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May 18, 2006

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OPINION COMMITTEE

RQ-0492-GA

FILE # ML-44814-06  
I.D. # 44814

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

Re: Request for an Opinion regarding proper release of a towed vehicle from a vehicle storage facility

Dear General Abbott:

It has been brought to my attention that there is some question as to the proper use of the Texas Department of Transportation's Form 1895, "Affidavit of Right of Possession or Control," with regard to the release of vehicles from licensed vehicle storage facilities. A copy of the Affidavit is attached. The issue is whether the Affidavit can be used by any person to gain possession of a vehicle from a vehicle storage facility or is limited to use only by an immediate family member of the registered vehicle owner.

The Affidavit is defined by the Texas Administrative Code as "A form prescribed by the department and provided by the licensee (vehicle storage facility) for use by an individual certifying right of possession if the licensee is unable to verify the individual's status as an immediate family member." See 43 T.A.C. §18.82(3). Immediate family member is defined as "An individual's parents, spouse, children, brothers, and sisters if they reside in and are supported by the same household." See 43 T.A.C. §18.82(6). Pursuant to 43 T.A.C. §18.92(3)(G) a licensed vehicle storage facility is required to release a stored vehicle upon the presentment of the Affidavit.



(3) The licensee shall allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §18.91(d)(1) of this subchapter, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(G) a department approved Affidavit of Right of Possession and Control, as defined in §18.82 of this subchapter, which is to be furnished by the licensee upon request (an Affidavit of Right of Possession and Control is not to be used as a repossession instrument).

Texas Department of Transportation has interpreted §18.82(3) and 18.92(3)(G) to mean that a vehicle storage facility is required to release a vehicle to any person who presents a notarized Affidavit. Under the Department's interpretation any person with a notarized Affidavit, regardless of the fact the person is not an immediate family member of the vehicle owner or can provide any other documentation supporting right of possession, can take possession of a vehicle from a vehicle storage facility by virtue of the Affidavit. In support of its interpretation the Department cites *Quimby v. Texas Department of Transportation*, 10 S.W. 3d 778. I would note that the Texas Towing & Storage Association informs me that its members have been threatened with citation by the Department for refusing to release stored vehicles upon the presentment of the Affidavit, when the member knows the person is not an immediate family member of the vehicle owner.

A different interpretation of §18.82(3) and 18.92(3)(G) is that the person certifying right of possession of the vehicle must be an immediate family member of the vehicle owner. The proper use of the Affidavit would be limited to those instances when the vehicle storage facility has some question about or trouble verifying whether or not the person seeking possession of the vehicle is in fact a family member of the vehicle owner. Under this interpretation, the vehicle storage facility, for whatever reason, "... is unable to verify the individual's status as an immediate family member" the Affidavit would then be used as additional proof and assurance that the person wanting the vehicle is an immediate family member of the vehicle owner.

I would appreciate your expedited opinion on this matter.

Sincerely,



Robert E. Talton  
State Representative

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