

**OPINION NO. 91-018****Syllabus:**

1. Property on which old or scrap materials are stored or kept is not a junk yard for purposes of R.C. 4737.05-.12 unless the property is maintained or operated as a commercial establishment or place of business for the purpose of storing, keeping, buying, or selling such materials.
2. Property that is maintained or operated as a residence or farm is not a junk yard for purposes of R.C. 4737.05-.12 merely because some old or scrap materials are stored or kept there.
3. Various statutory provisions may be available to remedy problems arising from the storage of junk motor vehicles on residential or agricultural property within a township. Among them are

nuisance provisions, such as R.C. 505.87, R.C. 3707.01-.02, and R.C. Chapter 3767; provisions governing junk automobiles, such as R.C. 4513.65 and R.C. 4513.63; and local zoning provisions adopted under R.C. Chapter 519.

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**To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio**  
**By: Lee Fisher, Attorney General, April 16, 1991**

I have before me your request for an opinion on the question "whether the provisions of O.R.C. §4737.05 et seq. regulating junk yards are broad enough to encompass the accumulation of such vehicles on residential and agricultural property." R.C. 4737.05(B) contains the following definition of "junk yard":

"Junk yard" means an establishment or place of business, which is maintained or operated for the purpose of storing, keeping, buying, or selling junk, and includes garbage dumps and sanitary landfills. For the purposes of sections 4737.05 to 4737.99 of the Revised Code, the term "junk yard" shall also include scrap metal processing facilities which are located within one thousand feet of the nearest edge of the right of way of a highway in the interstate or primary system.

R.C. 4737.05(A) defines "junk" to mean "old or scrap copper, brass, rope, rags, trash, waste, batteries, paper, rubber, iron, steel, and other old or scrap ferrous or nonferrous materials."

R.C. 4737.06 and 4737.07 prohibit the operation or maintenance of a junk yard, "adjacent to the interstate or primary systems" inside a municipality, "except in zoned or unzoned industrial areas," unless a license is first obtained from the municipality under R.C. 4737.02-.12; the exception does not prohibit the regulation or prohibition of junk yards in zoned or unzoned industrial areas by municipal corporations, and R.C. 4737.07 expressly permits a municipality to impose a licensing requirement. R.C. 4737.07 prohibits the operation and maintenance of a junk yard "outside of a municipality, except in zoned or unzoned industrial areas adjacent to the interstate or primary systems," unless a license is first obtained from the county auditor. *See also* R.C. 4737.08-.12. The statutory scheme imposes requirements that junk yards be fenced or otherwise obscured from view. *See* R.C. 4737.05(C); R.C. 4737.07; R.C. 4737.09.

You have indicated that your question has arisen because of the "problem of inoperable, disabled or junk motor vehicles accumulating on private property... particularly in unzoned townships. In most instances, these vehicles simply sit unused and rusting on the owner's property....In some instances, the property also has discarded furniture or appliances." You have added that townships have suggested that action might be taken against the property owners "for violation of O.R.C. §4737.05 et seq. or for violation of zoning provisions for maintaining such a junkyard in a prohibited area." Your question is whether R.C. 4737.05 and related provisions were intended to apply to non-commercial properties where junk motor vehicles are kept.

As your letter notes, R.C. 4737.05(B) defines "junk yard" to mean "an establishment or place of business, which is maintained or operated for the purpose of storing, keeping, buying, or selling junk," including garbage dumps and sanitary landfills. Your question relates to residential or agricultural property that contains one or more disabled and inoperable motor vehicles and perhaps a few miscellaneous discarded items. It does not appear - on those facts alone - that such property is "an establishment or place of business, which is maintained or operated for the purpose of storing, keeping, buying, or selling junk."

It is true that the word "establishment" may include a household or residence. *See, e.g., Webster's New World Dictionary* 479 (2d college ed. 1978) (defining "establishment" to mean "a thing established, as a business, military organization, household, etc."). The word "establishment" does, however, frequently carry with it the connotation of commerce or business. *See, e.g., Black's Law Dictionary* 546 (6th ed. 1990) (defining "establishment" as "[a]n institution or place

of business, with its fixtures and organized staff"). As used in R.C. 4737.05(B), the word "establishment" is linked with "place of business," thus indicating that the word is used in the sense of a commercial establishment. The conclusion that "establishment" means a commercial enterprise is fortified by the purpose language of R.C. 4737.05(B): a "junk yard" is an establishment or place of business "which is maintained or operated for the purpose of storing, keeping, buying, or selling junk."

An ordinary residence or farm is maintained and operated for the purpose of supporting the life and day-to-day activities of a family or for undertaking agricultural pursuits. While the property may be used for the storage of old or scrap materials, such a use is normally incidental to the main purpose for which the property is operated and maintained. It would be nonsensical to conclude that a residence or farm becomes a junk yard – and that the person operating or maintaining the residence or farm is, thus, subject to licensing provisions – whenever any old or scrap materials are stored there; such a definition would include as a junk yard the home of every thrifty family that saves used items for eventual reuse. It appears, rather, that residential or agricultural property on which some discarded materials are stored does not become a junk yard within the meaning of R.C. 4737.05(B) unless the property is maintained or operated for the purpose of storing, keeping, buying, or selling junk for a commercial purpose.

Issues similar to those that you have raised were considered in *City of Lewiston v. Mathewson*, 78 Idaho 347, 303 P.2d 680 (1956). There a city ordinance made it unlawful for any person to engage in the business of a junk dealer without first obtaining a license. The court stated:

Respondent contends that the definition of "junk dealer" contained in the ordinance is so broad as to include every person who shall occasionally or incidentally engage in keeping, dumping, disposing of or collecting junk, and that in view thereof, every man, woman and child in appellant City are in literal violation of the ordinance; that therefore the ordinance is void since it is unreasonable, evidences an improper use of police power, and violates basic constitutional rights.

In defense of his position respondent points specifically to the following portion of the ordinance:

"The term 'junk' dealer as used in this chapter shall include every person who shall be occasionally, regularly, principally or incidentally engaged in buying, selling, keeping, dumping, disposing of or collecting 'junk' as defined by this chapter." (Respondent's emphasis.)

However, such portion of the ordinance must be interpreted in conjunction with the portion thereof which declares it unlawful for any person to engage in the business of a junk dealer without first obtaining a license therefor. When so considered it becomes clear that appellant City intended to regulate the business of a junk dealer or, stated another way, to require persons to be licensed who deal in junk as a business.

The ordinance was never intended to be and is not, as respondent contends, "so broad that every man, woman, and child is in violation of it" simply because, to be in violation of its provisions, the person first must deal in junk as a business. The acquisition and disposition of the kinds of materials or articles referred to in the ordinance by the man, woman or child for any purpose, other than the business of a junk dealer, is not in violation of the ordinance.

*City of Lewiston v. Mathewson*, 78 Idaho at 351-52, 303 P.2d at 682-83.

It is important in the instant case, as it was in the *Lewiston* case, to look at all portions of the statutory scheme. If the definitions set forth in R.C. 4734.05(A) and (B) are read in conjunction with related provisions, it becomes apparent that the licensing requirements of R.C. 4737.06 and 4737.07 are imposed only upon commercial establishments or places of business that are maintained or operated for the purpose of storing, keeping, buying, or selling junk, and not upon residences or farms that may incidentally serve as repositories for junk. It is, of course, clear that property housing a residence or farm might also be maintained or

operated for the purpose of storing, keeping, buying, or selling junk for a commercial purpose, even as such property might be the site of any of a number of other types of businesses. A determination as to whether the storage of discarded materials is incidental to residential or agricultural activities or itself constitutes a commercial enterprise must be made on a case-by-case basis in light of the facts involved in particular circumstances. *See generally, e.g.*, 1988 Op. Att'y Gen. No. 88-051.

In considering whether the type of situation with which you are concerned comes within the regulatory scheme set forth in R.C. 4737.05-.12, it should be noted that what is commonly thought of as a junk yard for motor vehicles is not governed by R.C. 4737.05-.12 but is, instead, governed by R.C. Chapter 4738, which relates to motor vehicle salvage. *See generally* 1989 Op. Att'y Gen. No. 89-008. R.C. 4738.01(B) defines a "salvage motor vehicle" as "any motor vehicle which is in a wrecked, dismantled, or worn out condition, or unfit for operation as a motor vehicle." R.C. 4738.01(A) defines a "motor vehicle salvage dealer" as "any person who engages in business primarily for the purpose of selling salvage motor vehicle parts and secondarily for the purpose of selling at retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal." R.C. 4738.02 provides that, with certain exceptions, "no person shall engage in the business of selling at retail salvage motor vehicles or salvage motor vehicle parts, or assume to engage in any such business without first obtaining a motor vehicle salvage dealer's license" pursuant to R.C. Chapter 4738. The making of a casual sale by a person other than a motor vehicle salvage dealer to an ultimate purchaser for use as a consumer does not constitute "engaging in business." *See* R.C. 4738.01(E), (I). R.C. 4738.02(B) does, however, provide that no person may make more than five casual sales of salvage motor vehicles in a twelve-month period, or provide a location or space for the sale at retail of salvage motor vehicles, without obtaining a motor vehicle salvage dealer's license. A person who engages primarily in the business of selling salvage motor vehicles but either does not sell salvage motor vehicle parts or sells them secondarily must be licensed as a used motor vehicle dealer under R.C. Chapter 4517. *See* R.C. 4517.01(L); R.C. 4517.02.

Prior to September 17, 1986, R.C. 4737.05(A) included the following language within its definition of "junk": "junked, dismantled, or wrecked automobiles or parts thereof." *See* 1975-1976 Ohio Laws, Part I, 93, 102 (Am. S.B. 52, eff. Sept. 15, 1975). At that time, R.C. 4737.05(B) listed the following within its definition of "junk yard": an establishment or place of business maintained or operated "for the maintenance or operation of an automobile graveyard," and "any site, location, or premise on which are kept two or more junk motor vehicles, whether or not for a commercial purpose." *See* 1975-1976 Ohio Laws, Part I, 93, 102 (Am. S.B. 52, eff. Sept. 15, 1975). These references to automobiles and motor vehicles were deleted by Am. H.B. 755, *see* 1985-1986 Ohio Laws, Part III, 5696 (Am. H.B. 755, eff. Sept. 17, 1986), which also amended the provisions of R.C. Chapter 4738. In discussing the effect of Am. H.B. 755, the Ohio Legislative Service Commission stated: "The act removes all references to automobiles in the definitions of the Junk Yards Law and repeals the above exemption statute in that law,<sup>1</sup> thus eliminating any question of dual licensing." Ohio Legislative Service Commission, *Summary of Enactments April - June 1986*, 131 (1986) (footnote added). It thus appears that persons who sell salvage motor vehicles or salvage motor vehicle parts are subject to licensure under R.C. Chapter 4517 or 4738, rather than R.C. 4737.05-.12.

Prior to the enactment of Am. H.B. 755, any property on which two or more junk motor vehicles were kept would have been considered a junk yard for purposes of R.C. 4737.05-.12, regardless of whether the vehicles were kept for a commercial purpose. Since the enactment of Am. H.B. 755, such property does not come within

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<sup>1</sup> R.C. 4737.13, repealed by 1985-1986 Ohio Laws, Part III, 5696 (Am. H.B. 755, eff. Sept. 17, 1986), had provided that R.C. 4737.05-.11 and R.C. 4737.99 did not apply to a person who held a current, valid motor vehicle salvage dealer's license, salvage motor vehicle auction license, or salvage motor vehicle pool license issued under R.C. Chapter 4738. *See* 1981-1982 Ohio Laws, Part II, 2541 (H.B. 361, eff. March 15, 1982).

the definition of "junk yard" appearing in R.C. 4737.05(B). *See generally Donham v. E.L.B., Inc.*, 8 Ohio Misc. 2d 31, 33, 457 N.E.2d 953, 956 (C.P. Clermont County 1983) (stating that R.C. 4737.05(B), as in effect in 1983, did not provide a distinction between a commercial junkyard (where buying and selling occurs) and any other type of junkyard (used simply for storage); the facts showed that both storage and buying and selling occurred at the facility in question). Rather, as discussed above, property on which old or scrap materials are stored or kept is not a junk yard for purposes of R.C. 4737.05(B) unless the property is maintained or operated for the purpose of storing, keeping, buying, or selling such materials for a commercial purpose, rather than merely as a use incidental to residential or agricultural activities.

There are various statutory provisions apart from R.C. 4737.05-.12 that may be used to effect the removal of junk motor vehicles from property within a township. In 1990 Op. Att'y Gen. No. 90-020, my predecessor concluded that junk automobiles may be included as "refuse" or "other debris" for purposes of R.C. 505.87, which authorizes a board of township trustees to provide for the abatement, control, or removal of refuse or other debris that constitutes a nuisance. Other nuisance provisions appear in R.C. Title 37. *See, e.g.*, R.C. 3707.01-.02 (board of health's authority to abate nuisances); R.C. Chapter 3767 (general nuisance provisions).

Provisions relating specifically to junk motor vehicles appear in R.C. Chapter 4513. R.C. 4513.65 authorizes, *inter alia*, the sheriff of a county, a board of township trustees, or the zoning authority of a township to send notice requiring the removal or enclosure of a junk motor vehicle that has been left uncovered in the open on private property for more than seventy-two hours with the permission of the person with the right of possession of the property. Failure to comply with the notice constitutes a criminal offense. R.C. 4513.65; R.C. 4513.99(E). For purposes of R.C. 4513.65, a "junk motor vehicle" is defined 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;
- (D) Apparently inoperable;
- (E) Having a fair market value of two hundred dollars or less.

R.C. 4513.63.

R.C. 4513.63 governs the removal of abandoned junk motor vehicles - *i.e.*, junk motor vehicles that have been left on private property for more than seventy-two hours without permission or on public property for forty-eight hours or longer. *See also* R.C. 4513.64; 1985 Op. Att'y Gen. No. 85-097. R.C. 4513.60 governs the removal of motor vehicles that are not abandoned junk motor vehicles and are left on private property without permission, and R.C. 4513.61 governs the removal of motor vehicles that are not abandoned junk motor vehicles and are left on public property for forty-eight hours or longer. *See also* R.C. 4513.62; Op. No. 85-097. A board of township trustees may contract with a motor vehicle salvage dealer, *see* R.C. 4738.01(A), or a scrap metal processing facility, *see* R.C. 4737.05(D), for the disposal of motor vehicles pursuant to R.C. 4513.60-.64, or with a storage facility for the storage or impoundment of motor vehicles pursuant to R.C. 4513.60-.64. R.C. 505.85.

Your letter mentions the enforcement of zoning provisions. The references in R.C. 4737.05-.12 to zoned and unzoned industrial areas are applicable only to junk yards as defined in R.C. 4737.05(B) and do not affect a residence or farm unless it is maintained or operated for the purpose of storing, keeping, buying, or selling junk. It is, however, possible that a township may have zoning provisions that govern the storage of discarded materials of various types on property that does not constitute a junk yard for purposes of R.C. 4737.05-.12.<sup>2</sup> *See, e.g., State v. Coble*, C.A.

<sup>2</sup> R.C. 4737.06 and R.C. 4737.07 expressly authorize a municipal corporation to license or prohibit junk yards. *See generally State v. Petry*, No. CA87-06-016 (Ct. App. Preble County Dec. 31, 1987) (LEXIS, Ohio

No. 2541, slip op. at 2-4 (Ct. App. Wayne County Aug. 8, 1990) (1990 Ohio App. LEXIS 3475) (finding that legislative changes in R.C. 4737.05 and other provisions of Title 47 did not affect an argument on the vagueness of a township zoning resolution providing that "[a]ll automobiles and trucks not housed in an enclosed building or garage shall meet State vehicle safety regulations and be immediately operable");<sup>3</sup> *State v. Bond*, 47 Ohio Misc. 2d 5, 6, 547 N.E.2d 422, 423 (Highland County Ct. 1988) (upholding conviction under a township ordinance stating: "No abandoned, wrecked, dismantled, or totally disabled automobiles, trucks, trailers, aircraft, or discarded furniture, appliances or other miscellaneous materials shall be permitted to remain exposed on the premises" for more than thirty days); cf. *Rootstown Township v. Shimp*, 47 Ohio App. 3d 141, 547 N.E.2d 1007 (Portage County 1988) (declaring unconstitutional a township zoning resolution that attempted to zone a motor vehicle as a junk yard; the basis was that the zoning power pertains to the use of real property, not personal property). If a township has zoning provisions governing the storage of discarded materials, such provisions may be helpful in addressing problems arising from the storage of junk motor vehicles. See R.C. Chapter 519. See generally *State v. Bond*.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Property on which old or scrap materials are stored or kept is not a junk yard for purposes of R.C. 4737.05-.12 unless the property is maintained or operated as a commercial establishment or place of business for the purpose of storing, keeping, buying, or selling such materials.
2. Property that is maintained or operated as a residence or farm is not a junk yard for purposes of R.C. 4737.05-.12 merely because some old or scrap materials are stored or kept there.
3. Various statutory provisions may be available to remedy problems arising from the storage of junk motor vehicles on residential or agricultural property within a township. Among them are nuisance provisions, such as R.C. 505.87, R.C. 3707.01-02, and R.C. Chapter 3767; provisions governing junk automobiles, such as R.C. 4513.65 and R.C. 4513.63; and local zoning provisions adopted under R.C. Chapter 519.

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library, App file). A township has no such express authority, and I am not considering whether, or to what extent, a township may regulate junk yards that are subject to R.C. 4737.05-.12. *But see generally* 1969 Op. Att'y Gen. No. 69-136 (syllabus) (concluding under law then in effect: "A township's zoning authority under Chapter 519, Revised Code, is not inconsistent with the requirement under Section 4737.07, Revised Code, of a license issued by the county auditor prior to the establishment of a junk yard. The county auditor's licensing power, with respect to junk yards, and the township's zoning authority are mutually independent and separately enforceable"). Your question relates to properties that are not junk yards for purposes of R.C. 4737.05-.12, and the existence of R.C. 4737.05-.12 clearly does not affect a township's authority with respect to such properties.

<sup>3</sup> *State v. Coble*, C.A. No. 2541, slip op. at 3-4 (Ct. App. Wayne County Aug. 8, 1990) (1990 Ohio App. LEXIS 3475), states:

Coble also contends that "one man's junk is another man's treasure" and that when the Ohio legislature amended R.C. 4737.05 it no longer defined junk to include "junked, dismantled, or wrecked automobiles." Coble argues that the trustees cannot define "junk" in a way that the state legislature has rejected. This argument lacks merit.