

TAKING NOTICE

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In our discussion last month of Martha Barnett and her purple 1975 Mustang planter, we noted that the City of Baytown had sent her a Notice advising her that the Mustang was a "junked abandoned vehicle visible from a public place" and constituted a public nuisance. It also told her what she had to do to remedy ("abate") the situation (and by when she had to do it), and what the City would do if she did not.

Under our legal system, people are entitled to the protections and safeguards of "due process" of law. This means that governmental entities must follow certain procedures when they take actions that affect our rights. One due process right we have is the right to receive proper notice that the government plans to do something that affects us.

Thus, when enforcing ordinances prohibiting the outdoor storage of old cars in poor condition, the government must (as Baytown did) notify the owner that it will act if he or she does not remedy the situation within a certain time.

Such a requirement was the focus of the Ninth Circuit Court of Appeals' June 28, 1994 opinion in *Schneider v. County of San Diego*. It ruled that an owner's constitutional right to due process was violated by a county that, without proper notice, dismantled and destroyed several old vehicles that were on his property.

Louis Schneider owned a lot in a rural, agriculturally zoned area. Although he did not reside on the property, he rented out a house located on the lot, and also parked several old vehicles (nine buses, two motorhomes, and two automobiles) in an open field there. The vehicles were visible from a public road that ran in front of the property.

The county received several complaints about the vehicles. It investigated the situation, and determined that the vehicles were parked in violation of

county zoning ordinances and constituted a public nuisance. The county was unsuccessful in persuading Schneider to "abate" the nuisance voluntarily. It therefore posted a "Notice and Order to Abate" on the property, referring to the provisions allegedly violated and indicating that abatement could be accomplished by Schneider's removing the non-operable vehicles.

Schneider requested and was granted an appeal hearing before the County Abatement Board. Unfortunately for him, the hearing officer issued an order of abatement, giving Schneider 30 days to remove the vehicles. Schneider did not. Eventually, the county, through an auto recycling agent, towed the vehicles. The recycler subsequently dismantled or destroyed the vehicles, and sold the remains as scrap.

Schneider sued the county and the recycler (among others) to recover for the loss of his vehicles. The district court granted summary judgment to the defendants, dismissing the case. Schneider appealed to the Court of Appeals.

The Court of Appeals rejected Schneider's argument that the county had violated the Fourth Amendment of the Constitution's bar against unreasonable searches and seizures by entering his property and removing his vehicles. Normally, the Fourth Amendment requires that authorities obtain a warrant before entering onto private premises to search for and abate suspected or declared nuisances. However, there is an "open fields" exception to that requirement, based on the premise that one's expectation of privacy is less in open areas than in private areas such as one's home. Thus, the court ruled that no warrant had been necessary to enter the area or to seize the vehicles there.

Schneider fared better with his argument that his due process rights were

violated because the county did not give him notice of its intention to deprive him of his vehicles by allowing them to be dismantled and sold as scrap. The court noted: "Loss of the use and enjoyment of a car deprives the owner of a property interest that may be taken from him only in accordance with the Due Process Clause." It observed that this applied to Schneider with particular force because the deprivation was permanent.

According to the court, due process required that Schneider be given notice "of such nature as reasonably to convey the required information." It found that the county did not violate his rights when it removed the vehicles, since the risk of removal had been made clear in the notice and hearing. However, the vehicles were not a nuisance "per se" — *i.e.*, regardless of the circumstances — but only because they were parked on his property in violation of the zoning ordinances. Thus, once they were removed from the property, they no longer constituted a nuisance. The county had never given Schneider notice that, under those circumstances, the vehicles would further be destroyed if he did not move them.

Thus, the court ruled that Schneider's due process rights had been violated when the county, through its agent, destroyed his old vehicles. It therefore sent the case back down to the lower court for trial.

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