THE CARS NEXT DOOR

LAWRENCE SAVELL

Beauty, it is said, is in the eye of the beholder. Thus, what we may view as a model of classic automotive design awaiting restoration to its former grandeur, someone else may view as a broken-down eyesore late for its appointment with the junkman. Such differences of opinion were implicit in *Board of County Commissioners of the County of Boulder v. James Martin,* decided June 3, 1993 by the Court of Appeals of Colorado.

Martin owns residential property near the town of Lyons in Boulder County. For many years, he has kept numerous vehicles, operable and inoperable, on his property. He planned to license the inoperable cars as collectors' vehicles and store them for restoration as a hobby.

A Colorado statute permitted collectors to store vehicles or "parts cars" on their private property. The state statute required that such vehicles and the outdoor storage areas not create a health, safety, or fire hazard, and be "effectively screened from public view by means of a solid fence, trees, shrubbery, or other appropriate means."

On a more local level, a county zoning resolution and policy (the "ordinance") allowed collectors to store licensed, *operable* vehicles on residential property with no limit or storage requirements. However, it allowed collectors to store only one *inoperable* vehicle outdoors, and only if the storage area complied with the screening requirements. Any additional inoperable vehicles had to be stored indoors, in a garage or similar building.

The Boulder Board of County Commissioners sued Martin, alleging that his outdoor storage of multiple inoperable vehicles violated the local ordinance. Martin argued that the state statute permitted keeping more than one inoperable collector car in outdoor storage as long as the screening requirements were met.

The trial court ruled for Martin, concluding that the ordinance conflicted with and was thus *preempted* by the state statute. ("Preemption" is a legal doctrine that says, for certain matters of national or state, as opposed to local, character, laws of the broader population take precedence over — and may invalidate — those of the narrower.) The Board appealed.

The Court of Appeals began its analysis by noting that, under Colorado law, an ordinance and a statute may coexist if they do not irreconcilably conflict with each other. If there is such a conflict, the local ordinance may be preempted.

Colorado courts provide three ways a state statute can preempt a county ordinance. The first is if the statute *specifically says* it preempts the subject. The second is if the statute *implies* that the state legislature intended to be the sole voice on the subject. The *Martin* court concluded that neither situation was present here.

The third way is if, in operation, the local ordinance conflicts with the application of the state statute. Such preemption can arise when furthering the local interest impedes or destroys the state interest. Here, the county had an interest in maintaining coherent and uniform zoning regulations and in ensuring that collectors' car storage complied with them. However, Colorado also had an interest in the statewide regulation of licensing and storage of collectors' vehicles.

Thus, the question was whether the county ordinance significantly impeded or destroyed the effect of the state statute. The court agreed with Martin that the ordinance conflicted with the statute as it restricted his ability to store multiple inoperable vehicles outdoors.

The court reviewed the statute's language and the concerns of state legislators at the time of its enactment. It concluded that the statute's goal was to allow collectors to store vehicles in outdoor storage areas if the areas were effectively screened from public view.

The statute provided that screening using solid fencing, trees, or shrubbery would be acceptable if effective. If these methods were not effective, the statute provided that "other appropriate means" could be required.

The state legislature thus left determining the effectiveness of screening to local authorities on a case by case basis. However, these local authorities could not require additional methods without first determining that the enumerated permitted methods of trees, fences, or shrubs were ineffective in a particular case.

The ordinance, however, essentially predetermined that the enumerated means were not effective for more than one inoperable vehicle, as it declared that effective screening may be accomplished only through the use of a garage or other structure. Further, the ordinance provided that a collector may keep only one inoperable car in outdoor storage, whereas the statute provided no limitation on the number of vehicles allowed in outdoor storage.

The court therefore concluded that the county ordinance conflicted with and was preempted by the state statute in these respects. Thus, the court affirmed the judgment for Martin.

Lawrence Savell is an attorney with the law firm of Chadbourne & Parke in New York City. This column provides general information and cannot substitute for consultation with a lawyer.