

OPINION NO. 79-073

Syllabus:

The provisions of R.C. 4511.661 regarding unattended motor vehicles apply equally to vehicles left on public highways and those left on private property used by the public for purposes of vehicular travel or parking.

To: John E. Moyer, Erie County Pros. Atty., Sandusky, Ohio
By: William J. Brown, Attorney General, November 2, 1979

I have before me your request for my opinion as to whether R.C. 4511.661 regulates the manner in which a person may leave a motor vehicle unattended while on private property. R.C. 4511.661 provides, in pertinent part, as follows:

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the parking brake, and, when the motor vehicle is standing upon any grade, turning the front wheels to the curb or side of the highway.

Initially, it should be noted that R.C. 4511.99(D) subjects a person who violates the requirements of R.C. 4511.661 to criminal penalties. Thus, you are particularly concerned with the question whether police officers may issue tickets under R.C. 4511.661 for vehicles left unattended on private property. There is no reference in the statute to either public or private property. The statute must be examined, therefore, to determine the type of property to which its provisions apply.

R.C. 4511.661 sets forth five requirements that must be met by a person driving or in charge of a motor vehicle when the vehicle is left unattended. The first four requirements are that the person stop the engine, lock the ignition, remove the key from the ignition, and effectively set the parking brake. I find no ambiguity in the statute with respect to each of these requirements.

The meaning of the last requirement, however, is not clear. One interpretation is that the front wheels of the vehicle must be turned to the curb of the highway or to the side of the highway, thus making the provision applicable to only those vehicles left on the highway. Another interpretation is that the wheels of an unattended vehicle must be turned toward the curb of an area other than a highway—meaning, perhaps, the edge of a driveway at a shopping center or other private area—or toward the side of a highway. The distinction between these two interpretations is significant to the question you have raised.

If the former interpretation is adopted, the statute will apply only to vehicles left unattended on a public thoroughfare. If the latter interpretation is adopted, it is immaterial whether the vehicle is left on a public highway or on private property. Because of the lack of any case law construing the statute, the purpose of the General Assembly must be determined.

After examining Ohio's statute and similar statutes of many other states, I find that such statutes seek two major goals: prevention of auto theft and safety from vehicles being set in motion by minors or the force of gravity on a grade. With these goals in mind, I find it contradictory to limit the application of the statute to highways, thereby allowing vehicle operators to leave their vehicles running or with the keys in the ignition in a shopping center parking lot. There it is as likely, if not more so, that the car could be stolen or started. Where a statute's language is susceptible of two constructions and only one will carry out the intention of the legislature, that construction must be used. State v. Glass, 27 Ohio App. 2d 214, 219 (1971). Thus, to carry out the intent of the legislature to prevent theft and injury arising from unattended vehicles, it appears that the statute must be construed to govern both public and private areas.

To allow enforcement of the statute on all private property, however, would be an unreasonable expansion of the provision. In construing a statute almost identical to that of Ohio, the court stated in Elliot v. Capitol Cadillac-Oldsmobile Co., 245 A. 2d 634, 635 (1968):

If Section 98 were applied to motor vehicles parked on private property, one, who parks his car in a carport away from a public

highway or, who puts his car in a closed garage, would be violating the regulation and subject to a criminal penalty merely because he left the keys in the car. He could also incur civil liability for damages should a thief trespass on the residential property and take the car from the carport or break into his garage and steal the car. We do not think this result was intended by the regulatory language.

Similarly, it is my opinion that the General Assembly did not intend to include all private property within the purview of R.C. 4511.661.

In order to determine where the public interest in the above goals ends and interests in private property begin, I find New York's position helpful. The New York statute specifically applies to vehicles left on the highway, but has been expanded by the court to areas which are not highways. The court adopted a "public character" test based on a case by case factual determination that there is a public interest in certain private property. The court stated in Watts v. Colonial Sand & Stone, Inc., 64 Misc. 2d 889, 892 (1970), aff'd, 31 N.Y. 2d 685 (1972):

The public character of the area must be considered even if it be privately owned and its use limited to the owner's customers.

Thus, if this position is adopted, ticketing will be permitted on private property which is used by the public to such an extent that the property takes on a public character.

The intent of the General Assembly to make the provisions set forth in R.C. Chapter 4511 applicable to private property used by the public is found in R.C. 4511.08, set forth below.

Sections 4511.01 to 4511.78, inclusive, . . . of the Revised Code do not prevent the owner of real property, used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use or from requiring additional conditions to those specified in such sections, or otherwise regulating such use as may seem best to such owner. (Emphasis added.)

By authorizing the owner of private property which is being used by the public to impose conditions in addition to those set forth in R.C. Chapter 4511, the General Assembly has indicated that the provisions of R.C. 4511.661 are intended to regulate the use of vehicles while on such property.

A similar distinction was made in R.C. 4507.02, requiring operators of vehicles to be licensed. The statute states:

No person, except those expressly exempted under sections 4507.03, 4507.04, and 4507.05 of the Revised Code, shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless such person, upon application, has been licensed as an operator or chauffeur by the registrar of motor vehicles under sections 4507.01 to 4507.39, inclusive, of the Revised Code. (Emphasis added.)

The distinction between private property used by the public and purely private property, therefore, is not a new or unnatural one.

Accordingly, it is my opinion, and you are advised, that the provisions of R.C. 4511.661 regarding unattended motor vehicles apply equally to vehicles left on public highways and those left on private property used by the public for purposes of vehicular travel or parking.