



CITY OF BILLINGS

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EXHIBIT 1
DATE 3/4/05
SB 181
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August 29, 2003

Dee Jay Bee, Inc.
Billings Towing & Repair
ATTENTION: Joanne
2212 Main Street
Billings, Montana 59105

Re: Towing Company Lien Extends to Contents

Dear Joanne:

Thank you for your fax message of August 25, 2003 concerning this issue. I did call to the Towing and Recovery Association of America, and ended up, in the absence of the Association's attorney, talking to Legislative Committee Chair Joe Pedigo about the subject. He was both candid and practical in his approach to the issue. I also found him to be a very reasonable and professional source of information on this precise topic.

The Billings Police Department asked for a formal opinion on this point, and I have just completed it. I thought it would be of interest to you, so I have enclosed a copy with this letter.

Again, many thanks for your inquiry and your assistance.

Sincerely,
OFFICE OF THE CITY ATTORNEY

John K. Addy
Deputy City Attorney

-----Original Message -----

From: Addy, Kelly

Sent: Friday, August 29, 2003 10:04 AM

To: Barone, Tony

Cc: Brooks, Brent; Tussing, Ron; Sutherland, Bonnie; Archer, Jerry; Bell, Darrell;

Hensel, Craig; D'Alton, Moira

Subject: Towed vehicle lien

Dear Tony:

I have reviewed the question you submitted regarding a towing company's lien for payment of services pursuant to §71-3-1201, MCA. More specifically, the question is whether the lien attaches only to the vehicle, or whether it applies to the contents of the vehicle as well. In other words, if the towing company takes a vehicle to its impound lot, can they keep only the car, or can they keep the car and its contents, until the owner pays the towing company bill.

I have researched this issue and I have conferred with City Attorney Brent Brooks and with Assistant City Attorney Bonnie Sutherland on the issue. We have arrived at a consensus that, given the specific terms of the Montana statute, the lien extends to the car and the contents of the car and the towing company can refuse to return either or both to the vehicle owner until their bill for services is paid.

There are some states, like California, that have statutes that specifically provide that the lien does not extend to the contents of the vehicle. There are other states, like Maryland, that provide that the lien does extend to the contents of the vehicle. Montana's statute does not address the question in detail, but only provides that "*Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or the lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on it.*"

The towing companies were only expressly added as lienholders pursuant to the terms of this statute by the 1999 Legislature with the language "*or tows or stores the article as directed under authority of law*". No cases have been reported by which a Montana Court has interpreted this language to include or exclude the contents of the vehicle from the extent of the lien. Under these circumstances, it is necessary for us to try to predict what a court is likely to do. Brent, Bonnie and I all believe that a court interpreting this language in the kinds of cases you

describe would be most likely to include the contents of the vehicle in the scope of the lien.

The plain language of the statute extends the lien to any "article of personal property" and both the vehicle and its contents are articles of personal property.

The towing company has a duty to safeguard both the vehicle and its contents while it is in their possession. While the only reason they are called to the scene is to tow the vehicle, once the vehicle is in their possession, they have a duty to safeguard both the vehicle and the contents. Since they have safeguarded both, the contents become, as described in the statute, safeguarded property, and the clear meaning of the statutory language once again applies to the contents as well as the vehicle.

Also, the courts may look at this from a practical point of view and say that a lien against a wrecked clunker is valueless, and the legislature would not have intended by its enactment to confer a valueless benefit, so that they must have intended the lien to extend to the contents if they meant it to apply to any meaningful thing.

We also note that this appears to be a civil matter that the parties - the vehicle owner and the towing company - should straighten out between themselves. This is not a theft since the towing companies were called to the scene and specifically ordered by the police to remove the vehicle which contained the items of personal property in the first instance. They came into possession of the property not only lawfully, but at the express direction of the police. Nor is it a wrongful detainer of the contents because the language of the statute, as discussed above, appears to encompass the contents within the intended scope of the lien.

Finally, it may also become difficult to persuade towing companies to perform services at accident scenes if we also prohibit them from claiming a lien in the contents and defending that interpretation as a civil matter. If the City calls them in the morning to come clear away a wrecked vehicle, then tells them in the afternoon that they will be prosecuted for theft if they don't surrender the only property of any value that gives them any hope that the owner will pay the bill, they may be very reluctant to come to the scene of the next accident when the City calls them the next morning.

For these reasons, it is our opinion (1) that a court would be most likely to interpret the towing company's lien to include the contents of the vehicle, (2) that this question should be decided as a civil and not as a criminal matter, and (3) that it would not be in the best interests of the motoring public to impose a potentially severe disincentive on the towing companies who perform a public service by clearing away the wreckage on the City's streets after an accident.

JOHN K. "KELLY" ADDY

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