

Treasure hunt: Digging for trouble

State law puts stiff restrictions on artifacts people pull from the ground

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Backyard treasure hunters beware. A little-known Oregon statute makes it illegal for anyone to intentionally unearth artifacts more than 75 years old without a permit from the state — even on private property.

After local bottle hunter Dale Mlasko was featured in the Mail Tribune and on the Travel Channel show "Cash and Treasures," he received a letter from the state saying he may have run afoul of the law.

The Oregon State Preservation Office informed him that digging up items on private property that are 75 years or older — even with the property owner's permission — must be witnessed by an archaeologist and signed off by the state.

Mlasko, 44, has been following his passion for hunting glass since he was a young boy. He searches for bottles from the 1800s and early 1900s on private property in Northern California and Southern Oregon.

He asks the owners for permission to look for old outhouses with a metal probe, then offers to give them everything he finds. Sometimes they let him keep what he finds, Mlasko said.

Mlasko said he was shocked to learn from the letter that "the excavation activities depicted in the 'Cash & Treasures' episode violate Oregon state law and cannot be condoned."

"I try to do everything in an ethical and legal way," Mlasko said. "Nobody needs to desecrate sacred ground. But these are outhouses."

Susan Lynn White, Oregon assistant state archaeologist, said she doesn't doubt Mlasko's "heart is in the right place." The state doesn't want to appear punitive or arbitrary — or even prohibit Mlasko from digging, White stressed.

"We're more interested in education, rather than punishment," she said.

But not everyone in the historic arena shares White's benevolent attitude. After the "Cash and Treasures" episode ran, Mlasko received "anonymous threatening letters from so-called archaeologists," he said.

His episode was savaged on a related Internet-based forum, Mlasko said.

One post, signed Scott Wolf, associate archaeologist of ASM Affiliates Inc., ended a finger-wagging rant with the condemnation, "Your ignorance and irresponsibility makes

me sick. SHAME ON YOU, SHAME ON YOU, SHAME ON YOU!"

"I did not know this law was in effect," said Mlasko. "I don't even keep most of the stuff. I give it to the property owner."

The law treads on property rights but protects the public's history, said Jacksonville historian Marshall Lango, who went searching for an abandoned backyard privy on his property and found bottles in the early 1970s, before the law was in effect.

"It's an interesting dilemma," Lango said. "If you went digging in your own backyard, it was considered a no-brainer. I really question if there should be a law about digging in your own backyard."

Cost also is an issue — especially for private homeowners, he said.

The state permit is free. But depending on the nature of the site, a property owner may have to pay to have the excavation overseen by a qualified archaeologist.

"That's the reality of it," said White.

Local universities will sometimes send out an archaeologist — with students in tow — for free. But if that option is not available, the owner will likely bear the professionals' costs, said White.

If the excavation took several days — or even weeks — it could be cost-prohibitive, said Lango.

"That would be a real problem if three or four people spend several weeks (on your property), and you're paying for that," Lango said. "If the state was willing to fund the dig, that would be different."

Lango applauds the state's effort to learn from the past — even a past as recent as the Great Depression, he said.

"If I could do it again, as long as I could keep what was found, I would love to have had a real educated look," said Lango.

Unless it's human remains, the objects discovered belong to the property owner, White said.

"But we do ask if the owner would like to donate the artifacts to the Oregon Museum of Natural and Cultural History in Eugene," she said.

Jacksonville resident Larry Smith wholeheartedly supports the laws.

"People need to be sensitive. Once you move a bottle, once you move an arrowhead, the historical significance is reduced," said Smith, executive director of the Jacksonville Woodlands Association.

There are seven cars buried in the woodlands area, including a 1947 Nash and a 1948 Ford pickup chassis. The cars were dragged to old mine sites and dumped down shafts, Smith said.

"They were dumped in our woodlands," said Smith. "We can't touch them because they are on federal land, rotting away."

Because the old junked cars were not a natural part of Jacksonville's mining history, they likely can be removed, White said, depending upon federal regulations.

Property owners shouldn't worry about violating the law if artifacts are unearthed while digging up an old septic tank or putting in a new fence. Inadvertent discovery of historic matter is not illegal. However, the digging should stop until the state's preservation office is notified and can assess the situation, White said.

"Everything is context," she said.

From those bottle-containing privies can come a wealth of other historical information of interest to archaeologists, said White, adding that everything from the types of bottles found to fossilized feces provide indicators about the people who lived there.

The protective historical laws were created (and revised) between 1983 and 1997, White said.

"We always go by a case-by-case basis, because the most interesting cases come up," she said.

In Multnomah County, in 2004, ground-penetrating radar was used to discover a secret previously unknown to local historical societies. The county wanted to sell property adjacent to the old Lone Fir Cemetery. Previous historical records showed Chinese burials were adjacent to the site but the remains had been disinterred and shipped back to China for reburial in the 1950s. But the radar was still discovering what appeared to be bones. White's office was called.

"Most of the calls we get are (regarding the discovery of) human remains," said White.

Test trenches in the property's parking lot revealed china fragments and coffin corners, and fragments of human remains.

It turned out that only the males' remains had been removed, White said.

"The women and children were left behind," said White.

Within hours, the Chinese Consolidated Benevolent Association, the state historic office and the county had agreed the area should remain untouched, White said.

The county retained the property, demolished an old building, and a Buddhist monk blessed the site. The county will be erecting a monument commemorating the burial site, White said.

"There was a sensitive resource there with the remains," said White.

Mlasko said he will dig more in California, where there aren't such restrictive laws, but intends to comply with Oregon law when working locally. Indeed, he thinks it would be interesting to share knowledge with an archaeologist. But the law will have a chilling effect for many of his fellow hobbyists.

"A lot of bottle collectors have gone underground," said Mlasko.

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Archaeological sites: What the law says

A person may not knowingly and intentionally excavate, injure, destroy or alter an archaeological site or object on public or private lands without first obtaining an archaeological permit, according to a series of state laws. The one pertaining to private lands is Oregon Administrative Rule 736-051-0090. **On private or public non-federal lands, an official archaeological site is defined when it has 10 or more artifacts that are 75 years or older located in a concentrated geographic area, said Susan Lynn White, Oregon assistant state archaeologist. Violation of these laws is a Class B misdemeanor punishable by up to six months in jail, White said.**

"Removal of human remains is a Class C Felony," she adds. "The state police can be contacted and the site shut down."

Oregon law also prohibits a person from selling, purchasing, trading, bartering or exchanging an artifact that has been removed from an archaeological site on public, non-federal land or obtained from private land without the written permission of the landowner, White said.