

Junk Motor Vehicles

Storage, Regulation & Removal

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1. What does the new law (R.C. 505.871) do?

With the enactment of R.C. 505.871, effective March 5, 2008, townships in Ohio have new statutory authority to address junk motor vehicles located within a township. The provisions of R.C. 505.871 specifically vest township boards of trustees with the express statutory authority to actually remove or cause the removal of junk motor vehicles from both public and private property located within the unincorporated area of a township. Prior to the enactment of R.C. 505.871, most townships that undertook the removal of junk motor vehicles relied primarily upon an opinion provided by the Ohio Attorney General in O.A.G 90-020 that such vehicles were “refuse” or “other debris” and ultimately could constitute nuisances under the provisions of R.C. 505.87. While helpful in many ways, it was still necessary for a board to determine that a junk motor vehicle constituted a nuisance before any action could be taken. The new law, on the other hand, specifically allows a board, after adopting a written resolution and sending proper notice, to cause a vehicle that satisfies the statutory definition of a junk motor vehicle to be removed from property located in the unincorporated area of a township. A board is no longer required to make a determination that a nuisance exists. R.C. 505.871 provides a specific definition of a “junk motor vehicle” and sets forth a statutory procedure for dealing with them. Basically, a “junk motor vehicle” is defined as a “vehicle that is three model years or older, is apparently inoperable, and is extensively damaged, including, but not limited to any of the following: missing wheels, tires, engines, or transmission”. This definition notably does not include a dollar limit or value of the vehicle. Once a board makes a determination that a junk motor vehicle exists, the statutory process discussed later in this article must be followed.

2. Does my township need to pass a resolution to implement this new law?

Yes, it is recommended that a township adopt a broad based policy resolution implementing the new law so that residents are aware of the new junk motor vehicle removal authority. Once a township official or officer notices a junk motor vehicle, a board should adopt an additional resolution addressing that specific vehicle. A township may address multiple junk motor vehicles located on various properties with the same resolution.

Although R.C. 505.871 does not specifically set forth the information that must be included in the resolution, the resolution ordering the removal of a junk motor vehicle from private property should contain several provisions. First, the resolution should specifically identify by mailing address, tax parcel identification number or legal description the property where the junk motor vehicle is located. Second, the resolution should provide a general description of the vehicle to be removed, state that the vehicle is “three model years or older, apparently inoperable, is extensively damaged (identifying ____)” and specifically state that the board has determined that the vehicle is a junk motor vehicle under the provisions of R.C. 505.871. Third, the resolution should instruct a township administrator, employee or a board member to provide written notice to the property owner and all lien holders of record of the board’s determination and its intention to remove or cause the removal of the vehicle unless the vehicle is removed from the property within 14 days of receipt of the notice sent by the township. Lastly, a board may want to include provisions authorizing a board member to enter into any necessary removal contracts in the event the junk motor vehicle is not removed from the property within the applicable timeframe, and requesting the township fiscal officer to certify the removal costs to the county auditor for inclusion on the tax duplicate for the property where the junk motor vehicle was located.

3. Does the township have to go through the courts under this new law?

One of the primary benefits of R.C. 505.871 is that it does not require court involvement prior to removing a junk motor vehicle from a property located in the unincorporated area of the township. Instead, the statute sets forth a specific procedure that allows a board to move forward with the removal of a junk motor vehicle without the assistance of the courts while still providing some due process procedural protections for citizens of the township. Since the determination that a vehicle is a junk motor vehicle is factual in nature, it is extremely important that a board exercise care to accumulate sufficient facts to justify its determination that a vehicle is a junk motor vehicle and to ensure that all procedural requirements are followed.

Prior to passing a resolution causing the removal of a junk motor vehicle, a township zoning inspector or other township official should inspect the property and document the existence and condition of the vehicle and preferably take pictures of the property and the junk motor vehicles for use as evidence and support of the board's decision. The zoning inspector or township official should then appear at a special or regular meeting of the board and provide the board with a written report documenting the existence of the junk motor vehicle and any pictures and/or other evidence regarding the vehicle in question. If a complaint was filed by someone other than the zoning inspector or township official, the complainant and any persons, particularly neighboring property owners, should also be allowed to provide additional comments regarding the existence and condition of the junk motor vehicle. If the board determines based upon the facts and evidence submitted, that the vehicle in question is a junk motor vehicle under the provisions of R.C. 505.871, the board must then pass a resolution in the format previously discussed declaring the vehicle to be a junk motor vehicle and ordering the property owner to remove the vehicle within 14 days. Once again, it is extremely important that the board keep very thorough and detailed meeting minutes to document the board's decision-making process.

As part of the procedural process required by the provisions of R.C. 505.871, the township is specifically required to provide notice to the owner of the property on which the junk motor vehicle is located and to all holders of liens on that property. In order to ensure that all parties are notified, the board should have a title search performed to identify the property owner of record and the names of the record lien holders. The notice must (i) generally describe the vehicle to be removed, (ii) advise the property owner and lien holders that the board has determined that the vehicle is a junk motor vehicle, (iii) order the owner to remove the vehicle within fourteen days after service of the notice, (iv) advise the owner and lien holders that if the junk motor vehicle is not removed within fourteen days of receipt of the notice, the board will remove or cause the removal of the junk motor vehicle, and (v) advise the owner and lien holders that any expenses incurred by the township in removing or causing the removal of the junk motor vehicle will be entered upon the real estate tax duplicate for the property and become a lien against the land.

The notice to the owners and lien holders must be sent by certified mail, return receipt requested, to the owner and each of the lien holders. If the address of the property owner or one or more the lien holders is unknown and cannot be reasonably ascertained or if the certified mail is returned bearing the notation "refused" or "unclaimed", the board must cause the notice to be published in a newspaper of general circulation in the township and, if the land contains any structures, must

post the notice on the principal structure on the property, before the junk motor vehicle may be removed. If the junk motor vehicle has not been removed within fourteen days after proper notice has been served on the property owner and record lien holders, a board may remove, or cause to be removed, the junk motor vehicle from the property. All expenses incurred in the removal of junk vehicles must be paid from the general fund from moneys not otherwise appropriated, unless the expenses exceed \$500.00, in which case a board may borrow moneys from a financial institution to pay for all removal costs. The township fiscal officer then certifies all removal costs to the county auditor for inclusion on the tax duplicate.

4. Will the township be sued for removal of the vehicle?

Never say never! Even if a board does everything in accordance with R.C. 505.871, the possibility that the township will be sued still exists. As with any decision of the board, there is simply no foolproof way to prevent someone from filing suit or otherwise challenging a board's decision. Therefore, the more appropriate question is "what is the likelihood that such a suit against the township will be successful." The answer to this question will likely depend upon the facts and circumstances surrounding the board's decision and actions.

There are a number of measures that a township can and should take when removing, or attempting to remove, junk motor vehicles. For example, a board should (i) collect sufficient evidence to justify a finding that the vehicle is a junk motor vehicle, (ii) document all of its findings, (iii) pass an appropriate resolution, (iv) carefully follow the notice provisions of R.C. 505.871, and (v) use care in the removal of the junk motor vehicle. Again, if a township is addressing multiple junk motor vehicles located on various properties, one resolution can be used to declare all such vehicles junk motor vehicles. In other words, what a township can do is to ensure they have taken and documented all the appropriate steps required by R.C. 505.871. If a township is sued, the board's defense is that the township has acted within its specific statutory authority to remove junk motor vehicles pursuant to the provision of this new law. If there are any questions about any aspect of the process, the board should always contact the township's legal counsel or the county prosecuting attorney for advice.