

FILED

1991 JAN 30 PM 3:14

NAPOLEON MUNICIPAL COURT

IN THE NAPOLEON MUNICIPAL COURT, HENRY COUNTY, OHIO

City of Napoleon

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Case _____

vs.

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Gary Hogrefe

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Judgment Entry

This matter came on for hearing this 29th day of January upon the complaints. The court having heard the testimony, examined the exhibits and review law applicable to the issues set forth herein.

The defendant is charged with seven counts of violation of Section 151.39(A)(5) City of Napoleon Code of Ordinances. Said ordinance sets for conduct of permitted uses in a planned business district. Part (5) states, "Outside storage, including continued storage of auto-mobiles, trucks, or trailers, is not permitted, except by special use permit." The parties heretofore have stipulated that the business known as Hogrefe Auto Parts is located in the planned business district of the City of Napoleon, Ohio.

- 1 There are three motions before the court, the first is that the law charging the defendant is Ex Post Facto, per Section 713.15 Ohio Revised Code and Section 151.43(B)(2), in that the alleged conduct of the defendant in operating the business was taking place since 1952 or 1953. The second motion states that
- 2 the alleged conduct was a continuing occurrence and therefore only one criminal charge may be brought, per 21 Am Jur 2d Sec. 267.
- 3 The third motion was for acquittal of the defendant for the City's failure to establish a prima facie case. All motions were taken under advisement and the trial proceed to conclusion.

The court having heard all of the evidence finds that under the rule of strict construction, the laws alleged to have been violated must be interpreted strictly against the City and liberally in favor of the accused. The act or acts alleged by City that form the basis of the criminal charge are vague and ambiguous as to their specific meaning.

The City of Napoleon charges the defendant with not having a special use permit under Section 151.39(A)(5), states, "Outside storage, including continued storage of auto-mobiles, trucks, or trailers, is not permitted, except by special use."


The e/A or ordinance

The Napoleon City Code of Ordinances fails to define the term storage, therefore the Court will have due regard for the plain, ordinary, and natural meaning and scope of the language employed in the ordinance. Webster's New Collegiate Dictionary defines storage as follows: "space or a place for storing, an amount stored; the act of storing; the state of being stored; the safe keeping of goods in a depository (as a warehouse).

The evidence presented at trial established that motor vehicles were parked in front of the business known as Hogrefe Auto Parts for some alleged legal purpose. The evidence clearly showed by photographs that there were vehicles in front of the Hogrefe's Auto Parts, except for one vehicle, the remaining vehicles moved almost on a daily basis. There was no evidence of ownership of the vehicle's that the defendant is alleged to have stored on the property of Hogrefe Auto Parts, there is an allegation of agency by the defendant, however there is no creditable evidence to that element. This court further finds that the evidence as presented showed that this type of conduct as alleged by the defendant as agent of Hogrefe Auto Parts has been a continuing business since the early 50 's. Therefore the attempt to render an act punishable in a manner in which it was not punishable when it was committed would rendered it ex post facto. The court finds that the City has failed to prove all the necessary elements as alleged in the complaints. For the above reasons the court finds the defendant not guilty of case, 89 CRB 114, 115, 116, 117, 118, 119, 120.

Wrong




Visiting Judge Robert H. Saxer

Storage agency

Eugene
Carl Detmer
Jon Hilland
Partnership Certif
J.E. 23416

I proved

PR
No Permits
Agency
V. 112
Picts