

630323-1

MOTOR VEHICLES: Parking by disabled veterans and physically handicapped persons in city-owned parking lot.

Disabled veterans and physically handicapped persons who have been issued a certificate of identification as provided in Section 675(e) of Act 300, P.A. 1949, as amended, are exempt from liability for meter violations in a city-owned parking lot.

No. 4118

March 23, 1963.

Mr. James G. Fleming
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Act No. 300, P.A. 1949, as amended, being C.L.S. 1956, § 257.1 et seq.; M.S.A. 1960 Rev. § 9.1801 et seq., is known as the Michigan Vehicle Code.

Section 675(e) of the Michigan Vehicle Code provides as follows:

“Any veteran who has been or may hereafter be honorably discharged from any of the armed services of the United States and who has or may hereafter have a service connected disability equivalent to the disabilities as prescribed in section 1 of Public Law 187 of the 82d Congress, First Session, and any physically handicapped person who possesses material incapacity for ambulation, shall be entitled to receive, and the secretary of state is hereby authorized to issue, under such rules and upon such application as he shall prescribe, a serially numbered certificate of identification for the personal use of said veteran or physically handicapped person. Such veteran or physically handicapped person shall be entitled to courtesy in the parking of such automobile which shall relieve him from liability for any violations with respect to parking, other than in violation of this act: Provided, That any local authority may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours and the privileges extending to veterans and physically handicapped persons hereunder shall not apply on streets or highways where and at the times such parking is so prohibited. Any certificate issued as provided herein shall be displayed prominently upon the automobile while being parked by or under the direction of such veteran or physically handicapped person pursuant to this section. Upon conviction of any offense involving a violation of the special privileges hereby conferred upon holders of such special certificates, a magistrate or judge trying such cases shall be authorized, as a part of any penalty imposed therein, to confiscate the serially numbered certificate herein provided and to return the same to the secretary of state together with a certified copy of the sentence so imposed. Any person, other than the veteran or physically handicapped person to whom it was issued, who shall use any certificate of identification for the purpose of parking an automobile as permitted by this section shall be guilty of a misdemeanor: Provided, That as to any applicant for a certificate

hereunder any official finding or rating as to disability within the requirements of this section by the United States veterans administration shall be sufficient evidence of the qualifications of the applicant."

You ask for my opinion in answer to the following question:

Does Sec. 675(e) of Act 300, P.A. 1949 exempt veterans or physically handicapped persons who have been issued the certificate of identification provided for in said act from liability for meter violations for prohibited parking on a city owned parking lot?

Section 64 of the Michigan Vehicle Code defines the phrase "street or highway" to mean "the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel."

The Attorney General has ruled that disabled veterans exempt from liability for violation of local ordinances prohibiting and regulating parking of motor vehicles, pursuant to Sec. 675 of the Michigan Vehicle Code, were not required to deposit coins in municipally operated parking meters, or where a coin has been deposited the disabled veteran could park beyond the measured time. Opinion No. 1475, O.A.G. 1951-52, p. 394. In that opinion it was decided that a disabled veteran would be relieved of liability for violation of any local ordinance governing parking of vehicles except an ordinance prohibiting parking—

- 1—on any street or highway for the purpose of creating a fire lane or
- 2—an ordinance to provide for the accommodation of heavy traffic during morning or afternoon rush hours. The holding of that opinion would relieve the veteran of an ordinance regulating parking in an off-street city owned parking lot.

The parking of vehicles was held to be a proper use of the highway in *In re Widening of Fulton Street*, 248 Mich. 13 (1929), so that the right of eminent domain may be exercised to establish or widen a highway for parking purposes. Relying on *In re Widening of Fulton Street*, supra, the Michigan Supreme Court in *Cleveland v. City of Detroit*, 324 Mich. 527 (1949), held that the use of the subsurface of a city street for parking purposes is a proper highway use. It must follow that a municipally owned parking lot which is on the surface is as much a "street or highway" as though it were located under the surface of the earth.

In *Ebert v. Incorporated Village of Garden City*, 196 N.Y.S. 2d 878 (1960), a municipal parking field was held to be a "street" or "highway" within a state statute providing that no civil action could be maintained against the village for injuries suffered because of snow or ice on any street or highway, the court recognizing that while the parking field was primarily a place where vehicles are left standing and unattended, it is essential to its use that both vehicles and passengers have passage way on and through it.

It is patent that a city owned parking lot which is located on the surface of the earth must have a part thereof which is open to the use of the public for the purpose of passage of vehicular traffic in order to afford use of the parking facilities of the parking lot so that the area of the city owned parking lot is a street or highway under Sec. 64 of the Michigan Vehicle Code.

There can be no question but that Sec. 675(e) of the Michigan Vehicle Code is a general state law and is binding upon cities, villages and townships. See *People v. McGraw*, 184 Mich. 233 (1915); *People v. Drost*, 353 Mich. 691 (1958).

Since Act 300 P.A. 1949, as amended, supra, by its title provides for "the regulation and use of streets and highways," and a municipal parking lot is a "street or highway" under the act, I find that the title to the Michigan Vehicle Code is in accord with Article V, Sec. 21 of the Michigan Constitution.

Therefore, it is my opinion that Section 675(e) of Act 300, P.A. 1949, as amended, exempts disabled veterans and physically handicapped persons who have been issued a certificate of identification from liability for meter violations on a city owned parking lot.

FRANK K. KELLEY,
Attorney General.

630325-1

ELECTIONS: Residence of servicemen and their families.
RESIDENCE: Change of, by servicemen and their families.

Members of the Armed Forces do not acquire residence in a given community merely by reason of being stationed there. They are not, however, precluded while in service from obtaining a new residence in a community off a federal post. Whether they have abandoned their former residence and acquired a new one is a question of fact to be determined from their actions, as well as their declared intent.

Persons living upon a military post under exclusive federal jurisdiction may not by reason thereof obtain residence in this state and the political subdivision in which the post is located. This is true of civilians as well as servicemen.

No. 4120

March 25, 1963.

Mr. Lawrence Gubow
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Your request for an opinion notes that at the election held on November 6, 1962, certain Air Force personnel and their wives were not permitted to vote in Oscoda Township, Iosco County, in which is located Wurtsmith Air Force Base. You state that some of the WAFB personnel lived on the base, whereas others resided in the Capehart Housing Section "which apparently is not on federal owned land, but on land which is leased." Citing an opinion¹ of one of my predecessors, you continue:

"* * * While the general principles enunciated in that opinion ap-

¹ O.A.G. 1955-56 Vol. II No. 2807, p. 577.