Towing -- Valuable Consideration

Number: INFORMAL

Date: September 17, 2012

The Honorable Frank Artiles
State Representative, District 119
13501 Southwest 128th Street
Suite 115
Miami, Florida 33186

Dear Representative Artiles:

You have requested my assistance in interpreting section 715.07, Florida Statutes, relating to vehicles or vessels parked on private property. Attorney General Bondi has asked me to respond to your letter.

Section 715.07, Florida Statutes, provides that the owner or lessee of real property or persons authorized to do so, "may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels[.]"[1] The owner or lessee is guaranteed by the statute that no liability will result to him or her "for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage" so long as the provisions of the statute are followed.[2]

The statute requires strict compliance with statutorily designated conditions and restrictions including that prescribed in subsection (2)(a)4.:

"A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location."

Violations of this provision are prosecuted as a third degree felony.[3]

The statute does not contain a definition of what may constitute "valuable consideration" and you have asked this office to make several determinations of whether particular activities may come within the scope of that term. Because this office cannot resolve mixed questions of law and fact,[4] my comments herein will be general. I also note that the statute specifically provides that these requirements are minimum standards and that local governments may enact additional regulations touching on this subject.[5] Thus, resolution of your questions could also involve any local regulations defining "valuable consideration" and this office has no information relating to such local regulations.

As noted above, section 715.07, Florida Statutes, does not define the term "valuable consideration" as used in subsection (2)(a)4., Florida Statutes. It is a general rule of statutory construction that where a statute does not specifically define words of common usage, such words must be given their plain and ordinary meaning.[6] In the absence of a statutory definition, the plain and ordinary meaning of words can be ascertained if necessary by reference to a

dictionary.[7]

"Valuable consideration" is defined as

"Consideration that is valid under the law; consideration that either confers a pecuniarily measurable benefit on one party or imposes a pecuniarily measurable detriment on the other. – Also termed *good and valuable consideration; legal consideration*."[8]

The terms are also defined separately. The term "valuable" as an adjective is defined as "that which has pecuniary or other value."[9] "[C]onsideration" is defined as "a recompense or payment, as for work done; compensation;" and, as used in the law, as: "something that suffices to make an informal promise legally binding, usually some
value given in exchange for the promise."[10]

Prior to its amendment to its current form, section 715.07(2)(a)4., Florida Statutes, provided that

"The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited."[11]

The statute was amended in 2005 to read as it does currently. Nothing in the legislative history relating to the amendment of the language in section 715.07(2)(a)4., Florida Statutes, indicates that the Legislature intended anything more than to "[p]rohibit a wrecker operator from paying the owner or operator of the property from which a vehicle is towed money or other consideration for the privilege of towing vehicles[.]"[12]

Thus, the phrase "other valuable consideration" as used in section 715.07(2)(a)4., Florida Statutes, should be contrasted with "money" and may be understood to mean something that confers a measurable pecuniary benefit on the receiving party. However, determining the existence or amount of that pecuniary benefit, *i.e.*, whether *de minimus* or measurable, is beyond this office's authority.

I trust that these informal comments will be helpful to you. Thank you for contacting this office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 715.07(2), Fla. Stat.

[2] *Id.*

[3] Section 715.07(5)(b), Fla. Stat.

[4] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com).

[5] Section 715.07(2)(b), Fla. Stat.

[6] *Southeastern Fisheries Association, Inc. v. Department of Natural Resources*, 453 So. 2d 1351 (Fla. 1984).

[7] *See, e.g., Green v. State*, 604 So. 2d 471, 473 (Fla. 1992) and *Plante v. Department of Business and Professional Regulation*, 685 So. 2d 886, 887 (Fla. 4th DCA 1996).

[8] "[V]aluable consideration," Black's Law Dictionary (8th ed.), p. 326

[9] "[V]aluable," Webster's New Universal Unabridged Dictionary (2003), p. 2103.

[10] "[C]onsideration," *id.* at p. 434.

[11] *See* s. 5, Ch. 2005-137, Laws of Fla., amending section 715.07, Fla. Stat.

[12] *See* Senate Staff Analysis and Economic Impact Statement on CS/CS/SB 492, dated March 30, 2005.