

TO: Mike Sachi, Parking Facilities Project Engineer
Pamela Selinski, Supervisor - Parking Enforcement/
Traffic Control/Taxicab Inspections

FROM: Steven Heng, Assistant City Attorney

DATE: March 1, 2004

RE: Pilot Booting Project

INTEROFFICE MEMORANDUM

ISSUE

You have asked this office to review the issue of whether Minnesota Statute §169.041 would prohibit the City of Minneapolis from using a vehicle immobilization device prior to the expiration of the four-hour time limit for towing. You have also asked this office to review the current towing contracts that are in place to determine if instituting a pilot booting process would violate those contracts. No specifics have been proposed for the institution of a vehicle immobilization process. The analysis that is performed is done based on the facts assumed for each scenario. To the extent a proposed plan differs from these scenarios, the analysis may be different. For the purpose of this memorandum, I will be discussing two scenarios for booting vehicles. In scenario A, the booting would be done immediately and after four hours, the vehicle would be towed. In scenario B, the booting would become part of the towing process. In scenario C, the booting would be done immediately and the towing would not occur after four hours. If a vehicle were to be towed, it would be done after the vehicle was considered abandoned. In scenario D, the booting would replace the towing process.

DISCUSSION

I. MINNESOTA STATUTE §169.041

Minnesota Statute §169.041 sets forth when a towing authority is authorized to tow a vehicle from public property. Towing authority is defined as “any local authority authorized by section 169.04 to enforce the traffic laws, and also includes a private towing company authorized by a local authority to tow vehicles on behalf of that local authority.” Minn. Stat. §169.041, Subd. 1. For the purposes of §169.041, the City of Minneapolis would be a towing authority subject to the provisions of §169.041. Subdivision 3 of Minnesota Statute §169.041 prohibits a towing authority from towing a motor vehicle for a parking or traffic violation until four hour

after the citation was issued. Subdivision 4 of Minnesota Statute §169.041 provides a list of offenses for which a towing authority may tow a motor vehicle without regard to the four-hour limit. The ordinances being considered for booting would not qualify under subdivision 4 and for the purpose of §169.041 vehicles could not be towed for a violation of these ordinances until four hours have elapsed from the issuance of the citation.

A. Scenario A

I assumed the following facts for the purpose of the discussion. An officer writes a citation for a parking violation. That parking violation is not an exception to the four-hour waiting period to be towed. The officer immediately calls for the vehicle to be booted, and the vehicle is booted prior to the expiration of four hours. After the expiration of four hours, the boot is removed from the vehicle, and the vehicle is towed to the impound lot.

Minnesota Statutes do not provide a definition for the word ‘tow’. For the purpose of statutory construction, when the statutes do not provide a definition, the court interprets words with their ordinary and common understanding. The ordinary and common understanding of the word ‘tow’ would include the removal of the vehicle from its location and the transportation of the vehicle to another location. The word ‘tow’ does not have a definition that discusses the immobilization of vehicles. In addition, while ‘tow’ is not defined in the statutes, a ‘tow truck’ is defined. It is defined as “a vehicle . . . used exclusively to transport vehicles.” Minn. Stat. §169.01, Subd. 52. The definition of ‘tow truck’ would support the use of the word ‘tow’ to refer to the removal and transportation of a vehicle.

The City of Minneapolis could argue that immobilizing a vehicle is not towing a vehicle, and therefore, there is no violation of §169.041 when the vehicle is booted and not towed. This argument is supported by the fact that towing is used in Minnesota Statutes to describe the process of removing a vehicle from the location. Booting does the opposite and forces the vehicle to remain in its location.

A court is likely to look at how the City of Minneapolis executes its towing policy. In scenario A, when the vehicle is immediately immobilized, the court may consider that the vehicle immobilization is part of the towing process and, as such, a violation of §169.041. The booting of the vehicle, while not removing the vehicle from its location, could be seen as seizing the vehicle prior to the expiration of the four-hour time limit for the purpose of holding the vehicle until the four-hour time limit expired. In scenario A, a court may determine that booting a vehicle was a step in the towing process, in which case immobilizing a vehicle would fall under the definition of tow for the purpose of §169.041.

B. Scenario B.

I assumed the following facts for the purpose of the discussion. An officer writes a citation for a parking violation. That parking violation is not an exception to the four-hour waiting period to be towed. The officer immediately calls for the vehicle to be booted, and the vehicle is booted prior to the expiration of four hours. After the expiration of four hours, the vehicle is not towed. The vehicle may be towed when the vehicle is considered abandon (normally after a period of more than 48 hours.)

In contrast to Scenario A, the court is not likely to determine that booting a vehicle is a step in the towing process. In Scenario B, the booting of the vehicle is replacing the towing

process. To determine whether or not a plan following the facts of scenario B would violate Minnesota Statute §169.041, the court would look to the purpose behind Minnesota Statute §169.041.

The statute creates a waiting period of four hours before a towing authority is permitted to tow a vehicle. Minn. Stat. §169.041, Subd. 3. Subdivision 4 of §169.041 creates exceptions to that four-hour requirement. The exceptions that have been created are those parking violations that effect other vehicles and traffic and require that the towing authority quickly remove those vehicles to remove those impediments. This creates the opposite presumption for those violations that are not listed as an exception in subdivision 4, that in those violations, it is not necessary to quickly remove the vehicles. Minnesota Statute §169.041 gives to those individuals who might park illegally, but not in a situation that requires immediate removal, a four-hour grace period to return to their vehicle.

To determine whether a booting plan pursuant to scenario B violates §169.041, a court would have to determine why the state permits an individual to have a four-hour grace period to return to their vehicle. A court may consider two reasons for the four-hour grace period. First, a grace period would prevent an individual from being stranded by having their car removed. Second, a grace period would prevent cities from adding an additional ‘fine’ to a parking violation.

Based on the facts assumed in scenario B, a court may determine that booting a vehicle would violate the intent of Minnesota Statute §169.041. While a vehicle that was booted would not be removed from its location, the individual driver of that vehicle would still be stranded. The individual would be unable to leave that location unless the individual had access to a telephone in order to call the towing company that had booted the vehicle or found another means of transportation. In addition, booting a vehicle would increase the costs required of the individual with regard to the amount that would have to be paid. The individual would have to make an additional payment to the towing company to remove the boot in addition to paying the parking citation. Should a court adopt these purposes as the intent behind §169.041, a vehicle immobilization plan pursuant to scenario B would violate that intent.

II. EXISTING TOWING CONTRACTS

Implementing a vehicle immobilization plan would not violate the contracts that the City of Minneapolis has with the towing contractors. In scenario A, booting vehicles is not replacing the towing of vehicles. Therefore, the number of towed vehicles is unlikely to change. In scenario B, booting vehicles would replace the towing of vehicles and the number of vehicles towed may be reduced.

In reviewing the specifications for public impound towing, no section of the specifications provides that a contractor will receive a minimum number of tows. Section XI of the specifications provides that “if, due to ordinance and/or policy changes regarding City towing practices a substantial reduction in the amount of tows is made, Contractors will be permitted to request reduced tow truck requirements from Table A within their zones.” Section XI of the specifications puts the towing companies on notice that the City of Minneapolis may enact ordinances or policy changes that effect the number of tows being made. Section XI also put the companies on notice that those changes may have a substantial reduction in the amount of tows that are being made. Finally, section XI provides for a remedy for the towing companies if a substantial reduction occurs. The towing contractors would be permitted to request a reduction

in the minimum number of trucks that they are required to have for street sweeping and snow emergencies. Since the specifications for public impound towing provides both notice of the possibility of a reduction in the number of tows and a remedy to the towing companies if the reduction occurs, the towing contracts would not be violated if the City of Minneapolis instituted a vehicle immobilization policy.

III. MINNESOTA STATUTE §169.041, SUBD. 4 (13)

In reviewing the ordinances and policies of cities that are using a vehicle immobilization device, a large majority of those cities are using a boot on those individuals who have failed to respond to previous citations. The City of Minneapolis could institute a booting program that would target those individuals who had failed to respond to five or more citations. Minnesota Statute §169.041, Subd. 4 (13) provides that ‘a towing authority may tow a motor vehicle without regard to the four-hour waiting period if a law enforcement official has probable cause to believe that the owner, operator, or person in physical control of the vehicle has failed to respond to five or more parking or traffic offenses.’ Minnesota Statute §169.041, Subd. 4 (13) is an exception to the requirement that a towing authority wait four hours prior to towing a motor vehicle. Since it would be permissible to tow the motor vehicle if there were probable cause that the owner had failed to respond to five citations, it would be permissible to boot that vehicle.

The analysis of the effects on the contracts would be the same as above for scenario A and B. A vehicle immobilization plan that booted those vehicles where the owner had failed to respond to five or more prior citations would not violate the current towing contracts.