

November 20, 2001

Re: Wrecker regulations

Dear Sir:

Your letter of August 27, 2001 has been referred to me for reply.

Most business regulation of towing or wrecker businesses has been preempted by federal law. Municipalities may still regulate the price for non-consensual tows, but all other business regulation of towing businesses is not allowed. Municipalities may still also establish standards for towing businesses that do work for the city itself as a market participant. Any regulations that go beyond this run afoul of federal laws that attempted to deregulate the motor carrier industry.

In 1994 the U.S. Congress passed a preemption statute that is now codified as 49 United States Code Annotated § 1405(c)(1). This section provides in pertinent part that “a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of a motor carrier ... with respect to the transportation of property.” There are two (2) exceptions to this preemption: (1) A “State” may enact and enforce safety regulations (See 49 U.S.C. § 1405(c)(2)(A)); and (2) A State or political subdivision may enact and enforce regulations relating to price for for-hire motor vehicle transportation by a tow truck if the transportation is without prior consent of the owner or operator of the vehicle. (See 49 U.S.C. § 14501(c)(2)(C)).

In *Petrey v. City of Toledo*, 246 F.3d 548 (6th Cir. 2001), the Sixth Circuit Court of Appeals applies these statutes to tow company regulations adopted by the City of Toledo, Ohio. That city’s regulations established two (2) classes of licenses, a Class A and Class B license. Under the Class B license, a business could conduct private and third-party tows. Under a Class A license, in addition to these, the permit holder could conduct non-consensual tows ordered by the police department. The city limited the number of Class A licenses to eleven.

The court upheld the Class A requirements as being proprietary in nature and in the nature of regulating simply who may contract with the city:

[W]e hold that the challenged Toledo towing provisions dealing solely with those towers wishing to perform non-consensual police tows for the City, along with the Rule limiting the number of police towers to eleven, are proprietary in nature , do not constitute regulation or have the force and effect of law, and thus are not preempted by 49 U.S.C. § 1405(c)(1). 246 F.2d at 559.

The court noted that by limiting the number of towing companies the city would deal with, “ Toledo can ensure greater administrative efficiency and can better monitor the performance of

all towers involved.” 246 F.2d. at 558. Any rationally based regulation that is not illegally discriminatory would probably be upheld as applied to these companies doing business with the city. It would appear that perhaps the better practice in procuring these services would be for the city to go through a request for proposals purchasing procedure rather than the licensing system now in place.

The court in *Petrey* also held that the city’s licensing requirements for Class B tow companies were not valid and had been preempted by the federal law. These are companies that provide towing services to individuals in the city. The court stated:

[W]hile a city or state’s regulation of the price of non-consensual police tows is permitted, Toledo’s license requirement for all tow drivers doing work in the City clearly does not fit within this exception. 246 F.2d at 559,560.

The only other exception to preemption that would apply and that Toledo relied on to save its general towing regulations is the provision that allows “states” to regulate for safety. The court found, however, that the word “states” did not include political subdivisions. Therefore, municipalities cannot enact safety requirements for towing companies not doing business with the city.

Another significant holding of the case is that the city can be held liable for violating a towing company’s right not to be regulated. The court held that “ § 1983 relief was available for the violation of that right.” 246 F.3d at 565.

I hope this information substantially answers your questions. If you have further questions, however, please feel free to ask again.

Sincerely,

Dennis Huffer
MTAS Legal consultant