

Out of Ordinance

BY LAWRENCE SAVELL

As a general rule, it's safe to say that there are some things that, while you can get in trouble for (and might catch cold) doing them outdoors, you're probably okay if you do them indoors. I won't list what these activities are, but they may even include car collecting, depending upon such factors as where you live and the condition of the car or cars in question.

This was recently the subject of discussion in *Ohio v. Mark*, decided on September 26, 1995 by the Court of Appeals of Ohio, Jefferson County.

Madge Mark was charged with a violation of Ordinance No. 1981-24, Section 1 of Wintersville, Ohio. This ordinance required that within residential districts unlicensed motor vehicles not in operating condition could only be stored or parked in an enclosed building or garage. It stated: "No person shall park or store, or permit to be parked or stored, within a residential district for a period of more than thirty days any unlicensed motor vehicle not in operating condition, except in an enclosed building or garage. A motor vehicle parked or stored in violation of this section, after thirty days notice of such violation by registered mail or delivery to the owner or person in possession of such premises by the Police Department or the Building Inspector, may be removed by any police officer at his discretion and shall not be released except upon payment of towing and storage charges. Vehicles so removed may be disposed of . . ." Section 4 of that ordinance provided: "Whosoever shall violate any provisions of Section 1 . . . shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than One Hundred Dollars (\$100.00) plus the costs of prosecution. Each day during which such violation shall continue shall constitute a separate violation."

Following a trial to the court, Mark was found guilty. She was fined \$50.00 and ordered to remove all vehicles that did not run or that were unlicensed within ten days. Mark appealed.

Mark argued that the State of Ohio had determined that a municipality may not regulate the parking or storage of collector's vehicles. A state statute defined a "collector's vehicle" as "any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector's item, leisure pursuit, or investment, but not as the owner's principal means of transportation." It also defined "licensed collector's vehicle" as "a collector's vehicle, other than an agricultural tractor or traction engine, that displays current, valid license tags . . ."

Unfortunately for Mark, another provision stated: "No political subdivision shall prevent a person from storing or keeping, or restrict him in the method of storing or keeping, any collector's vehicle on private property with the permission of the person having the right to the possession of the property; except that a political subdivision may require a person having such permission to conceal, by means of building, fences, vegetation, terrain, or other suitable obstruction, any unlicensed collector's vehicle stored in the open." The Court of Appeals ruled that this meant Wintersville had the power to require a person to store an unlicensed collector's vehicle in a building. It thus found that Ordinance No. 1981-24, Section 1 was valid legislation.

Mark fared better, however, with the argument that the prosecution had failed to put forth sufficient evidence to prove beyond a reasonable doubt that she violated each and every one of the essential elements of the crime.

The State had called only one witness, Robert Eiler, a patrolman employed by the Wintersville Police Department. Mr. Eiler had observed Mark's residence and had observed 11 motor vehicles parked in and around the residence. He was questioned by the prosecution and testified regarding the condition of the vehicles:

"A. There's approximately six or seven of them that don't even hold—have a license on them."

"Q. Are they inoperative?"

"A. To my knowledge they are, yes, because they haven't been moved for over a period of a year."

Under cross-examination, the officer was asked:

"Q. . . . Which vehicle violated the ordinance?"

"A. Any of them that's not running and does not have license on them."

"Q. Okay. Tell us which ones, sir."

"A. I don't know which ones don't have license. I didn't check that. I do know there are three or four of them—there's several of them that's unlicensed. As far as running condition, I don't know."

Finding that the evidence put forth by the prosecution relative to the essential elements of the crime was insufficient, the Court of Appeals reversed the judgment of the trial court and discharged the defendant-appellant Mark.

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