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February 11, 2012

Honorable Bill Emmerson
Room 4082, State Capitol

UNLICENSED DRIVERS - #1200017

Dear Senator Emmerson:

You asked whether a local government has the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver's license and who does not have a prior conviction for driving without a valid driver's license prior to the end of a 30-day impoundment period under circumstances not specified in subdivision (b), (d), (f), or (h) of Section 14602.6 of the Vehicle Code.

By way of background, subdivision (a) of Section 12500 of the Vehicle Code¹ prohibits a person from driving a vehicle unless the person holds a valid driver's license. Hence, a person whose driver's license² has expired, or has been suspended or revoked, or a person who has never been issued a driver's license, is prohibited from driving a vehicle. Subdivision (p) of Section 22651 authorizes a peace officer to remove a vehicle "[w]hen the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500 ... and the vehicle is not impounded pursuant to Section 22655.5."³ The court has interpreted this provision as authorizing, but not requiring, the impoundment of the vehicle (*People v. Green* (1996) 46 Cal.App.4th 367, 372-373; hereafter *Green*). Section 22651 does not specify a time period for which the vehicle is to be impounded.

¹ All further section references are to the Vehicle Code, unless otherwise stated.

² Section 310 defines "driver's license" as "a valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under [the Vehicle Code] or by a foreign jurisdiction."

³ Subdivision (p) of Section 22651 further prohibits the release of an impounded vehicle, "except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court."

In addition to subdivision (p) of Section 22651, Section 14602.6 also authorizes the impoundment of a vehicle driven by a specified group of people.⁴ Section 14602.6 provides, in relevant part, as follows:

“14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver’s license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

* * *

“(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to the storage, in accordance with Section 22852.

* * *

“(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days’ impoundment under any of the following circumstances:

“(A) When the vehicle is a stolen vehicle.

“(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

“(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

⁴ In addition to subdivision (p) of Section 22651 and Section 14602.6, Section 14607.6 requires, except for specified circumstances, a peace officer to impound a vehicle driven by an unlicensed driver who has a previous misdemeanor conviction for violating subdivision (a) of Section 12500 (para. (1), subd. (c), Sec. 14607.6; *California Highway Patrol v. Superior Court* (2008) 162 Cal.App.4th 1144, 1154; hereafter *California Highway Patrol*).

“(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

“(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

* * *

“(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

“(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

“(2) (A) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

“(B) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. 'Credit card' means 'credit card' as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

“(C) A person operating or in charge of a storage facility described in subparagraph (B) who violates subparagraph (B) shall be civilly liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing, storage, and related fees, but not to exceed five hundred dollars (\$500).

“(D) A person operating or in charge of a storage facility described in subparagraph (B) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

“(E) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

“(3) The legal owner or the legal owner’s agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code; a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following, as determined by the legal owner or the legal owner’s agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

“No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner’s agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner’s agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this paragraph. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The legal owner or the legal owner’s agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner’s agent.

“(4) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner’s agent to retrieve the vehicle, provided all conditions required of the legal owner or legal owner’s agent under this subdivision are satisfied.

* * *

“(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days’ impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

* * * (Emphasis added.)

Thus, under paragraph (1) of subdivision (a) of Section 14602.6, a peace officer has the discretion to impound a vehicle driven by a person who has never held a valid driver’s license. In exercising this discretion, an officer must follow standard criteria (*Green*, supra, at pp. 372-373). “If an officer decides to exercise this authority, the vehicle is subject to a 30-day impoundment” (*California Highway Patrol*, supra, at p. 1152; *Samples v. Brown* (2007) 146 Cal.App.4th 787, 801; hereafter *Samples*). Subdivisions (d), (f), and (h) require the release of an impounded vehicle prior to the 30-day period to the registered owner, legal owner, or rental car agency that owns the vehicle, under specified circumstances. In addition, subdivision (b) of Section 14602.6 “directs the impounding agency to consider facts or situations that might reduce the culpability of the owner and warrant an early release of the impounded vehicle” (*Samples*, supra, at pp. 801-802). Hence, a finding that the “vehicle owner’s lack of actual knowledge regarding the unlicensed status of the driver is also a mitigating circumstance” warranting early release (*Id.*, at p. 805).

Turning to the question posed, both subdivision (p) of Section 22651 and Section 14602.6 authorize the impoundment of a vehicle driven by a person who has never been issued a valid driver’s license. While Section 14602.6 specifies a mandatory 30-day impoundment period, subdivision (p) of Section 22651 does not. However, subdivision (p) of Section 22651 applies generally to vehicles driven by drivers in violation of Section 12500, which includes drivers whose driver’s licenses have expired, while Section 14602.6 applies only to those vehicles driven by drivers whose licenses were suspended or revoked, or by drivers who were never issued a driver’s license. It is a “long-standing principle of statutory construction [that] a special statute governs over a general” (*People v. Jackson* (2005) 129 Cal.App.4th 129, 170). Hence, in regard to a vehicle driven by a person who has never been issued a driver’s license, it is our opinion that Section 14602.6 would control.

Pursuant to Section 21 of the Vehicle Code, the state has preempted the field of motor vehicle traffic regulation (*Zack’s, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1183). Subdivision (a) of Section 21 prohibits local governments from enacting or enforcing an ordinance or resolution on matters covered by the Vehicle Code unless expressly authorized by the Vehicle Code. In this case, paragraph (1) of subdivision (a) of Section 14602.6 specifically gives a peace officer the discretion to determine whether to impound a vehicle driven by a person who has never been issued a driver’s license, but if the vehicle is impounded, requires the vehicle to be impounded for 30 days. Subdivisions (d), (f), and (h) of Section 14602.6 prescribe specific circumstances under which the impounded vehicle could be released prior to the end of the 30-day impoundment period (see *Samples*,

supra, at p. 804). In addition, subdivision (b) of Section 14602.6 directs the impounding agency to consider facts and situations that might reduce the culpability of the owner, warranting an early release of the vehicle (*Id.*, at pp. 801-802).⁵ Hence, the Vehicle Code covers matters related to the impoundment of vehicles driven by persons who have never been issued a driver's license and circumstances under which the impounded vehicle may be released prior to the end of the mandatory impoundment period. Accordingly, pursuant to Section 21, a local government may not establish a policy through an ordinance or resolution authorizing the early release of those impounded vehicles under circumstances not specified in Section 14602.6.

In summary, Section 14602.6 grants a peace officer the discretion to determine whether a vehicle driven by a person who has never been issued a driver's license is to be impounded. In exercising this discretion, the peace officer must follow standard criteria, which may be established by the local government. Once the decision to impound the vehicle is made, the vehicle is required to be impounded for 30 days.

While subdivision (p) of Section 22651 also provides for the impoundment of a vehicle driven in violation of subdivision (a) of Section 12500, Section 14602.6, as a more specific statute, would govern the impoundment of vehicles driven by a person who had never been issued a driver's license. Because the Vehicle Code specifically addresses the impoundment of vehicles driven by a person who has never been issued a driver's license and specifies circumstances under which the impounded vehicle might be released prior to the end of the mandatory 30-day impoundment period, it has preempted these matters and a local government may not provide for the early release of that impounded vehicle in circumstances not specified in Section 14602.6.

Accordingly, in our opinion, a local government does not have the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver's license and who does not have a prior conviction for driving without a valid driver's license prior to the end of a 30-day impoundment period under

⁵ The mitigating circumstance does not need to justify or excuse the wrongful conduct of the unlicensed driver (*Samples, supra*, at p. 801).

circumstances not specified in subdivision (b), (d), (f), or (h) of Section 14602.6 of the Vehicle Code.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

A handwritten signature in black ink, appearing to read 'W Chan', is positioned above the typed name of the signatory.

By
William Chan
Deputy Legislative Counsel

WKYC:pba