Local Government Law Bulletin

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ENFORCING PARKING REGULATIONS

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THE ENFORCEMENT of on-street and off-street parking regulations raises a surprising number of legal issues. Unfortunately, it has been a quarter-century since the North Carolina Supreme Court last addressed any of these issues. In that time the number of registered vehicles in the state has tripled, with a consequent increase in the congestion that parking regulations seek to alleviate. Therefore this Local Government Law Bulletin discusses a number of issues that have arisen since the early 1950s and also questions whether those earlier cases should be accorded the full weight of precedent. The issues discussed are: enforcement of parking regulations by both criminal remedies and civil penalties; adoption, by ordinance, of evidentiary rules to be used in enforcement actions; towing--when it is permitted and under what procedures; and the use of towing and criminal remedies in publicly owned off-street lots.

USE OF BOTH CIVIL PENALTIES AND CRIMINAL PROSECUTION TO ENFORCE PARKING ORDINANCES

The parking ordinances of many cities provide that violators may either pay a modest civil penalty within a specified period of time or be subjected to criminal prosecution. The expectation is that almost all persons cited will pay the civil penalty, and so criminal prosecution will be necessary only rarely. In 1976 a district court judge held that this enforcement practice was unconstitutional and the procedural posture of the case made appellate review impossible.[1] Thus there has been a continuing concern about the legality of this common practice. The first section of this bulletin demonstrates that the practice is permissible.

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1. State v. Gilbert, 30 N.C. App. 130, 226 S.E.2d 229 (1976).

The constitutionality of this method of enforcement was affirmed by the Supreme Court of the United States in Marder v. Massachusetts.[2] The Court dismissed, for want of a substantial federal question, an appeal from the Massachusetts Supreme Court, which had held that a Massachusetts statute providing for noncriminal disposition of certain parking violations on a potentially more favorable basis than by criminal prosecution did not violate equal protection of the laws or due process of law. Such a dismissal is a decision on the merits of the case.[3]

In Marder the defendant attacked the constitutionality of a Massachusetts statute that provided that a violator of certain parking regulations would be subject to a maximum payment of $3 if he agreed to a "noncriminal disposition" of the case but would be subject to a possible $25 or $50 fine if he insisted on a judicial determination of the case. The defendant argued that the statute denied him equal protection of the laws and due process of law because the more lenient punishment afforded by the civil disposition coerced alleged parking offenders, whether guilty or not, into abandoning their rights to a judicial determination of their case.

In upholding the ordinance, the Massachusetts court reasoned that equal protection was not violated because the civil penalty was available to all alleged parking offenders on the same basis. The court also did not agree with the due process argument because the statute provided that all alleged offenders who desired a hearing were given the opportunity. It was this reasoning that the U.S. Supreme Court in effect affirmed with its dismissal of Marder, and the force of the dismissal was recognized by the Fourth Circuit, which upheld Raleigh's ordinance on the basis of Marder.[4]

CITY ADOPTION OF A PRIMA FACIE RULE

G.S. 20-162.1 establishes that if a vehicle is found parked in violation of any statute or ordinance, it is prima facie evidence that the registered and licensed owner of the vehicle is the person who illegally parked it. A prima facie rule of evidence states that the evidence admitted creates a sufficient case for the fact to be proved to be submitted to the jury. The jury may or may not believe the evidence and may or may not draw from it the inferences necessary for conviction, even if no contradictory evidence is presented.[5] Thus under G.S. 20-162.1, if the state shows that the defendant is the registered and licensed owner of the illegally parked vehicle, that showing alone is sufficient evidence for the case to go to the jury.

But the statute permits only the imposition of a $1 fine after a conviction pursuant to that section. A city therefore cannot use G.S. 20-162.1 if it decides to sue for a civil penalty as a means of enforcing its ordinances.

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2. 377 U.S. 407, reh. denied, 379 U.S. 371 (1964), dismissing app. from Commonwealth v. Marder, 346 Mass. 408, 193 N.E.2d 695 (1963).

3. Hicks v. Miranda, 422 U.S. 332 (1975).

4. Covington v. City of Raleigh, 531 F.2d 220 (4th Cir. 1976).

5. 2 STANSBURY'S N.C. EVIDENCE § 218 (Brandis 1973). A presumption, however, states that when a basic fact is established, the presumed fact must be found to exist unless evidence of its nonexistence is presented. State v. Cooke, 270 N.C. 644, 649, 155 S.E.2d 165, 168 (1967); Cogdell v. Wilmington & Weldon R. R. Co., 132 N.C. 852, 854, 44 S.E. 618, 619 (1903); 2 STANSBURY'S N.C. EVIDENCE § 215 (Brandis 1973).

(Although G.S. 20-162.1 speaks of a $1 "penalty," the State Supreme Court has held that a fine, not a civil penalty, was intended.[6]) In light of the difficulty of conviction without a prima facie rule,[7] a city may wish to establish by ordinance the same prima facie rule, but applicable to civil penalties. This section of the Bulletin will examine whether a North Carolina city, in order to enforce its parking regulations, can establish such a rule by ordinance.

With one exception,[8] the courts of all other jurisdictions that have decided the question have held that a statute authorizing cities to regulate parking includes by implication the authority to adopt such a prima facie rule.[9] G.S. 160A-301 authorizes cities to regulate, restrict, and prohibit parking. Therefore, if we look simply at the weight of authority, it would appear that a North Carolina city could adopt such a rule by ordinance.

Still, for at least two reasons, the North Carolina courts may not come to that conclusion.[10] First, State v. Scoggin contains some language that implies that the Supreme Court of North Carolina would not follow the majority of other courts if such a case were presented. Second, such an ordinance may be said to conflict with G.S. 20-162.1 because that statute is limited to the imposition of only a $1 fine.

In Scoggin, the defendant was convicted in the municipal court of the City of Raleigh for overtime parking. On appeal, the superior court also found him guilty as charged. He then appealed to the Supreme Court, which reversed his conviction because there was no evidence to show that it was the defendant who had illegally parked the vehicle and there could be no prima facie case without a prima facie rule provided by legislation. The Court stated that "we know of no law in this state which has delegated to municipalities the right to legislate upon the question of evidence, and of its weight and effect upon the courts."[11] Although this language is only dictum, since the city did not have a prima facie ordinance at the time the case was decided, it does suggest that the authority to regulate parking may not, in North Carolina, include the authority to adopt a prima facie rule.

Even if the language of Scoggin can be ignored, it can be argued that by enacting G.S. 20-162.1 the General Assembly has precluded cities from enacting an ordinance similar to it but applicable to civil penalties. The argument would be that the statute evidences a state policy to limit the use of such a prima facie rule to fines only, and very small fines at that. Any ordinance permitting use of such a rule in actions to collect civil penalties would be counter to that policy. This argument is somewhat weakened, however, by the provision for a $10 fine if the prima facie rule is used to enforce the handicapped-parking statute[12] and by the occasional local acts permitting larger fines.[13] Given all this, it seems sound to conclude that

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6. State v. Rumfelt, 241 N.C. 375, 85 S.E.2d 398 (1955).

7. Since most parking tickets are issued while the operator is absent, "under most circumstances, it is virtually impossible for a city to prove what person actually parked the vehicle. . . ." City of Columbus v. Webster, 170 Ohio St. 327, 330, 164 N.E.2d 734, 737 (1960).

8. Nasfell v. Ogden City, 122 Utah 351, 249 P.2d 507 (1952).

9. City of Chicago v. Hertz Commercial Leasing Corp., 71 Ill. 2d 333, 375 N.E.2d 1285 (1978); City of Columbus v. Webster, 170 Ohio St. 327, 164 N.E.2d 734 (1960); City of St. Louis v. Cook, 359 Mo. 270, 221 S.W.2d 468 (1949); Commonwealth v. Kroger, 276 Ky. 20, 122 S.W.2d 1006 (1938).

10. 236 N.C. 19, 72 S.E.2d 54 (1952).

11. Id. at 21, 72 S.E.2d at 55.

12. N.C. Gen. Stat. § 20-37.6.

13. E.g., 1979 N.C. Sess. Laws, Ch. 326 (Clinton).

cities have sufficient authority to support a good-faith adoption of a prima facie rule by ordinance but such an ordinance might fail if tested in the appellate courts.

TOWING

This section of the Bulletin will look into the question of when a city has the power to tow and the due process requirements of towing and storage ordinances and statutes.

Authority to Tow. Under G.S. 160A-303, cities may tow and store a vehicle while enforcing an ordinance prohibiting the abandonment of motor vehicles. That statute specifies four situations in which a vehicle is deemed to be abandoned and therefore may be removed: (1) when a vehicle is left on a street or highway in violation of a law or ordinance prohibiting parking; (2) when a vehicle is left on property owned or operated by the city for longer than 24 hours; (3) when a vehicle is left on any public street or highway for longer than seven days; (4) when a vehicle is left on private property without the consent of the owner, occupant, or lessee for longer than two hours. Under G.S. 20-37.6 cities may also tow a vehicle from a parking space designated for vehicles that are driven by handicapped persons or are transporting handicapped or visually impaired persons.

In addition to these express authorizations to tow, North Carolina cities may also have the implied power to tow a vehicle under either G.S. 160A-174(a) or, more directly, G.S. 160A-301. G.S. 160A-174(a) delegates to cities general police power, while G.S. 160A-301 provides in part that a city may by ordinance regulate, restrict, and prohibit parking within the city limits. The proposition that a statute that authorizes cities to regulate and prohibit parking implies the power to tow violating vehicles is supported by several cases in other states.[14] If these cases are accepted in North Carolina, then cities would be able to tow vehicles in circumstances other than those set out in G.S. 160A-303 and G.S. 20-37.6.

Due Process. Since both towing and storage of vehicles result in the deprivation of property, they are subject to due process limitations, even though the deprivation may only be temporary.[15] Although the modern case law, generally confined to decisions by the federal district and appellate courts, concerning the due process requirements of towing and storage statutes and ordinances is not completely settled, there is agreement on several basic points.[16]

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14. See Fendler v. Texaco Oil Co., 17 Ariz. App. 565, 499 P.2d 179 (1972); Hambley v. Town of St. Johnsbury, 130 Vt. 204, 290 A.2d 179 (1972); Edwards v. City of Hartford, 145 Conn. 141, 139 A.2d 599 (1958); Jackson v. Copelan, 50 Ohio App. 414, 198 N.E. 596 (1935); Steiner v. City of New Orleans, 173 La. 275, 136 So. 596 (1931).

15. Stypmann v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977); Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1976); Tedeschi v. Blackwood, 410 F. Supp. 34 (D. Conn. 1976).

16. Some cases decided in the 1930s and 1940s hold that there are no due process restrictions on towing and storage statutes. Although these old cases have never been overruled, they carry little weight in light of the development of due process rights over the past 30 to 40 years.

The cases agree that due process requires notice and an opportunity for a hearing after a vehicle has been towed and before towing and storage charges must be paid by the alleged violator of the statute or ordinance.[17] The purpose of the hearing is to permit the vehicle's owner to challenge the validity of the towing. To keep storage charges minimal, both notice and hearing must be prompt.[18] Indeed, it has been held that storage charges may not begin to accrue until this notice is sent.[19]

Moreover, some of the cases suggest that there may be situations in which notice and opportunity for a hearing is required before the vehicle is towed. These courts would require a pre-towing hearing when a vehicle is parked or abandoned in such a manner that it poses no threat to public health, safety, or welfare.[20]

Finally, a number of cases suggest that the common practice of requiring payment of towing and storage fees as a condition of releasing the vehicle to its owner is invalid.[21] These cases point out that some sort of bond or deposit requirement would serve the same end of assuring payment.

When tested against these cases, G.S. 160A-303 appears insufficient. It provides for notice, but only after a vehicle has been towed; and it does not provide at all for a hearing. In addition, it requires payment of fees as a condition of releasing the car. Since many city ordinances are modeled after the statute, city attorneys may wish to read the cases discussed in this section and review their ordinances in light of the cases. In addition, any ordinances that permit towing under a city's implied power to tow should also include due process protections.

ENFORCEMENT OF REGULATIONS IN CITY OFF-STREET PARKING FACILITIES-- TOWING AND CRIMINAL PROSECUTION

North Carolina cities may--under G.S. 160A-301(b) and G.S. 160A-302--own, operate, and regulate off-street parking facilities. For these facilities to operate effectively, the ordinances regulating their use must be properly enforced. This final section discusses whether enforcement may include towing and criminal prosecution.

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17. Stypmann v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977); Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1976); Bricker v. Craven, 391 F. Supp. 601 (D. Mass. 1975).

18. Stypmann v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977); Gillam v. Landrieu, 455 F. Supp. 1030 (E.D. La. 1978); Craig v. Carson, 449 F. Supp. 385 (M.D. Fla. 1978); Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1978).

19. Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1978); Gillam v. Landrieu, 455 F. Supp. 1030 (E.D. La. 1978).

20. See Gillam v. Landrieu, 455 F. Supp. 1030 (E.D. La. 1978); Craig v. Carson, 449 F. Supp. 385 (M.D. Fla. 1978); Tedeschi v. Blackwood, 410 F. Supp. 34 (D. Conn. 1976).

21. See Stypmann, supra note 15; Remm, supra note 15; Craig, supra note 18.

22. 236 N.C. 446, 73 S.E.2d 289 (1952).

23. Id. at 454, 73 S.E.2d at 295.

24. Annot., 8 A.L.R.2d 373 (1949), and Supplement, A.L.R.2d Later Case Service 7-12, p. 142 (1971).

25. Opinion of Attorney General to Mr. Rufus C. Boutwell, Jr., 43 N.C.A.G. 141, 143 (1973).

Towing. G.S. 160A-303 authorizes the towing of a vehicle from a city off-street parking facility when the vehicle is abandoned--that is, when it has been left in a city facility for longer than 24 hours. There is no other specific authority to tow applicable to off-street facilities, and the need to keep the streets free of obstruction, which may justify an implied power to tow vehicles that violate on-street regulations, would not seem to apply off-street.

Criminal Prosecution. G.S. 160A-301(b) authorizes a city to make it unlawful to park in an off-street parking facility without paying the established fee or charge. However, this statute may be questioned in light of Britt v. City of Wilmington.[22] Britt was an action to restrain the issuance of revenue bonds for an off-street parking facility and the pledging of on-street meter revenues to pay for this debt. The Court, in an opinion by Justice Barnhill, held that operating an off-street parking facility was within the proprietary and not governmental powers of a city, and a city could not enforce by criminal prosecution regulations enacted in connection with its proprietary operations.

But Britt may no longer be good law. First, the Court recognized in that decision that at that time the law on city off-street parking facilities was in a state of flux. It pointed out that "there will be a gradual drift of judicial opinion and legislative enactment towards uniformity until the law will become substantially the same in all American jurisdictions."[23] Since then, the clear majority of other states' courts that have decided this question have held that the operation or regulation of off-street parking facilities was within or adjunct to the police powers of a city.[24] Thus the Britt decision is not in line with the majority, and if the Court intends to be as flexible as it indicated in Britt, it may decide that its decision in that case is obsolete.

Second, the Court also may find Britt to be obsolete in light of the vast increase in the number of motor vehicles in North Carolina since the case was decided. In 1952, when opinion was filed, North Carolina had less than 1,300,000 registered motor vehicles, but when G.S. 160A-301(b) was enacted in 1973 over 3,600,000 vehicles were registered in the state.[25] The Court may be more willing to recognize off-street parking facilities as devices intended to promote the convenience and safety of the public with these additional vehicles on the roads.