

OPINION NO. 70-109

Syllabus:

A city ordinance authorizing the city police upon the request of and at the expense of the owner, lessee, and/or occupant of private lands, to immediately remove a vehicle parked upon such lands, is not in conflict with Section 737.311, Revised Code, which authorizes the removal, by a municipal law enforcement agency, of a motor vehicle parked upon private lands for seventy-two hours without permission of the person entitled to possession of the property upon which the motor vehicle was left.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: Paul W. Brown, Attorney General, August 27, 1970

I have your request for my opinion which poses the following question:

Is a city ordinance which authorizes the city police, upon the request of and at the expense of the owner, lessee, and/or occupant of private lands, to immediately remove a vehicle parked upon such lands without permission, in conflict with Section 737.311 ~~737.31.17~~, Revised Code, which authorizes the removal, by a municipal law enforcement agency, of a motor vehicle parked upon private lands for seventy-two hours without permission.

Certified Ordinance No. 351.12, City of Parma, provides as follows:

"(a) No person shall park any motor vehicle, truck, trailer, bus or other vehicle upon the private lands of another, without the owner's, lessee's and/or occupant's consent.

"(b) The Division of Police is hereby authorized, upon the request of the owner, lessee and/or occupant of the private lands upon which the vehicle is parked, to remove any vehicle from private lands to a suitable storage area and charge the owner, lessee and/or occupant thereof for removal and storage."

Section 737.311 ~~737.31.17~~, Revised Code, provides in part as follows:

"A law enforcement officer of a municipal corporation, upon complaint of any person adversely affected, may order into storage any motor vehicle which has been left on private property for more than seventy-two hours without the permission of the person having the right of possession of the property upon which

the motor vehicle was left. The place of storage shall be designated by the mayor of the municipal corporation.

"The owner of such motor vehicle may reclaim possession of the motor vehicle upon payment of the expenses or charges incurred in such removal and storage. * * *"

A possible conflict between the ordinance and the statute exists because Ordinance No. 351.12, supra, authorizes the division of police to remove a vehicle parked upon private property without permission, immediately upon complaint, while Section 737.311, supra, authorizes a law enforcement agency to remove, upon complaint, a motor vehicle left on private property for more than seventy-two hours without permission.

Article XVIII, Section 3, Ohio Constitution, provides:

"Municipalities shall have authority * * * to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

In determining whether an ordinance involving the police powers of a municipality is in conflict with the general laws, which include state statutes, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, or vice-versa. Cleveland v. Hoffa, 13 Ohio St. 2d 112 (1968); Akron v. Scolera, 135 Ohio St. 65 (1939).

In applying this test, it is clear that Ordinance No. 351.12, supra, does not permit that which Section 737.311, supra, forbids, but rather provides an additional procedure by which a municipal property owner or lessee can have a vehicle, parked upon his property without permission, removed.

That this remedy is supplemental to the procedure authorized by Section 737.311, supra, is illustrated by the fact that the owner, lessee, and/or occupant of the private property must pay for the immediate removal and storage of the vehicle, while under Section 737.311, supra, the owner of the motor vehicle must pay the charges for removal and storage to reclaim the vehicle left on private property without permission for seventy-two hours.

It is therefore my opinion, and you are hereby advised that a city ordinance authorizing the city police upon the request of and at the expense of the owner, lessee, and/or occupant of private lands, to immediately remove a vehicle parked upon such lands, is not in conflict with Section 737.311, Revised Code, which authorizes the removal, by a municipal law enforcement agency, of a motor vehicle parked upon private lands for seventy-two hours without permission of the person entitled to possession of the property upon which the motor vehicle was left.