Law enforcement, towing regulations

Number: INFORMAL

Date: March 06, 2008

Chief Glenn H. Kimbrel
Blountstown Police Department
20580 Central Avenue West
Blountstown, Florida 32424

Dear Chief Kimbrel:

You ask whether you have the authority to adopt a policy regulating the number of tow trucks that operate within the city.

Title 49 United States Code section 14501(c) preempts provisions by a state or political subdivision of a state related to a price, route, or service of any motor carrier with respect to the transportation of property. Tow trucks are "motor carriers of property" falling within ambit of section 14501(c). As set forth in 49 United States Code section 14501(c)(1):

"Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4) [49 USCS § 41713(b)(4)]) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property."

Section 14501(c)(2), in setting forth those matters not covered, states:

"Paragraph (1)--
(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;
(B) does not apply to the intrastate transportation of household goods; and
(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision *relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.*"[1] (e.s.)

In addition, 49 United States Code section 14501(c)(5) states that nothing in the section shall be construed to "prevent a State from requiring that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee (or an employee or agent thereof) or that such owner or lessee (or an employee or agent thereof) be present at the

time the vehicle is towed from the property, or both."

In *City of Columbus v. Ours Garage & Wrecker Service*,[2] the United States Supreme Court stated that the safety regulation exception to preemption provided for in section 14501(c)(2)(A), although not specifically referring to political subdivisions, could be delegated to such entities, permitting them to exercise safety regulatory authority over local tow-truck operations. The Court concluded that a political subdivision may exercise whatever portion of state power the state, under its own constitution and laws, chooses to delegate to the subdivision. Absent a clear statement to the contrary, the Court concluded that Congress' reference to the "regulatory authority of a state" should be read to preserve, not preempt, the traditional prerogative of the states to delegate their authority to their constituent parts.

While the statutory exception for "safety regulatory authority of a State with respect to motor vehicles" would therefore permit state and local safety regulations, any regulation of "prices, routes, or services of tow trucks that is not genuinely responsive to safety concerns garners no exemption from s. 14501(c)(1)'s preemption rule."[3] Thus, there would appear to be a substantial question as to whether the state or a local government could limit the number of tow companies operating within its jurisdiction.

As an example of the type of regulations falling within the exemption from the preemption provisions of 49 United States Code section 14501(c), I would note that in *Galactic Towing, Inc. v. City of Miami Beach*,[4] the Eleventh Circuit Court of Appeals upheld the city's non-consensual towing ordinance relating to a towing permit, business application requirement, written authorization for tow, and storage within city limits. In reaching its decision, the court recognized other cases considering the exemption from
the preemption set forth in 49 United States Code section 14501(c):

"The Fifth Circuit, on remand from the Supreme Court subsequent to its *Ours Garage* decision, recently denied a tow truck company's preemption challenge to a similar city ordinance regulating vehicle towing, holding that the ordinance fell under the purview of s. 14501(c)(2)(A)'s public safety exception. *See Cole v. City of Dallas*, 314 F.3d 730 (5th Cir. 2002) (regulation requiring criminal history included within safety exception). Likewise, a Washington appellate court recently upheld a similar preemption challenge under s. 14501(c). *See Fife Enterprises v. Washington State Patrol*, 113 Wn. App. 1011 (Wash. App. 2002) (unpub.) (licensing and record keeping requirements exempt under safety exception); *see also Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765 (2d Cir. 1999) (towing ordinance requiring, *inter alia*, licensing, display of information, reporting, record keeping, disclosure of criminal history, insurance, posting of bond by towing companies, and maintaining local storage and repair facilities, fell within the safety exception); *Hott v. City of San Jose*, 92 F. Supp. 2d 996 (N.D. Cal. 2000) (holding that regulations requiring liability insurance, criminal background check, displaying of information, reporting, and record keeping were all within scope of safety exception)."[5]

I would further note that section 166.043(1), Florida Statutes, which prohibits ordinances and rules imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law, states in subsection (1)(b) in pertinent part:

"The provisions of this section shall not prevent the enactment by local governments of . . . rates for towing of vehicles from or immobilization of vehicles on private property, or rates for removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle."[6]

This office would suggest that you discuss what actions the City of Blountstown may take in this area within the parameters of 49 United States Code section 14501(c) with your city attorney.

I hope that the above informal comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

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[1] 49 U.S.C. s. 14501(c)(3) provides:

"(A) Continuation. Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to--
(i) uniform cargo liability rules,
(ii) uniform bills of lading or receipts for property being transported,
(iii) uniform cargo credit rules,
(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or
(v) antitrust immunity for agent-van line operations (as set forth in section 13907 [49 U.S.C. s. 13907]),if such law, regulation, or provision meets the requirements of subparagraph (B).
(B) Requirements. A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if--
(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part [49 U.S.C. s. 13101 *et seq*.] or a regulation issued by the Secretary or the Board under this part [49 U.S.C. s. 13101 *et seq*.]; and
(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.
(C) Election. Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph."

[2] 536 U.S. 424, 122 S. Ct. 2226, 153 L. Ed. 2d 430 (2002).

[3] 536 U.S. at 442.

[4] 341 F.3d 1249 (11th Cir. 2003).

[5] *Id.* at 1252-1253.

[6] Section 166.043(1)(c), provides:

"Counties must establish maximum rates which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. *However, if a municipality chooses to enact an ordinance establishing the maximum fees for the towing or immobilization of vehicles as described in paragraph (b), the county's ordinance established under s. 125.0103 shall not apply within such municipality.*" (e.s.)