



ASSISTANTS
COLLEEN P. LIMERICK
RYAN A. ZERBY
SIOBHONNE K. WARD

INVESTIGATOR
DAVID HOLBROOK

ONE COURTHOUSE SQUARE
SUITE 50

KENTON, OHIO 43326-1575
TELEPHONE: (419) 674-2284

BRADFORD W. BAILEY
PROSECUTING ATTORNEY

RE: Requested Information on HB-50

Dear Trustees:

Please find enclosed a copy of HB-50. I have read the statute and provide the following synopsis of what I believe this statute means. First and foremost, it is now found under 505.871 of the Revised Code. This statute deals with the removal of any vehicle that the board of trustees determine is a junk motor vehicle found in the “un-incorporated” territory of the township. Therefore, junk motor vehicles located inside a village or city corporation limits are not subject to Ohio Revised Code §505.871.

The new Ohio Revised Code §505.871 utilizes the definition found in Ohio Revised Code §505.173 to describe “a junk motor vehicle”. That is as specifically as follows 505.173(E) junk motor vehicle means: (1) Three model years, or older; (2) Apparently inoperable; (3) Extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission.

The next procedural step after the vehicle is determined to be a “junk motor vehicle” is that the board must pass a resolution calling for the removal of a motor vehicle from a clearly described piece of real property in fourteen (14) days. The board of trustees must serve the written notice of its intent to remove or cause the removal of the vehicle upon the owner and any holders of liens of record of the land. Therefore, in every case it will be necessary to know who the actually owner of the land is (copy of deed and all lien holders, title search to the root of title of the current owner checking for his mortgages and other liens). **The statute makes it a necessity to serve the owner and it makes it a necessity to serve the lien holders. Just serving the land owner is not sufficient.**

After the board passes this resolution it must issue a notice containing the following details
(1) the board has determined the vehicle is a junk vehicle [described in detail the motor vehicle]
(2) the notice must state if landowner fails to remove the vehicle in fourteen (14) days the board may remove or cause the removal of the vehicle (3) any expenses the board incurs in removing or causing the removal may be entered upon the tax duplicate and become a lien upon the land from the date of entry.

The statute calls for specific service of this notice, which has to be tailored to each specific situation. The primary method of service is certified mail to the owner of the land and to any lien holders. If this notice is not good the statute also provides for publication of the notice. The statute provides how many times the publication must run to be good service. The statute, when publication is involved, specifically mandates that it be published at least once in a newspaper of general circulation. The township trustees should be careful of keeping track of all certified mail and newspaper publication costs.

Now if the resolution has been passed by the township and notice has been sent and the vehicle has not been removed the board or trustees is given the authority under the statute 505.871(D) to enter the land and use all necessary labor and equipment and expend all monies necessary to cause the junk motor vehicle to be removed. The statute also provides, under subsection "D", the township general fund is where the monies must come from, except where there is monies appropriated as a line item for junk motor vehicle removal. Another exception to using the general fund is when monies not otherwise appropriated exceed \$500.00. Where expenses exceed \$500.00 then the statute permits the board to borrow the money from a financial institution to pay for this removal. Bear in mind, expenses for removal include not only the actual labor but the certified mail costs, and publication expenses. The statute under 505.871(E) specifies that expenses even include not only the removal costs but any bank fees or interest paid on any borrowed monies under subsection "D" of 505.871.

Once the removal is done the fiscal officer is to certify to the county auditor an itemized list of all the expenses to be placed on the tax duplicate of the owner of the land. It would be necessary to give the county auditor a copy of the real property legal description, address of the property, and name of the property owner to assess and against whom to certify these expenses. 505.871 of the Ohio Revised Code specifically states that these expenses are placed upon the tax duplicate as a lien on the land and are collected as other taxes and returned to the township general fund. What this means is that the expenses become a tax lien ahead of all prior established lien holders (first mortgage holder). As real estate taxes get paid so does your lien.

Again these expenses actually beat out the first mortgage holder even though the mortgage may have been filed prior to these expenses being incurred.

Another interesting statute for your consideration is Ohio Revised Code §505.85. This is part of the HB-50 package. This statute permits the board of township trustees to contract with vehicle salvage dealers, defined in Ohio Revised Code §4738.01, to actually do the removal and disposal of the motor vehicles under 505.871. In other words, the township trustees can actually turn the every day mechanics of removing these junk motor vehicles over to a private contractor. Bear in mind, even if a private contractor does the physical labor to do these things they still have to run the process (resolution/notice) through the township government. There is still the need for the proper resolution, the proper notices to be signed and given the property owner and lien holders. The cost of this contractor or middle man would be considered, I think, an appropriate cost to be placed on the tax duplicate and collected back. Additionally the old abandoned car sections and junk motor vehicles sections under 505.173 and 4513.60 to 4513.64 of the Ohio Revised Code permit the board now to contract for the storage and impoundment of the motor vehicles within the township provided someone again processes them through the township.

This concept of allowing you to remove junk motor vehicles all comes down to the village taking initial steps to create resolutions and notices and making a determination under the code of whether the vehicle in question is a junk motor vehicle. **Interesting enough it does not matter whether the land owner is the owner of the vehicle or not. The crux of the statute is that if a motor vehicle considered a junk motor vehicle is found on another man's property, that man's property may become subject to a lien and costs of removal.** So it is not necessary for the trustees to establish that the landowner in question is actually the owner of the motor vehicle. Further, any "collector's vehicle" is subject to removal under this statute. See 505.871(F).

This statute still requires the township to have the labor force and the funds to carry out the intent of the statute. Sending notices without the ability to have a labor force to remove junk motor vehicles will not get the job done. If the notice does get the job done then the township does not have to expend money. The other interesting thing this statute does is permit the township to borrow money from financial institutions and to put that cost of the loan and all expenses associated therewith as part of your expenses. However, to be able to trigger the financial loan angle you must establish that the cost of doing this removal is going to exceed \$500.00 and further you do not have any appropriated funds.

Should you have any further questions on this statute, feel free to contact me.

Sincerely,

Bradford W. Bailey
Hardin County Prosecutor

BWB/jp