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November 18, 2024

The Honorable Regina T. Boyce
Maryland General Assembly
251 Taylor House Office Building
Annapolis, Maryland 21401
Via email

RE: Senate Bill 107 of 2024 – Commercial Law – Statutory Liens – Motor Vehicles Towed or Removed From Parking Lots

Dear Delegate Boyce:

You have asked whether a proposed amendment to Senate Bill 107 of 2024 would resolve due process concerns raised in my letter of advice to Delegate Sara Love dated April 5, 2024. In that letter I advised that Senate Bill 107, which would have authorized a possessory lien on a motor vehicle if the person legally tows or removes the motor vehicle from a privately owned parking lot, presented a significant risk of violating the Due Process Clause because it did not provide an opportunity for a prompt hearing so that a person could challenge the legal and factual basis of the tow. Specifically, you have asked about the following amended language:

> **(7) A political subdivision must create a prompt statutory post-deprivation hearing process to challenge the legality of the tow, that:**
>
> **a) Allows for an administrative hearing to dispute the legality of the tow within 48 hours of a request for a hearing; and**
>
> **b) In the event that an administrative hearing cannot be provided within 48 hours, the vehicle will be released to the owner without charge.**

In my view, the proposed language *partially* resolves the due process issue raised in my April 5, 2024 letter, as it provides the opportunity for a post-deprivation hearing within 48 hours of request, which courts have found to be reasonably prompt. *See Coleman v. Watt*, 40 F.3d 255, 261 (8th Cir. 1994) (collecting cases); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1325 (9th Cir. 1982) (holding "that provision for a post-seizure hearing within forty-eight hours satisfies the requirements of due process"). Of course, until political subdivisions create and provide the administrative hearing process, there could still be a risk of a procedural due process violation, depending on the circumstances involved.[1]

However, neither the proposed language, nor the current statutory provisions governing vehicle towing, expressly require prompt *notice* of a person's right to the hearing. If the owner is not told of the opportunity to request a hearing, the protections of such a hearing are lessened. In *De Franks v. Mayor & City Council of Ocean City*, the Fourth Circuit upheld an Ocean City towing ordinance after it was amended to require *both* (1) a "written notice to the owner of the vehicle, within one working day of the tow, of his entitlement to a hearing on the question of legality of the seizure," and (2) that "the hearing to be had within twenty-four hours after a request for it." 777 F.2d 185, 187 (4th Cir. 1985). The Eighth Circuit has also recognized there could be a procedural due process violation where a person was not informed that he could request to appear before a judicial officer to prove his vehicle was unlawfully seized sooner than the default court date of seven days after the tow. *Coleman*, 40 F.3d at 261. Accordingly, although not facially unconstitutional, in my view, the amended bill still presents a risk of a procedural due process violation if the political subdivision does not provide adequate notice in addition to a hearing.

This risk could be alleviated by explicitly directing political subdivisions to include as an element of the hearing process a prompt post-tow notice that is reasonably calculated to inform interested parties of the right to request the post-deprivation hearing. *Towers v. City of Chicago*, 979 F. Supp. 708, 716-17 (N.D. Ill. 1997), *aff'd*, 173 F.3d 619 (7th Cir. 1999) (Notice need only to be "'reasonably calculated' to apprise an individual of his or her rights.").

Constitutionally sufficient notice can take many forms. *See id*. (finding that notice was adequate where ordinance required police officers to inform person who was in control of the vehicle at the time of the violation of the right to request a hearing); *see also Scofield v. City of Hillsborough*, 862 F.2d 759, 764 (9th Cir. 1988) (holding that procedural due process was sufficient where statute required that notice of the right to a post-towing hearing and instructions on how to request the hearing be mailed to owner within forty-eight hours after vehicle was towed); *Cokinos v. D.C.*, 728 F.2d 502, 503 (D.C. Cir. 1983) (finding that notice was adequate when back of parking ticket informed recipient that an on-demand hearing was available to challenge the underlying traffic violation that triggered the tow). But in my view, notice of the right to request a hearing within 48 hours must be provided sooner than the seven-day statutory deadline required

[1] In addition, the individual ordinances setting up the hearing processes must themselves also be constitutionally adequate in terms of the process provided. For example, at least one federal court has held that the denial of an opportunity to appeal the decision made at a post-deprivation hearing can also be a sufficient basis for a procedural due process claim. *Lee v. NNAMHS*, No. 03:06CV-0433-LRH-RAM, 2007 WL 2462616, at *5 (D. Nev. Aug. 28, 2007).

for tow companies to notify vehicle owners of the fact of the tow. *See* Md. Code Ann., Transp. § 21-10A-04(a)(3).

I hope this response is helpful. Please let me know if you need further information.

Sincerely,

Natalie R. Bilbrough
Assistant Attorney General