Journal of Criminal Law and Criminology

Volume 32 | Issue 6 Article 9

1942

Questions and Answers

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Question: How many municipalities in the United States prohibit all-night parking? What are some of the principal reasons creating the need for such ordinances, and what enforcement measures are employed when violation occurs? (From Chief Carl Ekman, Evanston, Illinois.)—Answers in this number are by Dr. David G. Monroe of the Northwestern University Traffic Safety Institute.

Answer:

There is a trend toward prohibition of all-night parking on streets of municipalities in the United States. Where ordinances have illegalized all-night parking, a number of situations lead to such prohibitions. Difficulties in cleaning streets and removing snow have been prime factors. Where exceptional weather conditions prevail all-night parking regulations are usually encountered. The mandatory need for elimination of accident hazards and facilitation of flow of traffic have been factors of exceptional importance in nationalizing all-night parking provisions. Another factor is the need for combatting theft of automobiles and accessories, and identifying and returning stolen and abandoned cars. The history of all-night parking legislation points to the exceptional role which crime and emergencies have exerted in developing such legislation. The orgy of auto thievery in the late 1920's and early 30's was an important factor. The present war crisis, blackout and other emergencies, and the anticipated wave of tire thefts due to rubber shortage will stimulate other measures. In addition to these principal causes, there are others which have promoted passage of such ordinances: they prevent use of streets for storage purposes; prevent blocking of entrances to private property; improve the general appearance of streets; aid in the enforcement of curfew laws, and lessen hazards from fog and other weather conditions. Ordinances prohibiting all-night parking appear most frequent in the larger municipalities. An officer of the American Municipal Association has estimated that night parking ordinances are in effect in at least one-half of the municipalities of over 50,000 population. They are the exception in smaller municipalities and in the minor village, town and city are almost non-existent. As to municipalities in the upper population brackets, a survey made several years ago by the Bureau of Municipal Research and Service, University of Oregon, shows that such ordinances have been passed in 41 of 44 cities of over 150,000 population.[1]

While some all-night parking ordinances prohibit parking only in certain areas or streets or arterial highways, the majority eliminate parking in the municipal area. With regard to time limits on night parking, there is the widest variation. In some instances (as in Seattle) parking for more than one hour is a violation. Thirty minutes is the time limit in Detroit, four hours in Minneapolis, etc. In many jurisdictions, all night parking is permitted if fore and rear lights or others are left on. Most of the ordinances provide for tolerances. The cars of physicians and persons on public emergency service are nearly always exempted from penalty.

Enforcement policies and practices vary exceptionally. Rigid enforcement is most frequent in communities where partial prohibitions are in effect. Parking on narrow streets is rigorously checked in Cleveland. In Grand Rapids, regulations are enforced primarily with regard to snow removal. The parking ban in Akron applying to industrial districts is rigorously enforced. In Birmingham and Louisville where restrictions apply to downtown districts, enforcement is the rule. In general, however, opposition engendered by systematic, city-wide observation, coupled with the cost of supervision has bogged enforcement in many jurisdictions.

Among penalties, tagging is most exten-

[1] *Regulation of all-night parking on City Streets*, Information Bulletin No. 32, May, 1939.

sively employed. Ordinances seldom provide for impounding vehicles so far as can be ascertained. Usually, the first tag is a warning; subsequent ones mean a court appearance. In Buffalo, after three tags are issued to one person, he receives a summons. As to provisions for impounding, those of Cincinnati and Hamtramck are illustrative.[2] In the former, impounding is permitted if a vehicle has been parked for more than one hour in excess of time allowed or in the event that citation tags for two or more traffic ordinance violations have been ignored. The impounded vehicle may be redeemed on payment of a service charge of $5.00 and a storage charge of 20c per day for the impounding period. The Hamtramck ordinance not only prescribes certain impounding costs but gives the city a lien for the costs. If they are not paid in 60 days, the vehicle may be sold by the police department at a constable's sale after due public notice.

Question: When we employ chemical tests to determine whether or not a person is intoxicated, the defense usually raises the objection that such tests violate the defendant's constitutional rights as to self-incrimination. What can be done to overcome this objection?

Answer:

In the first place, the constitutional provision (i.e., that no person shall be compelled in any criminal case to be a witness against himself) refers only to *testimonial utterances.* In other words, you can not abstract from a person's lips an admission of his guilt. But a person may be compelled to supply a variety of physical evidences which may furnish incriminating evidence of prime importance. Of these, finger-prints and photographs are examples. These have been admitted over the self-incrimination objection on the ground that no fears, no hopes, no will of the person can falsify, or exaggerate such evidence. The evidence speaks for itself, not the person. The same argument could be used with regard to evidence of intoxication secured by chemical tests. In time, as chemical tests of the urine, blood, saliva and breath become generally recognized and approved, it is quite probable that judicial opinion as regards use of compulsion in taking fingerprints and the like will be extended to chemical testing. However, at present, the courts generally hold that use of the slightest compulsion in forcing a person to submit to a chemical test will thereby violate his privilege against self-incrimination.

But it should be remembered that self-incrimination is only a privilege and not a right. Hence, voluntary submission to a test voids the privilege. By all means attempt to secure the testing with the consent of the accused. In the event that the person refuses, some courts permit evidence of such refusal to be introduced in court. Perhaps the most notable progress toward compulsory taking of chemical tests will come from an extension of the principle that operation of an automobile upon the public highways is not a right but only a privilege which the state may grant or withdraw at pleasure. Even now, a driver may be compelled, in the event of automobile accident, to report the accident to enforcement officials. It would seem a reasonable extension of the principle to uphold a statute requiring a suspected drunken driver to give a sample of his blood, urine, saliva or breath.

Question: In taking a dying declaration, what conditions must be satisfied before a court will admit the declaration as evidence?

Answer:

In order to be valid, a dying declaration must meet these tests: (1) the declarant must be dying. (2) He must know that he is dying. (3) He must have given up all hope of recovery. (4) He must die. (5) The declaration can be used only at the criminal homicide trial for the death of the deceased.

[2] Consult section 74-134 of the Cincinnati Ordinance (1934), and sec. 73 of the Hamtramck Ordinance (No. 96).