

COURT OF COMMON PLEAS Henry COUNTY, OHIO

City of Napoleon, Ohio EX REL, Plaintiff

Case No. 97 CV 067

VS.

Hogrefe Auto Parts Partnership Defendant

SUBPOENA

Civil Criminal

Duces Tecum

The State of Ohio

Henry County, ss:

To the Sheriff of Henry County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

Brent Damman, Zoning Administrator
(Name)

Z City of Napoleon, Ohio
(Address)
255 W. Riverview Avenue, Napoleon, Ohio

To be and appear before the Court of Common Pleas of the County of Henry, Napoleon, Ohio on the 5th day of November, A.D. 19 98


at 1:30 o'clock P.M., to testify as a witness in a certain case pending in said court on behalf of the City of Napoleon
Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

and not depart the Court without leave. And therein to fail not, under penalty of the law, and to have then and there this writ. Present this subpoena to the Clerk of Court upon your arrival and before you leave. You may be held in contempt of Court for failure to appear.

Person being subpoenaed resides outside the county in which court is located. 1 day witness fee and mileage in amount of \$ _____ is attached.

See the back of this form for your rights and duties under subpoena.


Attorney for (Defendant - Plaintiff)

RETURN OF SERVICE	DATE OF SERVICE
Service \$ _____	<u>11-2-98</u>
Mileage \$ _____	Type of Service
Total \$ <u>0</u>	<input checked="" type="checkbox"/> Personal
	<input type="checkbox"/> Residential
	By leaving copy with _____
 Sheriff - Baliff - Process Server	

WITNESS my hand and Seal of said Court this _____ day of _____, 19____
_____, Clerk
_____, Court

By _____ Deputy Clerk
Fee paid to witness by clerk \$ _____

NOTE: PRESENT THIS SUBPOENA TO THE CLERK OF COURTS FOR PAYMENT

COURT OF COMMON PLEAS HENRY COUNTY, OHIO

City of Napoleon, Ohio EX REL, Plaintiff

VS.

Hogrefe Auto Parts Partnership Defendant

Case No. 97 CV 067

SUBPOENA

[X] Civil [] Criminal [] Duces Tecum

The State of Ohio, Henry County, ss:

To the Sheriff of County, Ohio, Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, to-wit:

Brent Damman, Zoning Administrator (Name)

% City of Napoleon, Ohio (Address) 255 W. Riverview Avenue, Napoleon, Ohio

To be and appear before the Court of Common Pleas of the County of Henry, Napoleon, Ohio on the 10th day of November, A.D. 19 97, at 1:30 o'clock P.M., to testify as a witness in a certain case pending in said court on behalf of the City of Napoleon, Ohio Plaintiff/Defendant

YOU ARE FURTHER ORDERED TO BRING WITH YOU:

and not depart the Court without leave. And therein to fail not, under penalty of the law, and to have then and there this writ. Present this subpoena to the Clerk of Court upon your arrival and before you leave. You may be held in contempt of Court for failure to appear.

[] Person being subpoenaed resides outside the county in which court is located. 1 day witness fee and mileage in amount of \$ is attached.

See the back of this form for your rights and duties under subpoena.

[Signature] Attorney for (Defendant - Plaintiff)

RETURN OF SERVICE DATE OF SERVICE 10-15-97 Type of Service [] Personal [] Residential By leaving copy with [Signature] Sheriff - Bailiff - Process Server

WITNESS my hand and Seal of said Court this day of , 19 , Clerk Court

By Deputy Clerk

Fee paid to witness by clerk \$

NOTE: PRESENT THIS SUBPOENA TO THE CLERK OF COURTS FOR PAYMENT

COURT OF COMMON PLEAS
OF HENRY COUNTY, OHIO
219 East Washington Street
Courtview Building, P.O. Box 70
Napoleon, OH 43545

PHONE: (419) 592-5926

Date: 10/08/97

CITY OF NAPOLEON, OHIO EX REL.,

Plaintiff,

vs.

HOGREFE AUTO PARTS PARTNERSHIP,

Defendant.

Case No. 97 CV 067

TO:

DAVID M. GRAHN
255 WEST RIVERVIEW AVENUE
P.O. BOX 151
NAPOLEON, OH 43545

DUE TO THE LIMITED SPACE AT OUR TEMPORARY LOCATION, ONLY THOSE PERSONS WHOSE ATTENDANCE IS ABSOLUTELY NECESSARY SHOULD COME TO COURT. PLEASE DO NOT BRING SMALL CHILDREN TO COURT. IF NUMEROUS WITNESSES ARE CALLED, ATTORNEYS SHOULD SCHEDULE THEM TO APPEAR AT APPROPRIATE TIME INTERVALS. YOUR COOPERATION IS APPRECIATED AND THE COURT APOLOGIZES FOR ANY INCONVENIENCE.

You are hereby notified that the above captioned case has been assigned for MOTION ON MONDAY, NOVEMBER 10, 1997 AT 1:30 P.M.



Diane Alvord *by KB*
Assignment Commissior

DAVID M. GRAHN
PETER D. SHORT

15 3 tr 2

July 17, 1997

David Grahn
City Law Director
225 Riverview Ave P. O. Box 151
Napoleon, OH 43545

Dear Dave;

We were dissapointed and confused upon receipt of your letter of July 8, 1997.

I have taken our extinguishers to Napoleon Fire Department for inspection and approval. I had removed all propane containers from the office covered the open junction boxes as instructed by the Fire Marshall in his inspection. One propane container was brought in to the office and I have since properly stored it. As for the clearing of the aisles and contracting of the fence issue, we were working with Building and Zoning Administrator Brent Damman and we thought we were making great progress in all the areas he was concerned with, as it was our understanding that he would be our liaison with your office.

Over the past month, with Brent's direction and cooperation, we have moved approximately 2,000 cars into rows with fifteen foot aisles as directed by Lieutenant Mike Brown. As per our earlier discussions, and I thought agreement, we cannot physically and safely clear all the aisles in the time allotted.

As to the fence issue, we were in agreement with Mr. Damman on fencing changes and fencing materials and were in fact negotiating with Tonjes Construction and Toledo Fence on construction. However, on July 11, 1997 Mr. Damman came into our office with an aerial map stating that you and City Manager, Mark Gerken, had a new concept on the fence location and all previous agreements we had made with him were null and void. We obviously need to meet and once again agree on fence location, fence material and a contact person to coordinate our efforts with your office.

Thank you in advance for your time and consideration in this matter as it is in our mutual interests to resolve these issues.

Sincerely.



Donald Reynolds
Manager,
Hogrefe Auto Parts
690 E. Riverview
Napoleon, Ohio

cc/Mark Gerken, City Manager
Peter Short, Attorney
Brent Damman, Building and Zoning Administrator
Bob Hogrefe, Owner Hogrefe Auto Parts
Gary Hogrefe, Owner Hogrefe Auto Parts

DLR/car

OPINION NO. 94-006

Syllabus: A question was submitted by the Napoleon City Police Department in reference to the authority the Police Department, if any, has over a junk or salvage yard within the City Limits, including, but not limited to inspection and/or regulating the flow of vehicles onto the premises.

TO: Napoleon City Police
BY: David M. Grahn, City Law Director

Your request for my opinion is as follows:

Chapter 113 of the City Revised Code of General Ordinances is the City's controlling chapter pertaining to junk or salvage yards. However, this chapter primarily deals with the licenses associated with junk yards and the screening from the public view requirement and does not specifically deal with the enforcement powers of law enforcement. Therefore, we must then look in the Ohio Revised Code pursuant to the authority granted in Article VIII Section 8.04 that makes Ohio Law applicable to the City so long as it is not inconsistent with or contrary to Charter, ordinances or resolutions.

Section 4737.06 (Operation of junk yard without license prohibited) states:

" No person shall operate or maintain a junk yard, adjacent to the interstate or primary systems inside a municipality, except in zoned or unzoned industrial areas, unless he has first obtained a license issued under sections 4737.05 to 4737.12, inclusive, of the Revised Code provided that the exception does not prohibit the regulation or prohibition of junk yards in zoned or unzoned industrial areas by municipal corporations."

Section 4737.10 of the Revised Code (Junk Yard inspection) states in pertinent part:

" Before a license is granted or renewed under sections 4737.05 to 4737.12 of the Revised Code, the sheriff of each county, or, if the sheriff so designates, a township policeman or constable, and the chief of police of each municipal corporation shall inspect the junk yard within his respective jurisdiction to determine if it complies with sections' 4737.05 to 4737.12 of the Revised Code. The sheriff, or a township policeman or constable, or chief of police shall submit a written report of such examination to the county auditor of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located. "

"In addition, twice annually the sheriff of each county, or, if the sheriff so designates, a township policeman or constable, and the chief of police of each

municipal corporation shall inspect every junk yard that is located within his jurisdiction and for which a license has been issued under sections' 4737.05 to 4737.12 of the Revised Code, to obtain information about whether the licensee's activity has been and is being conducted according to sections' 4737.01 to 4737.12 of the Revised Code. ... a written report of each such examination to the county auditor of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located."

"The sheriff, township policeman or constable, or the chief of police shall, for the purpose of these examinations, have free access to the grounds and buildings used or proposed for use in the conduct of the junk yard activity by the applicant or the licensee."

This section authorizes inspections at anytime, at the option of the appropriate law enforcement agent and during regular work hours of the licensee or within the hours of eight a.m. and five p.m. Monday through Friday.

The section also authorizes the director of transportation to inspect yards that are adjacent to state highways. If a violation is found, then the attorney general shall be requested to take appropriate legal action.

If violations are found by the other appropriate law enforcement agency, such violations shall be submitted to the appropriate prosecutor.

However, it should be noted that the City, at present, has no junk yards that fall under the licensing requirement of chapter 47 of the Revised Code since section 4737.05 (B) defines "Junk Yards" as follows:

"Junk Yards means an establishment or place of business which is maintained or operated for the purpose of storing, keeping, buying, or selling junk, and includes garbage dumps and sanitary landfills. For the purpose of sections 4737.05 to 4737.99 of the Revised Code, the term "junk yard" shall also include scrap metal processing facilities which are located within one thousand feet of the nearest edge of the right of way of a highway in the interstate or primary system. "

Further, section 4737.05 (G)states:

"Junk yards located within areas adjacent to the interstate system and the primary system which are within one thousand feet of the nearest edge of the right of way and which are zoned industrial, or which are not zoned under the authority of state or local law, regulation , or ordinance, but are used for industrial activities as determined by the director of transportation are exempt from sections 4737.05 to 4737.99 of the Revised Code."

Given the above, we must now look at Ohio Revised Code section 4737.01 (a) (Duty of dealer in secondhand articles) which requires that the dealer of certain type of junk to keep a separate book, open to inspection by any law enforcement officer, in which shall be written, in the English language, at the time of the purchase or exchange of such articles, a description thereof, the name, description, and residence of the person from whom purchased and received, and the day and hour when such purchase or exchange was made. Every entry shall be numbered consecutively, commencing with the number one.

Further, section 4737.01 of the Revised Code places a requirement on purchaser's of junk to check a license or other type identification of sellers of junk and keep a written record of the number of the license or identification and the type of identification, along with the name and address of the seller, and a description of the article purchased, The record shall be maintained for at least one year and shall make the record available for inspection by any law enforcement officer at all reasonable times. (the written records as stated in the above paragraph is sufficient for this requirement)

Section 4737.04 of the Revised Code imposes a duty on "Dealers of scrap iron, metal and waste materials" to maintain a book of record, in which an accurate and complete record of all articles purchased or received by him in the course of his daily business be listed. Said records shall contain the name, descriptions, and residence of the person selling the items and the date and hour when the sale or exchange was made.

Section 4737.04 further states in pertinent part:

" Such records shall be open for inspection by the representative of any law enforcement agency at all business hours."

In conclusion then, it is my opinion and you are advised:

Yes, the police department does have authority and the duty to inspect "junk yards" and to verify proper regulation thereof. However, absent a local ordinance, the yard must be required to have a license pursuant to chapter 47 of the Ohio Revised Code and at this time, the junk yard presently in the City is exempt from the "State" licensing requirement. Inspection of "State licensed junk yards" is allowed to obtain information about whether the licensee's activity is being conducted according to sections' 4737.01 to 4737.12 of the Revised Code. Under the "State's" licensing requirement, such inspections shall be conducted before a license is granted or renewed under chapter 47 of the Revised Code and twice annually thereafter a written report shall be submitted to the law director's office as to its findings.


It would appear that the police certainly have the authority to verify that "Dealers in scrap iron, metal, and waste materials (in junk) that does not fall within the "State" licensing requirement comply with sections 4737.01, 4737.03 and 4737.04 of the Revised Code and their records must be open to all law enforcement during all business hours.

Finally, in the case of the junk yard found presently in the City, the local police have the authority to check records since the facility is also a dealer in scrap iron (old metal, etc.) pursuant to section 4737.04 of the Revised Code. It would also appear pursuant to section 4747.10 of the Revised Code that the "director of transportation" may inspect junk yards adjacent to state highways to verify compliance with sections' 4737.01 to 4737.12 of the Revised Code.



Memorandum

City of Napoleon Building & Zoning Department

To: David M. Grahn, Law Director
From: Brent N. Damman, Zoning Administrator 
Date: Friday, March 14, 1997
Subject: Hogrefe Junk Yard noncompliance issues.

The following is a list of non compliant issues at the subject property. I am also recommending deadlines for compliance.

1. Improper fencing along Riverview Ave. I would recommend that we place a deadline of 90 days for the ten foot fencing compliance.
2. Electrical code violations in the existing Quonset hut office. I would recommend that we allow 120 days for the new office trailer to be placed and connected to City water, electric, and sewer lines. The Quonset hut could either be rewired or be totally disconnected from utilities and used only for storage.
3. Lack of proper fire lanes to buildings. This issue could be addressed within 60 days.
4. Dilapidated buildings in several locations on the junk yard property. We should allow at least 180 days for the removal of these buildings as it is not as high of a priority as some of the other issues.
5. Illegal dwelling unit on site (travel trailer being occupied by Gary Hogrefe). I believe this issue could be resolved within 90 days as well.

MOTOR VEHICLE SALVAGE DEALER INSPECTION REPORT

IF NAME AND ADDRESS ARE NOT CORRECT, MAKE CORRECTION UNDER REMARKS

HOGREFE Auto PARTS
690 EAST RIVERVIEW
NAPOLEON OH

Telephone Number (419) 592-599

PERMIT # SD 000199

OWNER: GARY HOGREFE
BOB HOGREFE

1. Is Facility used for the purpose of buying or selling wrecked, scrapped, ruined or dismantled motor vehicle parts? YES
2. Is Facility used for the purpose of Auctioning salvage motor vehicles? NO
3. Is Facility used for the purpose of storing, displaying and offering for sale salvage motor vehicles party? NO
4. Type of Ownership: Individual, Partnership, Corporation.
5. Permit No. SD 000199 Is License properly displayed? YES
6. Does Dealer operate other locations? NO If so, list locations under
7. Are Secondary Locations properly licensed? _____
8. Does location have proper office space? YES
9. Does location meet size requirements? Yes No Lot Size: _____
10. List posted business hours 9-5:30 MON-FRI SAT 9-2
11. Does office equipment meet requirements? NO
12. Does dealer have adequate records of transactions? NO
13. Does dealer sign meet requirements? NO
14. Is location properly fenced? NO
15. Are vehicles stored within the confines of the fence? NO
16. Status: Approved Not Approved Hold SEE REMARKS

LIST ANY VIOLATIONS UNDER REMARKS

HOGREFE Not 6" letters
DON REYNOLDS - MANAGER - 419-592-0200 **COPY**
Will check records at 30 DAY REINSPECTION -
REMOVE SALVAGE FROM INFRONT OF FENCE
COUNTER COVERED WITH JUNK - FLOOR COVERED WITH PARTS / CLEAN W
FENCE DOWN IN SPOTS - REPAIR W/IN 30 DAYS
SOME FRONTAGE SHIELDED BY DIRT MOUND AND TREES -

SIGNATURE OF PERSON INTERVIEWED Don Reynolds TITLE Manager

DATE 2/20/97 BY: Carol Hill INVESTIGAT

Charles M. Boss
Mark F. Vitou
John A. Borell, Jr.

Boss & Vitou Co., L.P.A.

Attorneys at Law
111 West Dudley Street
Maumee, Ohio 43537-2140

PH: (419) 893-5555
FAX: (419) 893-2797

August 10, 1998

VIA FACSIMILE/(419) 592-4723

David M. Grahn
City Law Director
P.O. Box 151
255 West Riverview
Napoleon, Ohio 43545

RE: *City of Napoleon v. Hogrefe Auto Parts*
HCCP Case No. 97 CV 067

Dear Mr. Grahn:

The following is a report on the progress being made by Hogrefe Auto Parts in compliance with the City of Napoleon.

In the far west end area, Hogrefe Auto Parts is in the process of making an impound lot. Currently, there are large stone piles that need to be spread. After the stone is in place, they intend to fence the west and rear sides with chain link fence to make a secure area. This area will provide a secure place to put some of the cars that are now behind Anthony Wayne Restaurant and surround their new office.

The area on the far east end of the property is now covered with piles of fill and is high ground. Hogrefe Auto Parts intends to continue the new 10-foot fence to their east property line, thereafter, putting only used and new cars in front of the fence, thus making a nice appearing display from the road.

Hogrefe Auto Parts would like to put a holding and display area behind the fence for their rebuilders. Hogrefe Auto Parts intends to continue the 10-foot fence to the east property line back, then to the railroad and, finally, along the track behind the area hidden by the 10-foot fence.

Hogrefe Auto Parts is working on both ends of the property and out back but have no area completed. Hogrefe Auto Parts has shown their resolve in improving their appearance and their willingness to cooperate with the City in accomplishing their mutual goals. Hogrefe Auto Parts is committed to these improvements. The company recognizes that it cannot continue to prosper in business without completing the proposed changes. At this time, there is a need to end legal controversy with the City in order to use the time and money spent in this area to complete their

renovation.

I propose we cancel the hearing set for August 11, 1998, dismiss the action without prejudice, and release the performance bond deposited so that it can be used toward completion of the modernization of the Hogrefe Auto Parts site. I look forward to your response.

Very truly yours,

BOSS & VITOU CO., L.P.A.



Charles M. Boss

CMB/sms

