because, without the benefit of modern legislation, tenants cannot withhold rent or exercise rights beyond traditional contract rights, with a few minor exceptions. Even if the legislature were to pass new landlord-tenant legislation, which it considered for the last five sessions, the environmental court's docket could not handle the caseload.

The County Health and Hospital Corporation⁶ initiates most of the cases brought before the environmental court. The corporation is an independent unit of government which combines the traditional functions of a county health department with a county hospital administration, providing a coordination of efforts in prevention and treatment of health problems. The corporation's Bureau of Environmental Health monitors and regulates environmental health hazards including inspecting dwellings for housing code violations.⁷ The court spends approximately fifty percent of its time on cases brought by this bureau.

Zoning cases also occupy a large portion of the court's time. The Department of Development's Division of Code Enforcement⁸ brings these actions under its power to enforce the county zoning ordinances. The civil actions for injunctive relief and fines include everything from prosecutions of businesses operating in residential zones to storage of unlicensed and inoperable vehicles upon residential property, as well as violations of use and development standards.

Finally, the court devotes one-quarter of its time to a variety of cases which include the areas of air pollution, building licenses and permits, fire code violations and other health code violations. These cases are both civil and criminal city code violations initiated by the city prosecutor.

II. ENFORCEMENT METHODS

Unremoved trash and housing cases present the most difficult enforcement problems. The vast majority of violations occur because the violators are ignorant of their responsibilities under the law or simply do not care to comply. A small proportion of violations result from infirmities caused by age, illness or incompetency. These cases are the most difficult to deal with because of economic or physical limitations of the violators.

Housing and sanitation code violations are prevalent in the Indianapolis inner-city, where the poor live in older housing stock.⁹ Housing code violations come before the court through a civil complaint asking for a

6. See IND CODE §§ 16-12-21-1 to -15 (Burns 1976).

7. The Bureau of Environmental Health also files cases in the environmental court for violations of municipal ordinances relating to trash, debris, weeds and sanitation.

8. See IND CODE § 18-4-8-7 (Burns 1976).

9. A number of downtown areas are redeveloped or restored, but they represent only a small portion of the city.

mandatory injunction directing the defendant to bring the property into compliance. Attached to the complaint is a bill of particulars. Based upon these two documents, the court issues to the defendant an order to appear, usually within two weeks. If the problem is urgent, such as a lack of heat, the hearing may be set as soon as the next day. Failure to appear results in a body attachment order, usually executed by the sheriff's department within a few days. Attachment of the defendant is fairly easy because the Health and Hospital Corporation's efforts at administrative compliance typically yield considerable information about the defendant.

Upon the defendant's appearance for trial, which may be delayed to obtain counsel or subpoena witnesses, the court informs the defendant of the specific allegations of the complaint. The defendant must then admit or deny each allegation. The court hears evidence by both parties on the disputed allegations. The majority of defendants appear without counsel. The court takes an active role in the informal proceeding, interrogating the defendant in an effort to make a complete factual record of the violation, as well as the defendant's attitude and ability to comply.

The factual determination of the existence of a code violation is simple. The Bureau of Environmental Health submits photographs and detailed case histories. If the defendant complies before trial, the health department generally moves to dismiss. For repeat offenders the bureau requests that the court issue a permanent injunction. Absent voluntary compliance the court issues an enforcement order, based upon the attitude and circumstances of the defendant. If the violations are minor, the court orders the defendant to comply and report to the court within the shortest possible time. In a surprising number of instances the defendant's estimate of the time necessary to comply is less than the court's. In those instances the court strictly holds the defendant to his or her estimate.

The Bureau of Environmental Health inspects the property before the defendant must report back to the court. At this second hearing both parties submit evidence on whether or not the defendant complied with the order. If the property is in compliance, the court either dismisses the case or issues a permanent injunction. If the violation persists, the court has several alternatives. When the defendant shows substantial compliance through conscientious effort or justifiable excuse, such as inclement weather, the court grants an extension to its order. Complete failure to comply with the original order results in punishment for contempt. The court levies a fine: either a lump sum or an amount per day until the violation ceases. If the defendant fails to comply with an extended deadline, the court orders incarceration, usually for one or two

days. Subsequent noncompliance results in increased incarceration. The court warns the defendant that unless the violation ceases he or she will be placed in jail until he or she complies with the order.¹⁰ Although this process sometimes takes months, involving numerous hearings, violators eventually comply with the housing and sanitation codes.

The difficult cases are those where unusual circumstances do not permit ready compliance. In many cases the court must continually supervise the defendant's progress. A proper assessment of the defendant's means or abilities is also difficult. It is always necessary to maintain a certain flexibility to permit the use of various methods to solve a particular problem. Primary difficulties arise, however, where the defendant is without the means or the capacity to correct the problem. Where there is no hope that the defendant can bring the property into compliance, the court orders the defendant to vacate the premises. The health department then cleans and secures the property, billing the expense to the defendant. The money expended becomes part of the court's order and operates as a general judgment against the defendant. The court may order sale of the real estate involved or other assets of the defendant to satisfy the judgment. Few of the judgments will ever be collected. Once the court orders the property vacated because it is unfit for human habitation, condemnation proceedings begin. After razing the structure, the property will usually come into the city's possession by tax sale. Displacement of persons and expense to the city make this method a last resort.

A more acceptable solution is intervention by a social agency that can provide the defendant with sufficient services to permit continued occupancy. Many social services require cooperation of the defendant which, unfortunately, is often difficult to obtain because defendants suffer from some physical or mental disability. In those instances the court, on its own motion, petitions the probate court to appoint a guardian for the defendant.¹¹ The environmental court and the probate court cooperate to quickly locate and enlist the aid of relatives or friends.

In unique situations the court employs unusual solutions. For example, a sixty-seven-year-old woman, without friends or relatives, lived alone in a dilapidated house without heat or water. Pursuant to court order, she was immediately driven to a county home for indigents. The probate court appointed a guardian to administer the woman's

10. Use of indefinite incarceration has not yet been necessary. In one instance the court incarcerated a defendant on three separate occasions for a total of nine days.

11. See IND. CODE § 33-8-1-9 (Burns 1976).

considerable assets for rehabilitation of her house. In another case the court convinced a woman to sell to a neighbor a piece of property which she could not afford to bring into compliance. The neighbor razed the nonconforming structure. The woman used the money from the sale for a down payment on a better house. The environmental court, because of its limited jurisdiction, can develop the expertise to solve these difficult enforcement problems.

III. CONCLUSION

Even though the environmental court is only a year old, several changes would improve the court's effectiveness. The court sorely needs assistance in investigating methods to secure compliance of individual violators. Although the court has access to the probation department and public defender, they do not have the manpower to make field inspections, develop expertise regarding construction and repair of housing, determine the needs and capabilities of the defendant, or provide a liaison with social service agencies. A housing specialist on the court's staff would best fulfill this need.¹² A system of coordinated governmental housing services would also ease the court's burden by consolidating the funding available for rehabilitation.

The environmental court acts as a catalyst for focusing attention on the housing problems of Indianapolis. The local housing codes are now more effectively enforced because certainty of prosecution improves voluntary compliance. The court seeks not to punish violators, but to use the resources of the city, such as appointment of guardians and social service agencies, to assure habitable housing with the least displacement and disruption. A court of specialized jurisdiction over housing and sanitation codes, such as the Indianapolis environmental court, can improve compliance with the city's health regulations by effectively controlling recalcitrant violators through individualized treatment.

12. The court is seeking funding for the specialist.