

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-187

Garagekeeper's or towing firm's lien under Tenn. Code Ann. § 66-19-103

QUESTIONS

1. Are repair and/or towing facilities legally entitled to obtain lien status information regarding motor vehicles directly from the State of Tennessee and, if so, under what statute or regulation?
2. Do repair and/or towing facilities have a right to a lien "against the lienor" for amounts up to \$250 under Tenn. Code Ann. § 66-19-103(e) even if the total repair charge exceeds \$250?
3. Does the term "repairs" in Tenn. Code Ann. § 66-19-103(e) include each or all of the following: parts, labor, shop supplies, towing fees, storage fees, and/or interest on past due balances?
4. If a repair and/or towing facility puts parts or components (*e.g.*, tires, transmission, computer modules, body panels, etc.) into or onto a vehicle but the lienor asserts its rights under this statute, may the repair and/or towing facility remove those parts for which payment is not made prior to releasing the vehicle?
5. Is subsection (e) of Tenn. Code Ann. § 66-19-103 unconstitutional?

OPINIONS

1. Yes, a repair and/or towing facility may obtain motor vehicle lien information from the Department of Revenue and the Secretary of State's Office under the statutes discussed below.
2. A repair and/or towing facility that is otherwise in compliance with Tenn. Code Ann. § 66-19-103 would have a lien against a motor vehicle in its possession that could be enforced against the lienor for reasonable charges up to \$250, even if the repair and/or towing facility did not obtain any written authorization from the lienor/seller of the vehicle.
3. The term "repair" as used in Tenn. Code Ann. § 66-19-103 includes all reasonable costs or charges associated with restoring to a sound condition the motor vehicle upon which the lien is being asserted. Only a court of competent jurisdiction could determine whether

reasonable repair charges include each of the listed items after considering all of the facts and circumstances of the particular case.

4. Tenn. Code Ann. § 66-19-103 expressly states that the lien under that statute is to be enforced in the same manner as an artisans' lien under Tenn. Code Ann. §§ 66-14-102 – 66-14-106. Accordingly, we do not think a repair and/or towing facility may enforce its lien by removing parts or components from the motor vehicle.

5. No.

ANALYSIS

1. Motor Vehicle Lien Information

This opinion primarily concerns a garagekeeper's or towing firm's lien under Tenn. Code Ann. § 66-19-103. The first question asks whether repair and/or towing facilities may obtain lien status information directly from the state and, if so, under what statute or regulation. Under Tenn. Code Ann. § 10-7-503, all state records are open for public inspection by a citizen of this state unless otherwise provided by state law. The question becomes what state records contain motor vehicle lien information. Tennessee's Uniform Commercial Code provides that the filing of a financing statement is not necessary to perfect a security interest in property subject to this state's certificate-of-title statute, which provides for a security interest to be indicated on a motor vehicle's certificate of title. Tenn. Code Ann. § 47-9-311(a)(2). The certificate-of-title statute provides that:

A security interest or lien is perfected by delivery to the department [of revenue] or the county clerk of the existing certificate of title, if any, title extension form, or manufacturer's statement of origin and an application for a certificate of title containing the name and address of the holder of a security interest or lien with vehicle description and the required fee.

Tenn. Code Ann. § 55-3-126(b)(1).

Under Tenn. Code Ann. § 55-3-114(b)(1), the information contained on a certificate of title shall include "a statement of the owner's title and of all liens and encumbrances upon the vehicle described, whether possession is held by the owner under a contract of conditional sale or other agreement" By statute, the Department of Revenue is to keep a record of all outstanding certificates of title issued by the department. Tenn. Code Ann. § 55-3-111. Accordingly, a repair and/or towing facility may obtain lien information by obtaining a copy of a vehicle's certificate-of-title information. This conclusion is supported by Tenn. Code Ann. § 66-14-102, which applies to enforcement of artisans' liens and requires the artisan to make reasonable inquiry to identify and give notice to persons with an interest in the items to be sold to satisfy the lien. In the case of motor vehicles, the duty to make "reasonable inquiry" is met "by an inquiry of the title and registration division of the department of revenue or a county clerk as agent for the division to determine the interest of all title owners and all lienholders." Tenn.

Code Ann. § 66-14-102(c).¹ The department is entitled to a reasonable fee for providing records. Tenn. Code Ann. § 55-2-105 and -106.

Requests for records pertaining to a motor vehicle title are governed by the Uniform Motor Vehicle Records Disclosure Act, Tenn. Code Ann. §§ 55-25-101, *et seq.* Under Tenn. Code Ann. § 55-25-103(8), information that identifies a person, including name and address, is considered “personal information,” which is confidential under Tenn. Code Ann. § 55-25-104. But the department may disclose an individual’s “personal information” to a person who has obtained that individual’s consent. Tenn. Code Ann. § 55-25-106. Further, Tenn. Code Ann. § 55-25-107 allows disclosure in two instances that may have application to a repair and/or towing facility, depending upon the particular facts and circumstances:

(b) Personal information . . . may be disclosed for use as follows:

(3) In the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If the information so submitted is not correct or is no longer correct, to obtain the correct information, but only for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual.

* * * *

(7) In providing notice to the owners of towed or impounded vehicles.

Tenn. Code Ann. § 55-25-107(b)(3) & (7).

Chapter 16 of Title 55 concerns unclaimed or abandoned vehicles. Tenn. Code Ann. § 55-16-105 requires:

any garagekeeper or towing firm, which has in its possession an abandoned, immobile or unattended motor vehicle taken into custody by a police department, and in whose possession the vehicle was lawfully placed by the police department, shall, within fifteen (15) days of receiving possession of the vehicle, provide notice to the last known registered owner of the motor vehicle and all lienholders of record. All notification requirements included in subsection (a) shall apply to the notice required to be provided by a garagekeeper or towing firm pursuant to this section.

Tenn. Code Ann. § 55-16-105(f). A garagekeeper or towing firm may obtain the ownership/lienholder information required for this notice from the law enforcement agency or the Department of Revenue.² Tenn. Code Ann. § 55-16-105(e).

¹ See Vehicle Information Request Form at <http://www.tennessee.gov/revenue/forms/titlereg/vehinforequest.pdf>.

² See Request for Ownership Verification, <http://www.tennessee.gov/revenue/forms/titlereg/abandonedvehicles.pdf>.

In addition to the records maintained by the Department of Revenue, the Secretary of State's Office maintains lien information pursuant to Tenn. Code Ann. § 55-3-126(f). Under this statute:

(f)(1) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder or the first lienholder's designee may file a notarized copy of an instrument creating and evidencing a lien or encumbrance on the motor vehicle with the secretary of state . . .

A lien filed with the Secretary of State is temporary. It terminates when the lien is otherwise perfected under Tenn. Code Ann. § 55-3-126, or after 180 days, whichever occurs first. Tenn. Code Ann. § 55-3-126(f)(3). Subsection (f)(6) of the statute provides for the Secretary of State's Office to make lien information available to the public:

(6) Upon request of any person, the secretary of state may issue a certificate showing whether there is on file, on the date stated therein, any presently effective liens naming a particular debtor, giving the date and hour of filing of each effective lien, and the vehicle identification number and the name of the lienholder. The fee for this certificate shall be ten dollars (\$10.00). Upon request, the secretary of state shall furnish a copy of any filed lien for a uniform fee of one dollar (\$1.00) per page.

Tenn. Code Ann. § 55-3-126(f)(6). Accordingly, a repair and/or towing facility may also obtain motor vehicle lien information from the Secretary of State's Office.

2. Lien under Tenn. Code Ann. § 66-19-103 for Amounts up to \$250

The next question is whether repair and/or towing facilities have a right to a lien "against the lienor" for amounts up to \$250 under Tenn. Code Ann. § 66-19-103(e) even if the total repair charge exceeds \$250. The lien that is limited by subsection (e) of Tenn. Code Ann. § 66-19-103 is set forth in subsection (a). The statute provides in relevant part:

Garagekeepers or establishments substantially in the business of towing vehicles for hire, pursuant to the provisions of title 55, chapter 16, hereinafter referred to as "towing firms" shall be entitled to a lien upon all vehicles, which lawfully come into their possession and are retained in their possession until all reasonable charges due are paid. A garagekeeper may, after thirty (30) days, enforce this lien in the manner prescribed for the enforcement of artisans' liens under §§ 66-14-102 – 66-14-106, except the garagekeeper shall only be required to advertise the sale one (1) time in a newspaper published in the place where the sale is to be held.

Tenn. Code Ann. § 66-19-103(a)(1)(A). The statute defines "garagekeeper" as "any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair or maintenance of vehicles." Tenn. Code Ann. § 66-19-103(b). A garagekeeper or towing firm may not collect any storage or related fees for any period of time in which the

garagekeeper or towing firm is in violation of subdivision (a)(1) with respect to a motor vehicle or associated equipment. Tenn. Code Ann. § 66-19-103(a)(4). In addition to the provision quoted above, Tenn. Code Ann. § 66-19-103(a)(1) requires a garagekeeper or towing firm to notify the rental company if a rented vehicle or associated equipment comes into its possession. Tenn. Code Ann. § 66-19-103(a)(1)(B). The statute also provides that “[n]o person, firm or entity shall have a right to a lien on any vehicle that has been towed without authorization of a police department or the owner of the vehicle or where the vehicle has been towed in violation of any provisions of title 55, chapter 16.” Tenn. Code Ann. § 66-19-103(c). Thus, the statute recognizes a lien in favor of a garagekeeper or towing firm that complies with the statute against a motor vehicle retained by the garagekeeper or towing firm “until all reasonable charges due are paid.” Tenn. Code Ann. § 66-19-103(a)(1)(A). Subsection (e) then limits this lien:

No person, firm, or entity, unless licensed and regulated under title 55, chapter 17, part 1 [motor vehicle sales licenses], shall have a right to a lien against a lienor, who is also the seller of such motor vehicle or who retains title under a title retention or conditional sale agreement, for repairs in excess of two hundred fifty dollars (\$250) made on such motor vehicle, unless the person, firm or entity making the repairs has received a written authorization from lienor/seller to make such repairs on the motor vehicle.

Tenn. Code Ann. § 66-19-103(e). The General Assembly enacted subsection (e) as Chapter 275 of the Public Acts of 2005. Senator Fowler gave this explanation for the bill:

This deals with the companies that loan money on automobiles and retain title to those automobiles . . . and people go out and abandon the automobiles; they get picked up; and the next thing you know someone has made a bunch of expensive repairs that are unauthorized, and this provides that if you’re going to do that, and then hold a garageowner’s lien on these things, you have to have gotten authorization from the lienor or seller of the vehicle before you make these repairs.

(Remarks of Senator Fowler, Senate session April 27, 2005, Library & Archives Tape S-45). Thus, the answer to the second question is that a repair and/or towing facility that is otherwise in compliance with Tenn. Code Ann. § 66-19-103 would have a lien against a motor vehicle in its possession that could be enforced against the lienor for reasonable charges up to \$250, even if the repair and/or towing facility did not obtain any written authorization from the lienor/seller of the vehicle. *See* Tenn. Code Ann. § 47-9-333 (possessory lien created by statute has priority over a security interest unless lien statute provides otherwise).

3. Meaning of “repair” in Tenn. Code Ann. § 66-19-103

The third question is whether the term “repair” in Tenn. Code Ann. § 66-19-103 includes parts, labor, shop supplies, towing fees, storage fees, and interest on past due balances. The term “repair” is not defined in the statute. But the word generally means “[t]o restore to sound condition after damage or injury . . . [t]he work, act, or process of repairing.” *The American Heritage College Dictionary* (3rd ed. 1997), p. 1156. We think the term “repair” as used in Tenn.

Code Ann. § 66-19-103 includes all reasonable costs or charges associated with restoring to a sound condition the motor vehicle upon which the lien is being asserted. Only a court of competent jurisdiction could determine whether reasonable repair charges include each of the listed items after considering all of the facts and circumstances of the particular case. *See In re Hamby*, 360 B.R. 657 (Bankr. E.D. Tenn. 2007) (upholding garagekeeper's lien against vehicle for unpaid repair bill including parts and labor); *In re Big Boy Mobile Homes of Knoxville, Inc.*, 1972 WL 20906 (Bankr. E.D. Tenn. 1972) (holding predecessor statute to Tenn. Code Ann. § 66-19-103 [§ 64-1903] allowed lien that included charges for towing and storage of vehicle); *Roberson v. West Nashville Diesel, Inc.*, 2006 WL 287389 (Tenn. Ct. App. 2006) (noting that Tenn. Code Ann. § 66-19-103 imposes a lien "until all reasonable charges due are paid" and holding that storage fees were not due under facts of that case); *Simpson v. Bicentennial Volunteers, Inc.*, 1999 WL 430497 (Tenn. Ct. App. 1999) (denying lien under Tenn. Code Ann. § 66-19-103 to person who worked on vehicle but no longer had possession); *Citizens Bank v. Harris*, 1987 WL 8847 (Tenn. Ct. App. 1987) (lien under Tenn. Code Ann. § 66-19-103 applied to value of materials, services, and expenses incurred for repair of two vehicles in garagekeeper's possession but not to past balance due from same owner for other vehicles garagekeeper no longer possessed).

4. Enforcement of Lien by Removal of Parts

The fourth question is whether a repair and/or towing facility that repairs a vehicle with parts in excess of \$250 without the lienor/seller's authorization may remove those parts for which payment has not been made before releasing the motor vehicle to the lienor/seller. We think a court would answer this question in the negative. The primary rule of statutory construction is to determine and give effect to the intention of the legislature. *E.g., Sullivan v. Chattanooga Medical Investors, L.P.*, 221 S.W.3d 506, 511 (Tenn. 2007). In Tenn. Code Ann. § 66-19-103, the General Assembly expressly stated that the lien created by the statute is to be enforced "in the manner prescribed for the enforcement of artisans' liens under §§ 66-14-102 – 66-14-106, except the garagekeeper shall only be required to advertise the sale one (1) time in a newspaper published in the place where the sale is to be held." Tenn. Code Ann. § 66-19-103(a)(1)(A).

The statutory scheme for enforcing an artisan's lien requires notice to the person for whose account the items were repaired and to any other person known to the artisan claiming an interest. Tenn. Code Ann. § 66-14-102(a). The purpose of the notice is to demand that the account be paid and to give notice that, if not, the items will be advertised for sale and sold by auction at a specified time and place. Tenn. Code Ann. § 66-14-103. If a repair and/or towing facility could remove parts and otherwise undo repairs made to a vehicle without the lienor/seller's authorization, then the intention of the General Assembly in limiting the garagekeeper's lien under Tenn. Code Ann. § 66-19-103 would not be carried out. The purpose of subsection (e) was to cure the perceived problem of garagekeepers running up extensive repair bills and then requiring lienor/sellers to essentially buy back their own vehicles. Subsection (e)'s addition to the statute was clearly meant to require a repair and/or towing facility to obtain the written authorization of a lienor/seller who has retained title to a motor vehicle before incurring any charges for that vehicle that would exceed \$250. Accordingly, we do not think a repair

and/or towing facility may enforce a lien under Tenn. Code Ann. § 66-19-103 by a method other than that set forth in the statute.

5. Constitutionality of Subsection (e) of Tenn. Code Ann. § 66-19-103

The final question is whether Tenn. Code Ann. § 66-19-103(e) is unconstitutional. The request does not suggest any particular constitutional infirmity in the statute. It is well accepted that acts passed by the legislature are presumed constitutional. *Vogel v. Wells Fargo Guard Services*, 937 S.W.2d 856, 858 (Tenn. 1996). When a statute is attacked as unconstitutional, the courts are required to indulge every presumption in its favor and to resolve any doubt in favor of, rather than against, the statute's validity. *Dorrier v. Dark*, 537 S.W.2d 888, 891 (Tenn. 1976). Thus, a party attacking the constitutionality of a statute bears a heavy burden to establish that the statute is unconstitutional. *Esquinance v. Polk Co. Educ. Ass'n*, 195 S.W.3d 35, 47 (Tenn. Ct. App. 2005), *p.t.a. denied* (2006).

As we observed elsewhere in this opinion, Tenn. Code Ann. § 66-19-103 creates a lien in favor of a garagekeeper or towing firm against vehicles that lawfully come into their possession and are retained in their possession “until all reasonable charges due are paid.” Tenn. Code Ann. § 66-19-103(a)(1)(A). Tennessee case law refers to the lien described in Tenn. Code Ann. § 66-19-103 as the “common law lien,” which exists only so long as the garagekeeper retains possession and “[b]y its terms does not require that the work be done at the request of the owner or the owner’s agent.” *Simpson v. Bicentennial Volunteers, Inc.*, 1999 WL 430497 (Tenn. Ct. App. 1999), citing *Forrest Cate Ford, Inc. v. Fryar*, 62 Tenn. App. 572, 465 S.W.2d 882 (Tenn. Ct. App. 1970). Subsection (e) then limits the lien in the case of nonconsensual work, so that the garagekeeper or towing firm may not have a lien exceeding \$250 unless the garagekeeper or towing firm has received written authorization from a lienor/seller who has retained title to the vehicle under a title retention or conditional sale agreement.

A lien “is a legal claim or charge on real or personal property used as security for the payment of some debt or obligation.” *Keep Fresh Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443 (Tenn. Ct. App. 1994). The imposition of a lien on property also has been described as a remedy. *Bacigalupo v. Bacigalupo*, 2004 WL 2280409, *7 (Tenn. Ct. App. 2004). We think our courts would find subsection (e) to be constitutional whether construed as a remedy or a right. The running of a statute of repose, for example, abolishes both the remedy and the right. *Wyatt v. A-Best Products Co.*, 924 S.W.2d 98, 102 (Tenn. Ct. App. 1995), *p.t.a. denied* (1996). The Tennessee Supreme Court has held that the General Assembly has the sovereign power to limit and even abrogate common law rights of action, so long as the legislation bears a rational relationship to some legitimate governmental purpose; such statutes, when applied prospectively and supported by a rational basis, are not unconstitutional. *See Mills v. Wong*, 155 S.W.3d 916, 922 (Tenn. 2005) (upholding medical malpractice statute of repose against due process challenge); *Wyatt v. A-Best Products Co., Inc.*, 924 S.W.2d 98 (Tenn. Ct. App. 1995), *p.t.a. denied* (1996) (asbestos exception to products liability statute of repose did not offend equal protection when statutory classification had reasonable basis).

Statutes are given a prospective effect unless the General Assembly has plainly expressed or necessarily implied that an act should have retroactive force. *Dowlen v. Fitch*, 196 Tenn. 206,

264 S.W.2d 824, 825 (Tenn. 1954). Subsection (e) of Tenn. Code Ann. § 66-19-103 became effective July 1, 2005, and nothing in the act indicates any intention on the part of the legislature to make the statute retroactive. 2005 Tenn. Pub. Acts Ch. 275. Thus, after July 1, 2005, subsection (e) put garagekeepers and towing firms on notice that the nonconsensual lien in Tenn. Code Ann. § 66-19-103 was now limited to \$250, and garagekeepers and towing firms should not incur charges with respect to a vehicle in which a lienor/seller had retained title under a title retention or conditional sale agreement without first obtaining the lienor/seller's written permission. The \$250 limit corresponds with Tenn. Code Ann. § 66-19-104, which requires an automotive repair facility to inform a consumer for whom repairs are being done that the consumer may request a written estimate for repairs in excess of \$250. Failure to comply with this and other requirements in Tenn. Code Ann. § 66-19-104 abrogates the repair facility's rights under Tenn. Code Ann. § 66-19-103. Section 66-19-104 became effective in 2001, and thus, subsection (e) of Tenn. Code Ann. § 66-19-103 extended to lienor/sellers who retained title to a motor vehicle some of the same protections afforded to consumers in Tenn. Code Ann. § 66-19-104. 2001 Tenn. Pub. Acts Ch. 194.

We think the courts would find the enactment of subsection (e) to be a reasonable exercise of the state's police power. Our Tennessee Supreme Court has previously concluded that the state has a legitimate governmental interest in regulating the purchase and sale of automobiles. *Ford Motor Co. v. Pace*, 206 Tenn. 559, 335 S.W.2d 360 (Tenn. 1960). One of the provisions of the Motor Vehicle Act at issue in that case vested a commission with authority to revoke a motor vehicle sales license upon various grounds, including "coercing dealers to accept motor vehicles or parts or accessories not voluntarily ordered." *Id.* at 335 S.W.2d 364. Of course the Court examined the Motor Vehicle Act as a whole, but this statement has application to Tenn. Code Ann. § 66-19-103(e):

Motor vehicles, once luxuries, are now necessities. The handling of motor vehicles has become a complex business. The sale of new automobiles is closely tied in with the purchase, trade and sale of used cars. The possibilities of fraud upon the public have correspondingly increased. The elimination of harmful trade practices and dishonest dealings resulting in injury to the purchasing public may have been, and undoubtedly was, a factor in the passage of the act.

Ford Motor Co., 335 S.W.2d at 362-63, quoting the Nebraska Supreme Court in *Nelsen v. Tilley*, 137 Neb. 327, 289 N.W. 388, 392 (Neb. 1939). Similarly, a New York court has recognized that legislation regarding a common law garageman's lien is an area in which state government has a legitimate interest:

To be sure, it is a reasonable exercise of the State's police power to give the garageman a security interest in vehicles which he has enhanced in value. However, it is unreasonable and constitutionally impermissible to provide absolutely no safeguards against unauthorized or unnecessary repairs or storage charges which may underlie the whole transaction, especially where an ownership interest hangs in the balance.

Sharrock v. Dell Buick-Cadillac, Inc., 45 N.Y.2d 152, 379 N.E.2d 1169, 408 N.Y.S.2d 39 (N.Y. 1978). In subsection (e) of Tenn. Code Ann. § 66-19-103, the General Assembly limited a lien for nonconsensual work in order to protect lienor/sellers from having to pay expensive and unauthorized charges in order to reclaim a vehicle in which the lienor/seller had retained title. In our opinion, subsection (e) is a reasonable exercise of the state's police power.

Finally, we have examined whether the Interstate Commerce Act, 49 U.S.C. § 14501(c), preempts Tenn. Code Ann. § 66-19-103(e) under the Supremacy Clause of the United States Constitution. This federal act preempts state regulation that relates to price, route, or service of tow trucks, unless the law falls within one of the act's specified exceptions, or it regulates a matter of safety. Under 49 U.S.C. § 14501(c)(2)(C), the act does not preempt a state's authority to enact and enforce a law relating to the price of nonconsensual towing. Thus, we do not think subsection (e) of Tenn. Code Ann. § 66-19-103 is preempted.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

GINA J. BARHAM
Deputy Attorney General

Requested by:

Honorable Ben West, Jr.
State Representative
108 War Memorial Building
Nashville, TN 37243-0160