



CITY OF BILLINGS

CITY ATTORNEY'S OFFICE

P.O. BOX 1178

BILLINGS, MONTANA 59103

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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

SENATE JUDICIARY

Exhibit No. 2

Date 1-13-05

Bill No. SB 181

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

From: Addy, Kelly

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

To: Barone, Tony

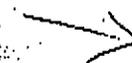
Cc: Brooks, Brent; Tussing, Ron; Sutherland, Bonnie; Archer, Jerry; Bell, Darrell;

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

DEPUTY CITY ATTORNEY
CITY OF BILLINGS
P.O. BOX 1178
BILLINGS, MONTANA 59103
406.657.8201
406.591.6777

Commercial Tow Truck Insurance Requirements

Questions concerning Statutes or Rules concerning tow truck operations should be directed to the Department of Justice, Highway Patrol
406-533-6620

Montana Codes Annotated Title 69 Chapter 8 (Select Provisions)

61-8-906. Liability insurance -- storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

- (i) \$300,000 for class A tow trucks;
- (ii) \$500,000 for class B tow trucks; and
- (iii) \$750,000 for class C tow trucks;

(b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage or on-hook liability insurance in an amount not less than \$50,000.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission.

(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays;
- (d) large enough to store all the vehicles towed for law enforcement agencies; and
- (e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism.

History: En. Sec. 6, Ch. 283, L. 1995; amd. Sec. 5, Ch. 88, L. 2003; amd. Sec. 116, Ch. 114, L. 2003.

Administrative Rules of Montana 23.6.101 DEFINITIONS (Select Provisions)

(1) "Cargo or other property" means the contents and non-motor vehicle (as defined in the policy), items in, on or attached to the towed or stored vehicle.

(8) "Garage keeper's legal liability insurance or on-hook insurance" means insurance coverage for loss or damage to motor vehicles (as defined in the policy), which are in the care of the insured for towing, storage or repair and for which loss or damage is caused by the insured's failure to exercise the degree of care required by law.

Lewis And Clark County
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.

Junk and abandoned vehicles wind up in the graveyard in a variety of ways. Owners who want to rid themselves of a defunct hulk can call the county and get it hauled away for free. Niles said the county has a wrecker and a driver who works Monday through Friday. The owner just has to sign a release-of-interest form, and the state takes possession. Abandoned vehicles are more trouble. Often they come to the attention of law enforcement through citizen com-

plaints or by a private wrecker requested by law enforcement. A private wrecker can be reimbursed \$70 through a program operated by the Department of Environmental Quality. Police recognize abandoned vehicles as a quality-of-life issue important to the community, Bryce said, but response to a complaint might not be as quick as citizens would like. "We do the best we can" he said. "It's not high on our priority list, but we get to them when we can."

to the towing company if the abandoned vehicle is inoperable, unregistered and worth less than \$500, Stankey said. In those cases, the vehicle doesn't have to be sold at a sheriff's sale, but becomes the property of the towing company — not that it's much of a bargain. Junk and abandoned vehicles can't just be summarily crushed, he said. Environmental concerns require that all the fluids be drained and the batteries and tires removed. Freon from air conditioning systems must be handled sep-

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April 18, 2004

Uninsured motorists often won't pay towing services

By LORNA THACKERAY
Of The Gazette Staff

Early this month, the owner of a car demolished in a weekend crash informed employees at Hanser's Automotive & Wrecker that he wasn't going to pay the bill for the tow from the accident scene.

"I didn't call you, the police did and I'm not paying," the vehicle owner told employees.

He was another in a long line of uninsured motorists who will dump the cost of cleaning the mess and disposing of the vehicle on the wrecker company, Spenser Hanser said. Ultimately, those who have insurance or who own up to their bills will cover the cost.

"People wonder why their towing bills are so high," he said. "This is why."

He estimates that at least 50 percent of the wrecked vehicles towed to the Hanser lot have no insurance. The owners usually walk away, and the tow truck company absorbs the cost.

"They come in, collect their things from the car and we never hear from them again," Hanser said. "You and I are paying for their stuff."

The cost of a tow, if the owner actually paid, could range from \$50 to more than \$400, depending on the size of the vehicle, its condition and the circumstances of the wreck, said his father, Ralph Hanser.

If gasoline and oil spilled in the aftermath of the wreck, the towing company cleans up the mess, Spenser Hanser said. If there's insurance, it will cover the cost, he said. If not, the towing company eats it.

"It's just something we do," he said. The spills have to be cleaned, he said, or the contaminants eventually end up untreated in the Yellowstone River.

A lot of the older cars that wreckers end up collecting from accident scenes are covered only by liability insurance, which won't take care of the cost of the tow or accident-scene cleanup, Spenser Hanser said.

"They come in, collect their things from the car and we never hear from them again. You and I are paying for their stuff."

— Spenser Hanser,
Hanser's Automotive & Wrecker

He said he's also seeing an increase in what he calls "dumping." That's when the insurance company does pay the vehicle owner, but the owner doesn't settle up his bill with the towing company.

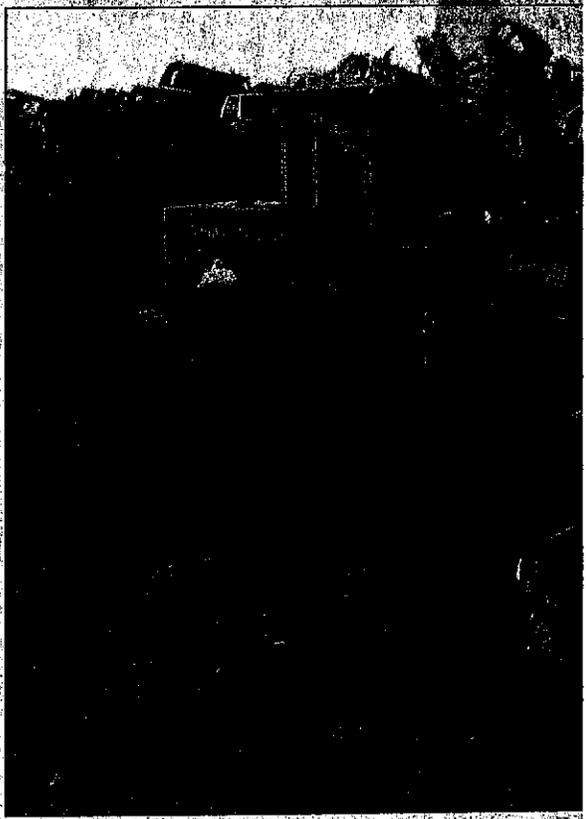
Don Blyton, owner of Interstate Wrecker Service, said occasionally it ends in legal disputes when owners want to retrieve their personal property but don't want to pay their bill. Sometimes, he said, a car worth \$50 will have a stereo system worth \$750.

The state and city say the property stays with the towing company until the bill is paid, he said, but some people disagree.

If there is any value left in the car, the towing company has to go through the process of a sheriff's sale. If no bid has been submitted 10 days after the sale, the vehicle can be released for salvage, Spenser Hanser said.

Usually there are no bids, and the vehicle can be readied for the crusher. Only rarely are any parts in these uninsured vehicles in good enough condition for recycling.

All that can be recovered is the sale of the scrap metal. Spenser Hanser said the sale price is based on weight. If scrap metal is going at \$25 a ton, salvage value on a 1½-ton Ford Taurus, for instance, would be less than \$40, he said.



A crusher operator uses a bar to puncture a fuel tank.

Junkers

Continued from 1A

of the Montana Department of Environmental Quality. Between 7,000 and 8,000 of those are abandoned to the state, he said.

Most are so worthless they are crushed and sold for the value of the scrap metals.

Billings, the largest metropolitan area, has the highest concentration of junked and abandoned vehicles. When the crusher arrived last fall at the Yellowstone County Junk Vehicle lot, 2,000 cars were stacked and ready to be smashed into a few square feet of scrap each.

Since January, another 300 junk or abandoned vehicles have been towed to the county lot, Stankey said.

There's a difference between junk and abandoned vehicles, Stankey said,

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