

Memo

~~Attorney's~~

To: Rick Broadwater
From: K. Paul Stahl, Deputy County Attorney
Date: February 19, 2003
Re: Tow Truck operators' authority to confiscate personal property within vehicle

Montana Code Annotated § 71-3-1201(2) provides that a person who tows or stores personal property has a special lien on that property. Subsection (2) also contains a caveat: the towing and storage must be "as directed under authority of law."

The lien is on the towed or stored vehicle; the lien is not on the personal property located within the vehicle. The statutory language cannot be expanded to include items of personal property other than the vehicle. The term "stored" cannot in any way be interpreted to include the property within the vehicle. There is simply no authority whatsoever that allows a lienholder to expand the lien to include the personal property within a vehicle.

That being said, the registered owner has the right to retrieve any personal property left inside the vehicle. Failure to allow access to the property within the vehicle would amount to unauthorized control by the tow truck operator.

One further note: Montana Code Annotated § 45-6-301 provides that a person commits the criminal offense of theft if the person purposely or knowingly obtains or exerts unauthorized control over property of another with the purpose of depriving the owner of the property.