

Towing, liability of tow truck operators

Number: INFORMAL

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The Honorable Sally A. Heyman
Representative, District 105
17101 N.E. 19th Avenue, Suite 205
North Miami Beach, Florida 33162-3159

Dear Representative Heyman:

Thank you for considering this office as a source for assistance regarding the liability of tow truck operators in removing motor vehicles from public roads at the request of a law enforcement officer. Attorney General Butterworth has asked me to respond to your letter.

While questions of liability depend upon the facts in any given instance and thus must be assessed on a case-by-case basis, I would generally note the provisions of section 713.78, Florida Statutes. The statute prescribes the procedure to be followed by towing and wrecker services to recover the costs of removing or storing vehicles which were recovered, removed or stored upon the instructions of, among others, a law enforcement agency.

Subsection (2) of section 713.78 provides:

"Whenever a person regularly engaged in the business of transporting vehicles by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or mobile home upon instructions from:

- (a) The owner thereof; or
- (b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle is wrongfully parked, and such removal is done in compliance with s. 715.07; or
- (c) Any law enforcement agency; or
- (d) A mobile home park owner as defined in s. 723.003 who has a current writ of possession for a mobile home lot pursuant to s. 723.061,

he shall have a lien on such vehicle for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if such vehicle is stored for less than 6 hours."

Subsection (6) of section 713.78, Florida Statutes, provides:

"No person regularly engaged in the business of recovering, towing, or storing vehicles shall be liable for damages connected with such services, provided that they have been performed with reasonable care and provided, further, that, in the case of removal of a vehicle upon the request of a person purporting, and reasonably appearing, to be the owner or lessee, or a person authorized by the owner or lessee, of the property from which such vehicle is removed, such removal has been done in compliance with s. 715.07.[1]

As this office stated in Attorney General Opinion 90-5, a copy of which is enclosed, this section appears to protect those persons engaged in towing or storing vehicles from liability if such services are performed with "reasonable care." However, as also noted in that opinion, resolution of issues of liability are dependent upon the particular facts of each case and thus must be resolved on a case by case basis.

I trust that the above informal comments and enclosed opinion may be of some assistance to you in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosure

[1] See s. 715.07, Fla. Stat., which sets forth guidelines for towing or removing vehicles from private property without the consent of the registered owner or other legally authorized person in control of the vehicle.