

**OPINION NO. 90-020****Syllabus:**

Junk automobiles may be included as "refuse" or "other debris" for purposes of R.C. 505.87.

**To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 3, 1990**

I have before me your request for an opinion on the question whether junk automobiles may be included as "refuse" or "other debris" under the provisions of R.C. 505.87. R.C. 505.87(A) states: "A board of township trustees may provide for the abatement, control, or removal of vegetation, garbage, refuse, and other debris from land in the township, if the board determines that the owner's maintenance of such vegetation, garbage, refuse, and other debris constitutes a nuisance."

R.C. 505.87 establishes a procedure under which a board of township trustees may order a landowner to abate, control, or remove vegetation, garbage, refuse, or other debris that has been determined to be a nuisance. The owner must be given at least seven days to undertake the abatement, control, or removal, or make provision for it. If the owner does not take the necessary action, the board is authorized to take such action at its expense, and to have the costs entered upon the tax duplicate as a lien upon the land to be collected as other taxes. R.C. 505.87.

Your question is whether the procedure established under R.C. 505.87 may be used for the removal of "junk automobiles." You have described such automobiles as being "either unlicensed or inoperable," "an eyesore to the township," and not having been moved "for a period of time varying from one month to one year or greater." I assume, for purposes of this opinion, that you are concerned with situations in which the automobiles in question are either owned by the landowners or left on the property with the permission of the landowners, and in which the landowners are not operating junkyards that are subject to regulation under R.C. 4737.05-12. See generally *State v. Buckley*, 16 Ohio St. 2d 128, 243 N.E.2d 66 (1968), *appeal dismissed and cert. denied*, 395 U.S. 163 (1969).

The terms "vegetation," "garbage," "refuse," and "debris" are not defined by statute. It is, therefore, appropriate to give them their ordinary meanings. See R.C. 1.42. It is clear that a junk automobile is not "garbage" or "vegetation" as those words are commonly used. See *Webster's New World Dictionary* 575, 1573 (2d college ed. 1978) (defining "garbage" as "spoiled or waste food, as from a market or kitchen, that is thrown away" and "vegetation" as "plant life in general"). A junk automobile may, however, come within the ordinary meanings of "refuse" or "other debris." "Refuse" is defined as "anything thrown away or rejected as worthless or useless; waste; trash; rubbish." *Webster's New World Dictionary* 1195 (2d college ed. 1978). "Debris" means: "1. rough, broken bits and pieces of stone, wood, glass, etc., as after destruction; rubble 2. bits and pieces of rubbish; litter." *Webster's New World Dictionary* 364 (2d college ed. 1978). It appears, therefore, that R.C. 505.87 applies to all types of rubbish. There is no indication that its coverage is limited to types of waste that would exclude such mechanisms as automobiles. See generally *Mile Road Corp. v. City of Boston*, 345 Mass. 379, 187 N.E.2d 826, *appeal dismissed*, 373 U.S. 541 (1963) (finding that the words "trash" and "refuse" are synonymous and roughly equivalent to "waste," "rubbish," or "debris," and that a prohibition against the dumping of trash or refuse stands as an absolute prohibition of dumping and is not limited to waste material that is "combustible or putrescible"). It follows that, if a junk automobile is in such condition as to be reasonably classified as "refuse" or "debris," it may come within the provisions of R.C. 505.87.

It should be noted, however, that R.C. 505.87 comes into effect only when the board of township trustees determines that the owner's maintenance of vegetation, garbage, refuse, or other debris constitutes a nuisance. Accordingly, the removal of a junk automobile may be ordered under R.C. 505.87 only if it has been determined that the maintenance of such automobile constitutes a nuisance. See generally *City of Stow v. Griggy*, 6 Ohio App. 3d 65, 453 N.E.2d 1125 (Summit County 1983) (upholding a conviction for the storage of inoperable motor vehicles without enclosure as a nuisance in violation of a city ordinance); *Foley v. Harris*, 223 Va. 20, 22, 286 S.E.2d 186, 187 (1982) (upholding the chancellor's finding that "old abandoned automobiles are offensive, unsightly, objectionable and constitute a 'nuisance'"). But see *Bohley v. Crofoot*, 7 Ohio L. Abs. 667, 668 (Ct. App. Medina County 1929) ("[p]laintiff's rights are not invaded by the mere storage of automobiles upon the premises of the defendant..."); *Dale v. Bryant*, 75 Ohio L. Abs. 401, 404, 141 N.E.2d 504, 505 (C.P. Montgomery County 1957) ("[t]he mere storage of automobiles upon the premises does not invade the rights of adjoining owners"). See generally *Village of Deshler v. Hoops*, 26 Ohio Op. 2d 30, 196 N.E.2d 476 (C.P. Henry County 1963).

The standard definition of nuisance is as follows: "To constitute a nuisance, the thing or act complained of as constituting such nuisance must either cause injury to the property of another, obstruct the reasonable use or enjoyment of such property or cause physical discomfort to such other person." *Dorow v. Kendrick*, 30 Ohio Misc. 2d 40, 40, 508 N.E.2d 684, 685 (Ct. Cl. 1987) (citations omitted); see *State ex rel. Chalfin v. Glick*, 113 Ohio App. 23, 177 N.E.2d 293 (Hardin County 1960), *aff'd*, 172 Ohio St. 249, 175 N.E.2d 68 (1961); see also *State ex rel. Pansing v. Lightner*, 32 Ohio N.P. (n.s.) 376, 390 (C.P. Montgomery County 1934) ("[a] nuisance is anything which endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property"). A determination as to whether a nuisance exists requires findings of fact and consideration of the surrounding circumstances. See, e.g., *Columbus Gas Light and Coke Company v. Freeland*, 12 Ohio St. 392 (1861) (syllabus, paragraph 1) ("[w]hat amount of annoyance or inconvenience will constitute a nuisance, being a question of degree, dependent on varying circumstances, can not be precisely defined"); *Antonik v. Chamberlain*, 81 Ohio App. 465, 475, 78 N.E.2d 752, 759 (Summit County 1947) ("[t]he law of nuisance plys between two antithetical extremes: the principle that every person is entitled to use his property for any purpose that he sees fit, and the opposing principle that everyone is bound to use his property in such a manner as not to injure the property or rights of his neighbor. For generations, courts, in their task of judging, have ruled on these extremes according to the wisdom of the day, and many have recognized that the contemporary view of public policy shifts from generation to generation"). It is inappropriate to use the opinion-rendering function of the Attorney General as a means for making findings of fact. See, e.g., 1989 Op. Att'y Gen. No. 89-055; 1986 Op. Att'y Gen. No. 86-076; 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body..."). Rather, under R.C. 505.87, the responsibility of determining whether a nuisance exists has been given to the board of township trustees.

In addressing problems relating to junk automobiles, you should be aware of R.C. 4513.65, under which a board of township trustees may send notice to a person who has a junk motor vehicle<sup>1</sup> on his property that the vehicle must, within ten days, either be housed in a suitable structure or be removed from the property. Failure to comply with the notice constitutes a criminal offense. See R.C. 4513.65; R.C. 4513.99(E). R.C. 4513.60-.64 are also applicable to automobiles in certain circumstances; they govern the removal of motor vehicles left on public

<sup>1</sup> R.C. 4513.65, by reference to R.C. 4513.63, defines a "junk motor vehicle" as follows:

- (B) Three years old, or older;
- (C) Extensively damaged, such damage including but not limited to any of the following: missing wheels, tires, motor, or transmission;

property or left on private property without permission. The existence of these provisions does not, however, appear to prevent R.C. 505.87 from applying, according to its terms, to automobiles that are "refuse" or "other debris" and are found to constitute a nuisance. *See generally Rootstown Township v. Shimp*, 47 Ohio App. 3d 141, 547 N.E.2d 1007 (Portage County 1988). General provisions governing nuisances appear in R.C. Chapter 3767. *See also* R.C. 3707.01-.02 (board of health's authority to abate nuisances); R.C. 4513.61. *See generally* 1987 Op. Att'y Gen. No. 87-097. Again, the existence of such provisions does not appear to limit the applicability of R.C. 505.87.

For the reasons set forth above, it is my opinion, and you are advised, that junk automobiles may be included as "refuse" or "other debris" for purposes of R.C. 505.87.

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- (D) Apparently inoperable;
  - (E) Having a fair market value of two hundred dollars or less.

Your question is not, however, restricted to vehicles that come within this definition.