

OFFICIAL OPINION NO. 87-35, Abandoned Vehicles and Titling

November 19, 1987

Roger A. Schiager  
City Attorney  
City of Sioux Falls  
Sioux Falls, South Dakota 57102

Official Opinion No. 87-35

### **Abandoned Vehicles and Titling**

Dear Mr. Schiager:

You have requested an official opinion regarding the ability of the City of Sioux Falls to effectively amend the provisions of SDCL 32-30-12 through 32-30-18. The amendment would seek to accomplish the same thing which had been accomplished by the city under SDCL 32-36-9 prior to the 1987 amendment which removed from the definition of motor vehicles those vehicles left on public property for more than 48 hours.

The law prior to 1987 relating to abandoned or junked vehicles provided a means whereby a municipality could obtain a title to an abandoned vehicle and dispose of it within 30 days from the date the city caused the vehicle to be removed. SDCL ch. 32-36. Another method required that an abandoned vehicle be impounded and the owner notified. After three months from the date of mailing the notice, the vehicle might be sold or, if after six months from the date of mailing, the vehicle remained unclaimed, the title was vested in the county or municipality, whichever had removed the vehicle. SDCL ch. 32-30.

The law prior to 1987 enabled cities to get out of the "boneyard" business in favor of private enterprise. You point out that the new law is now more cumbersome by requiring notice and a waiting period before titling and disposition of vehicles. You argue that this will significantly impair the city's ability to efficiently remove abandoned vehicles from public streets compared to the previous method of disposition under Chapter 32-36. You have suggested that the city wishes to pass an ordinance which would modify the provisions of SDCL 32-30-12 to 32-30-18 to provide for titling and disposition of vehicles in a manner identical to the prior version of SDCL 32-36. You state you believe the city has been given authority to do this in SDCL 32-30-12.1 which provides:

**The governing body of any municipality may by ordinance modify or change any provisions of any of §§ 32-30-12 to 32-30-18, inclusive, to meet its needs or to clarify the duties of its peace officers.**

Based upon these facts, you have asked the following questions:

QUESTIONS:

1. Does SDCL 32-30-12.1 provide sufficient authority for a municipality to modify state law regarding titling and disposition requirements of abandoned vehicles?
2. If your answer to question one is in the affirmative, would the affected state department, such as the Department of Revenue, which is responsible for issuing titles, be authorized to issue titles pursuant to the modifications proposed to be adopted by city ordinance?

IN RE QUESTION NO. 1:

The South Dakota Legislature has given the authority to municipalities to modify the provisions of SDCL 32-30. It has also empowered municipalities to regulate the use of motor vehicles, housecars, house trailers, trailer \_coaches, tractor engines, tractors, and road rollers. SDCL 9-31-1. These are broad general powers, and except for the legislative enactment of SDCL 32-30 and 32-36, the municipality could very well have enacted similar ordinances.

There are basic incongruities between the legislative enactments in SDCL 32-30 and 32-36, particularly in the area of giving notice and transfer of titles. For example, SDCL 32-30-15 requires a notice to be given to the owner of the abandoned vehicle. SDCL 32-30-16 permits the sale of the unclaimed vehicle after three months from the date of mailing of the notice. SDCL 32-30-16.1 vests the title of a motor vehicle in the municipality or county if the vehicle remains unclaimed after six months, while SDCL 32-36-9 vests the title of abandoned vehicles in the removal agency after a period of thirty days from the date of the notice sent to the owner of record under SDCL 32-36-8.

You have asked whether the city may modify the law to reinstate the thirty day time frame in SDCL 32-36-9 under powers granted by SDCL ch. 32-30-12.1.

Generally, the propriety, wisdom, necessity, utility, and expediency of legislation are exclusively matters for legislative determination and the constitutionality of legislative acts

is to be determined solely by reference to the limits imposed by the Constitution. 16 Am.Jur.2d, Constitutional Laws, Section 240. Our Supreme Court in Hurley v. Rapid City, 80 S.D. 180, 121 N.W.2d 21 (1963) discussed the matter of highways and the authority held by the State:

[The] State as principal and creator of municipal corporations has absolute control over them, unless some constitutional provision intervenes. Thus the legislature may grant power to a municipality to regulate the use and improvement of streets, ... and the use and speed of motor vehicles, ... etc.

The Hurley case clarified that:

...

[The] Legislature has paramount control over all the public highways of state, including city streets and county roads, and it may exercise it directly, may delegate power and once delegated, may recall it. (Emphasis supplied.)

Although the sections I have cited may seem inconsistent, I believe they can be reconciled. SDCL 32-30-16 relates merely to the sale of unclaimed vehicles by a peace officer or other person designated by the municipality providing proper notification has been given to the owner. SDCL 32-30-16.1 permits the agency which is holding the vehicle to obtain a title to the vehicle and thereafter dispose of it in any manner, by sale or otherwise, providing it holds the vehicle for six months.

SDCL 32-36-9 permits the removal agency having taken a vehicle from private property under appropriate conditions and having given notice to the registered owner to obtain vested title within thirty days of the notice. It does not seem unreasonable to me to require that the government hold the vehicle for a longer period of time than a private individual is required to hold.

Although it is conceded that prior to the 1987 amendment vehicles abandoned on public streets came under SDCL 32-36 and thus private removal agencies would be able to obtain title within the same thirty day period; however, if the municipality wishes to do other than sell the vehicle it must proceed under SDCL 32-30-16.1.

There is provision in the title registration and transfer statutes for the passage of title by "operation of law." This is contained in SDCL 32-3-6 which declares that:

When the ownership of any motor vehicle ... shall pass by operation of law, judicial sale, repossession or proceedings or in any other manner not provided for in this chapter, the owner may upon furnishing satisfactory proof to the department ... procure a certificate of title to said motor vehicle ... the burden of such satisfactory proof being on the applicant.

Thus title to a vehicle sold under the provisions of SDCL 32-30-16, after being unclaimed for three months and after a publication period of two weeks, vests in the purchaser by operation of law. A title will issue from the Department of Motor Vehicles upon presentation of evidence of the sale by the appropriate sheriff or peace officer in compliance with the provisions of the \_statute.

The answer to your first question is that under the powers expressed in SDCL 32-30-12.1 a city may lessen the amount of time which would be necessary to vest the title in a removal agency and to make that period the same as had previously been provided under § 32-36-9.

IN RE QUESTION NO. 2:

Since the municipality has the power to modify the provisions of SDCL 32- 30-12 to 32-30-18, inclusive, the Department of Revenue acting through its Division of Motor Vehicles would be required under SDCL 32-3-6 to transfer the certificate of title upon proper presentation of the evidence of sale given by the appropriate person under SDCL 32-30-16 as provided by the ordinance of the City of Sioux Falls.

Respectfully submitted,

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Attorney General