

Robert E. Talton

CAPITOL OFFICE:
P.O. Box 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0460



DISTRICT OFFICE:
P.O. Box 5661
PASADENA, TEXAS 77508
(281) 487-8818

District 144
House of Representatives

October 20, 2004

RECEIVED

OCT 22 2004

OPINION COMMITTEE

RQ-0281-GA

The Honorable Greg Abbott
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # AL-43991-04

I.D. # 043991

Re: HB849

Dear General Abbott :

In the last regular session I helped pass HB849 which dealt with non-consent tows as to cities. Under the Transportation Code §643.203 a governing body is permitted to regulate fees. In the event that a body chooses to regulate fees, Transportation Code §643.204 requires those political subdivisions to "establish procedures by which a towing company may request that a towing fee study be performed."

I have been advised that the City of Victoria has been advised that they do not have to comply with requirements of the bill. I am attaching a copy of their ordinance and a copy of a request for a towing fee study from the Texas Towing Association. The City of Victoria has refused to answer the letter.

By this letter, I request an opinion as to whether a city can bypass the clear intent of HB849 by refusing to set procedures even though they have set fees on non-consent tows.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Talton".

Robert E. Talton
State Representative



Sec. 23-75. Rates.

Search

(a) All tow truck permit holders operating permitted tow trucks on the public streets shall charge no more than the storage rates prescribed by the Texas Department of Transportation for performing nonconsent tows. A charge for any storage service exceeding the rates prescribed or in addition to the storage related services prescribed shall constitute a violation of this article.

(b) The city manager may establish further rate limits in the city's contracts with rotation list privilege holders. These rate limits shall not be considered rate regulations, but shall instead be considered contractual obligations pursuant to the city's provision of referrals to contractees. Failure to comply with any such contractual rate limits shall not be punishable as a violation of this ordinance, but shall instead merely give the city the right to declare a breach of contract and potentially terminate said contract.

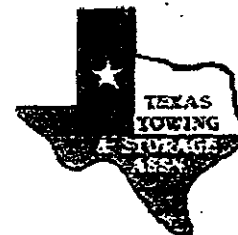
(Ord. No. 95-15, § 1, 6-20-95; Ord. No. 97-13, § 1, 1-21-97; Ord. No. 2002-12, § 1, 7-2-02)

Secs. 23-76-23-79. Reserved.

TEXAS TOWING & STORAGE ASSOCIATION

P.O. BOX 1647 · RED OAK, TX 75154

(866) 924-2088 · FAX (972) 515-8636

www.ttsa.org

June 16, 2004

City of Victoria
Will Armstrong, Mayor
Denny Arnold, City Manager

RE: Towing Rates

The Texas Legislature passed HB849 during the last legislative session. In Sec. 643.204 it clearly states that the governing body of a political subdivision that regulates tow fees SHALL establish procedures by which a towing company may request that a towing fee study be performed. Then they shall establish or amend those fees at amounts that represent the fair value of the services of a towing company and be related to financial information as to the cost of towing a vehicle. The assistant city attorney told me that this issue was decided by a court, but that is not the case. That case had nothing to do with rates that the city set on the contract that is signed by the towing company. Furthermore HB849 wasn't in effect when that case was tried. City attorney's try to legislate when they don't have that authority. As the state association who was very successful in getting this bill passed with the full support of the Texas Legislature would like to request that you look at this issue again and advise your council members that it doesn't say may do it, it states they shall do it.

The assistant city attorney also told me that the City of Victoria doesn't set rates, but it is clear in the ordinance that there is a rate section that has rates and even gives the authority to change those rates. Please consider the people that are providing a service to the City of Victoria and do what the State of Texas has given you the power to do.

Sincerely,

A handwritten signature in cursive script that reads "Larry Cernosek".

Larry Cernosek
Chairman

281-930-1539