

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 10-04

Written authorization required by Tenn. Code Ann. § 55-16-112(a) to tow vehicle

QUESTION

Does a tow truck driver violate Tenn. Code Ann. § 55-16-112(a) by hooking a vehicle to his tow truck after an appropriate person under the statute identifies the vehicle to be towed, but before the required written authorization has been completed?

OPINION

A tow truck driver does not violate Tenn. Code Ann. § 55-16-112(a) if he hooks a vehicle to his tow truck after an appropriate person identifies the vehicle to be towed, but before the written authorization required by the statute is completely filled out, as long as the tow truck driver does not draw or pull the vehicle from its original location until the written authorization has been completed.

ANALYSIS

This opinion addresses the interpretation of Section 55-16-112(a), which is part of a statutory scheme for the disposition of unclaimed or abandoned vehicles. This provision states:

Notwithstanding any other provision of this part or of title 66, chapter 19, part 1, in order for a garagekeeper or a towing firm to tow or to store a vehicle the garagekeeper or towing firm shall obtain an express written authorization for towing and storage of each vehicle from a law enforcement officer with appropriate jurisdiction, or from the owner of the vehicle, or from the owner, or the authorized agent of the owner, of the private property from which the vehicle is to be towed. The authorization shall include all of the information required by § 66-19-103(d). In addition to any other penalty provided by this part or by title 66, chapter 19, part 1, a violation of the provisions of this section is a Class C misdemeanor.

You state that some tow truck inspectors take the position that the written authorization described above must be completed before a tow truck driver may hook a vehicle to his tow truck. You convey, however, that many tow truck drivers take preliminary steps to hook vehicles to their tow trucks after an appropriate person under the statute identifies a vehicle to be

towed, but before that person completes the requisite written authorization. Tow truck inspectors who take the position described above are writing citations to tow truck drivers engaging in this practice. You inquire whether a tow truck driver who takes preliminary steps to hook a vehicle to his tow truck after the vehicle has been identified to be towed, but before the requisite written authorization has been completed, is in violation of Tenn. Code Ann. § 55-16-112(a).

The guiding principle of statutory construction is to ascertain and give effect to the intention or purpose of the legislature as expressed in the statute. *Westinghouse Electric Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984), *appeal dismissed*, 470 U.S. 1075, 105 S.Ct. 1830, 85 L.Ed.2d 131 (1985). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used when read in the context of the statute and without any forced or subtle construction to limit the import of the language. *Azbill v. Azbill*, 661 S.W.2d 682, 686 (Tenn. Ct. App. 1983) (citations omitted). Where the intent of the lawmakers is clear, the court will exercise its ingenuity to give effect thereto. *Knoxville Power & Light Co. v. Thompson*, 276 S.W. 1050, 1051 (Tenn. 1925). Where this intent is doubtful, the court must be more cautious. *Id.* This is especially true when a statute is penal in nature.¹ Such a statute must be construed strictly in favor of the defendant. *Key v. State*, 563 S.W.2d 184, 188 (Tenn. 1978); *Crowe v. State*, 241 S.W.2d 429, 430 (Tenn. 1951); *State v. Williams*, 623 S.W.2d 121, 124 (Tenn. Cr. App. 1981). Any ambiguity concerning the ambit of a criminal statute should be resolved in favor of lenity. *Rewis v. United States*, 401 U.S. 808, 812, 91 S.Ct. 1056, 1059, 28 L.Ed.2d 493 (1971) (citing *Bell v. United States*, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955)).

Examining Tenn. Code Ann. § 55-16-112(a), the General Assembly does not expressly address when the tow truck driver must obtain the written authorization described therein. The statute simply provides that a towing firm must obtain an express written authorization “to tow” a vehicle. The Merriam-Webster on-line dictionary states that the verb “tow” means “to draw or pull along behind.” Similarly, the American Heritage Dictionary states that “tow” means “to draw or pull along behind by a chain or line.” American Heritage Dictionary, p. 1430 (3d Coll. ed. 1997). These definitions of “tow” embrace movement. Applying the statutory construction principles above, we do not think that a violation of Tenn. Code Ann. § 55-16-112(a) occurs when a tow truck driver takes preliminary steps to hook a vehicle to his tow truck after the vehicle has been identified to be towed, but before the written authorization required by the statute has been completed, assuming that the tow truck driver does not proceed to draw or pull the vehicle from its original location until the written authorization is completely filled out. If a criminal penalty is to result in this instance, we think that intent would have to be made clear.

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¹ As reflected above, one who violates Tenn. Code Ann. § 55-16-112 commits a Class C misdemeanor.

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