

Towing regulation, preemption by federal law

Number: INFORMAL

Date: June 18, 1996

Mr. Anthony J. Gonzalo
Executive Director
Hillsborough County Public
Transportation Commission
Post Office Box 1110
Tampa, Florida 33601

RE: TOWING--WRECKERS--MOTOR VEHICLES--COUNTIES--regulation of towing preempted by federal law to the extent it does not relate to safety standards.

Dear Mr. Gonzalo:

This is in response to your recent letter requesting assistance in determining the effect of the Interstate Commerce Commission Termination Act of 1995 on the Hillsborough County Public Transportation Commission.

Your initial question as to whether the transportation commission is a "safety regulatory authority of a state" as that phrase is used in the act necessarily involves an interpretation of federal law which is beyond the jurisdiction of this office. To be of assistance, however, I make the following observations.

Section 14501(c)(1) of 49 U.S.C. generally provides that a state or political subdivision of a state may not enact or enforce a law related to "price, route, or service of any motor carrier . . . or any private carrier, broker, or freight forwarder with respect to the transportation of property." Paragraph (2) of section 14501(c) sets forth those matters not covered by paragraph (1). Specifically, it states that paragraph (1)

"(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization[.]"

Your question presupposes that the federal act is referring to an entity that regulates the safety of motor vehicles. I would note that there is no definition in the federal act for such an authority or entity. Moreover, the language in 49 U.S.C. section 14501(c)(2)(A) appears to relate to the right or power of the State to enforce laws regarding motor vehicle safety. Thus, it does not appear that the federal act is referring to a separate governmental entity.

In light of the special act granting the Hillsborough County Public Transportation Commission the authority to regulate the operation of various motor vehicles, including tow trucks, and specific

language regarding the adoption of safety and equipment regulations, it would appear that the state has granted such authority to the commission and it may continue to exercise its powers to the extent they do not conflict with the prohibitions in the federal act. Clearly, any attempt to regulate the rates for consensual towing would contravene the federal act.

You also ask whether the special act's requirement that companies obtain a certificate of operation and that tow truck drivers obtain a public vehicle drivers license would be preempted by the federal act. To the extent such requirements or regulations are related to maintaining safety standards, such licensing would not appear to violate the federal act. However, determinations made by the commission in granting a certificate of operation such as public necessity and convenience, as well as permanence and quality of the service offered by an applicant, do not appear to relate to safety standards.

I trust these informal comments will assist you in this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk