

Given the propriety of joint county and city financing of a project within the city limits, does Mason County have the authority to contribute, after the fact, either county road funds or general funds to pay off bonds which the city issued wholly on its own initiative to pay for a city project? The answer must be no.

While the county could have agreed with the city to directly undertake the reconstruction of the Washington Avenue Bridge, see 1951 PA 51, § 18c; MCLA 247.668c; MSA 9.1097(18c), and 1951 PA 51, § 18d; MCLA 247.668d; MSA 9.1097(18d), these statutes cannot be read to authorize an after-the-fact contribution by the county to the city in the form of assuming a portion of the bond debt.

Therefore, it is my opinion that while Mason County may have originally contracted to participate with the city in financing the Washington Avenue Bridge reconstruction with motor vehicle highway funds, there is no statutory authority for using county funds to assume a portion of an existing city debt. See Const 1963, art 9, § 18, which prohibits the state from lending its credit.

FRANK J. KELLEY,
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ARRESTS: Parking violations.

MOTOR VEHICLES: Arrest warrant issued against registered owner of a motor vehicle for a parking violation

PROCESS: Delivery of a citation.

A peace officer may not arrest a person without a warrant for commission of a misdemeanor not committed in his or her presence. Illegal parking of a motor vehicle is a misdemeanor. Therefore a peace officer may not arrest a registered owner of a vehicle previously parked illegally unless the illegal parking occurred in his or her presence. The district court may issue an arrest warrant against the registered owner of an illegally parked vehicle.

A registered owner of an illegally parked motor vehicle is presumed guilty of having illegally parked it, but may introduce evidence to refute this presumed fact.

A summons requiring a court appearance for a parking violation may be delivered by certified mail.

Opinion No. 5143

December 9, 1976.

Honorable Stephen Stopczynski
House of Representatives
Capitol Building
Lansing, Michigan

You have requested my opinion on the following questions:

- (1) May an arrest warrant be issued against the registered owner of a vehicle for a parking violation?
- (2) May a warrant be issued by a law enforcement officer against the registered owner of a vehicle that is illegally parked although the driver did not illegally park it in the presence of the officer?
- (3) May a summons be issued against a vehicle owner by certified mail? and
- (4) May the registered owner of a vehicle be held legally responsible for parking violations committed by a third person while consensually in possession of the vehicle?

Preliminarily it may be noted that the Michigan Vehicle Code, 1949 PA 300, § 606(a); MCLA 257.606(a); MSA 9.2306(a), provides in part:

"The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police powers from:

"1. Regulating the standing or parking of vehicles;

"* * *"

1949 PA 300, § 605, *supra*, states:

"The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter."

I now address your questions in the order presented.

- (1) May an arrest warrant be issued against the registered owner of a vehicle for a parking violation?

1949 PA 300, §675a, *supra*, states:

"Except as provided in section 675b involving leased vehicles, in any proceeding relating to arrest and prosecution for the violation of a local ordinance or state statute relating to the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of the ordinance or state statute, together with proof, by verifying ownership of the vehicle with the secretary of state, that the defendant named in the complaint was at the time of the parking the registered owner of the vehicle, shall be accepted by the court as establishing probable cause for the issuance of a warrant for the arrest of the registered owner, and creates in evidence a presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred."

Thus, the legislature has provided for: (1) establishment of probable cause for issuance of arrest warrants against the owner of an illegally parked vehicle; and (2) creation of an evidentiary presumption the registered owner, in fact, parked the vehicle.

It is therefore my opinion, upon ownership verification, an arrest warrant can be issued by a district court against the registered owner of an illegally

parked vehicle.¹ Procedure for issuing arrest warrants can be found in 1927 PA 175; MCLA 764.1 *et seq*; MSA 28.860 *et seq*.

- (2) May a warrant be issued by a law enforcement officer against the registered owner of a vehicle that is illegally parked although the driver did not illegally park it in the presence of the officer?

A peace officer may not arrest a person without a warrant for the commission of a misdemeanor not committed in his or her presence,² and therefore may not arrest the registered owner of a vehicle unless the illegal parking is actually committed in his or her presence. The officer who arrives after the driver's departure, and views proof of an illegal parking, i.e., a vehicle illegally parked, however, may issue a citation pursuant to 1949 PA 300, §§ 727a-728, *supra*. Further, the citation may be issued against the registered owner of the vehicle at the time the violation occurred, as provided in 1949 PA 300, § 675a, *supra*.

It is therefore my opinion, a law enforcement officer can issue a summons against the registered vehicle owner illegally parked not in his presence.

- (3) May a summons be issued against a vehicle owner by certified mail?

A "citation" is defined as a complaint or notice where a police officer records a motor vehicle law violation. 1949 PA 300, § 727c, *supra*. This provision, further, requires a copy be "*delivered*" to the alleged violator. No mention is made in the provision as to the means or method of delivery.

The meaning of "to deliver," of course, varies according to its context. It has been defined as meaning, to give or transfer, to hand or make over, make delivery of, to communicate or make known.³

It is my opinion, in the absence of any express authority to the contrary, a summons requiring a court appearance for a parking violation issued pursuant to 1949 PA 300, § 727, *supra*, may be delivered by certified mail.

- (4) May the registered owner of a vehicle be held legally responsible for parking violations committed by a third person while consensually in possession of the vehicle?

Provisions of 1949 PA 300, § 674, *supra*, prohibit a person from parking a vehicle in enumerated prohibited areas. The statute begins: "No *person* shall park a vehicle . . . in any of the following places:" (Emphasis supplied)

There is no provision making the vehicle owner legally responsible for an illegal parking committed with his or her automobile by third persons. The aforementioned statutory language, moreover, indicates the vehicle's driver, and not the owner, is responsible. While 1949 PA 300, § 675a, *supra*, eliminates probable cause and creates a presumption of guilt against the registered owner of a vehicle illegally parked, the procedural effect only shifts the burden of going forward.⁴ The registered owner could, though,

¹ See OAG 1975-1976, No 5033, p (1976).

² 1927 PA 175, § 15, *supra*.

³ 26a CJS at 163.

⁴ *In re Wood Estate*, 374 Mich 278, 289 (1965).

introduce evidence tending to disprove the presumed fact that he or she and not a third person illegally parked the automobile.

Establishing a presumption against the vehicle owner simply eases the burden of proving in each individual cases, without the aid of inference, the actual identity of the person who illegally parks the vehicle. The influence legislatively supplied is supported by the strong practical likelihood the vehicle is parked by its owner and not a third party.⁵ The provision creates an evidentiary presumption, not vicarious liability.

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CONSTITUTION OF MICHIGAN: Art 4, § 24.

CONSTITUTION OF MICHIGAN: Art 4, § 25.

TAXATION: Tax Tribunal.

TAX TRIBUNAL: Jurisdiction.

ADMINISTRATIVE LAW AND PROCEDURE: Tax Tribunal Act.

Inasmuch as the Tax Tribunal Act focuses upon the single general purpose of providing a procedure to review and resolve tax conflicts, it does not violate the constitutional "one object" clause in Const 1963, art 4, § 24.

Because various provisions in other tax statutes are drastically altered by the Tax Tribunal Act, which provisions were not re-enacted and published at length, those portions of the Tax Tribunal Act purporting to achieve these changes are in violation of Const 1963, art 4, § 25 and are therefore invalid; the balance of the act is valid.

The State Board of Tax Appeals is not abolished.

The procedure for taking appeals in tax disputes involving state income taxes, intangible taxes, inheritance taxes, motor fuel taxes, cigarette taxes, severance taxes, sales taxes, and use taxes are not affected by enactment of the Tax Tribunal Act.

The Tax Tribunal has jurisdiction to hear tax cases involving property taxes and single business taxes.

Opinion No. 5138

December 10, 1976.

Mr. Allison Green
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Section 79 of the Tax Tribunal Act, 1973 PA 186, § 79, as amended by 1976 PA 37, MCLA 205.779; MSA 7.650(79), provides that beginning

⁵ It is more probable than not, however, leased vehicles are parked by the lessee and not the registered owner. Consequently, the legislature enacted 1949 PA 300, § 675b, *supra*, which establishes a presumption of guilt against the lessee.