RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS

Docket No.: D-10-26

The City of Cranston has been allowed to participate in the above-captioned docket and respectfully thanks the Rhode Island Division of Public Utilities and Carriers ("Division") for allowing the City to enter its appearance and giving it the opportunity to be heard.

The sole issue before this Division is whether storage fees instigated by a police department are to be assessed to the owner of the motor vehicle or to the police department.

The Chief Legal Counsel for this Division, Attorney John Spirito, Jr., has opined that "it would be improper for a certified towing company to charge the vehicle owner for the storage days directly linked to a police department-ordered impound." As stated in Chief Counsel Spirito's two opinion letters to Attorney Michael Horan, he makes essentially three arguments: (1) the "involuntary" storage is not an approved tariff; (2) since the police departments order the vehicles to be held, they should pay: and (3) the statutory language limits the costs to the vehicle owner only to the costs of removal. The City of Cranston wholeheartedly disagrees with Counsel Spirito's opinion and needs to go no further than the clear and unambiguous language of the "Towing Storage Act" itself, R.I.G.L. sec. 39-12.1-1.

It is extremely important to note that when the language of a statute is clear and unambiguous, the statute must be interpreted literally and the words of the statute must be given their "plain and ordinary" meanings. See Sindelar v. Leguia, 750 A.2d 967 (R.I. 2000); Star Enterprises v. DelBaron, 746 A.2d 692 (R.I. 2000).

The Rhode Island legislature has had its "Towing Storage Act", R.I.G.L. sec 39-12.1-1 in effect since 1994. The Act's last two paragraphs fully and clearly state:

> WHEREAS, The police powers delegated by the legislature of the state include the power of the police, even without the owner's consent, to have public ways cleared of conditions which, in the opinion of the officer, creates a hazardous condition to the motoring public; to have removed abandoned, abandoned and of no value, and unattended vehicles; to have removed and/or relocated vehicles in violation of parking ordinances; and to have removed any vehicle under control of any person arrested for any criminal offense; and
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> WHEREAS, The process of selection of the operator of a **towing-storage** business for police work is unique in that law enforcement, **though having the legal duty to order the work, has no legal duty to pay costs and charges connected therewith, the same being the duty of the vehicle owner.** (emphasis added).

The City of Cranston has highlighted the portions of the statute that are pertinent to this Division's ultimate ruling.

Chief Counsel Spirito opines that there is no specific statutory authorization for storage charges so the police departments should pay for them. On the contrary, the legislature specifically wrote into the statute that the vehicle owner pays for "costs and charges connected therewith" (related to the towing-storage business that is unique to law enforcement). The vehicle owner is listed in the full and final paragraph of the statute as the payor of any and all related costs. The plain and ordinary meaning of "**costs and charges connected**" with the "**towing-storage business**" is **storage costs**! Nowhere in the statute does it imply, let alone state, that law enforcement bears any costs for the

execution of its police powers. The City cannot be asked to prove a negative. The burden of proof is on the vehicle owner to show any evidence of the law enforcement agency being liable in any way for his or her towing and storage fees.

Chief Counsel Spirito does recognize the fact that the police officer has the authority to impound the vehicle legally but personally opines that the police department should pay the storage bill. This blanket conclusion is not based on any applicable statutory and/or case law, and is in fact in direct conflict with "The Towing Storage Act" under Rhode Island's General Laws. While Counsel Spirito may argue that it is "improper" to charge the vehicle owner storage fees, it is completely legal by statute.

The City of Cranston respectfully requests that the Division hold that the owner of a motor vehicle has the legal duty to pay costs and charges connected with towing and storage related to Rhode Island law enforcement's execution of its police powers as stated in R.I.G.L. sec. 39-12.1-1.

Submitted by:

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CERTIFICATION

I, the undersigned, do hereby certify I mailed a copy of the within, by first class mail, postage prepaid, to John Spirito, Jr., Chief Legal Counsel, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888, on this
day of , 2010.

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