

Shopping carts found on public property, costs

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Mr. Robert H. Berntsson
Punta Gorda City Attorney
City Hall
326 West Marion Avenue
Punta Gorda, Florida 33950-4492

Dear Mr. Berntsson:

You have asked this office for advice regarding the interpretation of section 506.5131, Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Section 506.5131(2), Florida Statutes, provides:

"Notwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services."

Section 506.5131, Florida Statutes, was added in 1998 and has not been the subject of appellate interpretation. The statute, however, prohibits the assessment of a fee, fine, or cost against the owner of a shopping cart found on public property unless two conditions are met:

- 1) the owner, or the owner's agent, removed the cart from the premises or parking area of the retail establishment, *and*
- 2) the Department of Agriculture and Consumer Services has approved the fee, fine, or cost.

The Department of Agriculture and Consumer Services has advised this office that the removal of shopping carts rarely is done by the owner or the owner's employee. Without the removal of the carts by their owner, or the owner's employees, the first part of the test is not satisfied. In such cases, no fee, fine, or cost may be assessed against the owner whose cart is found on public property. As a result, the department has indicated that it has not received a request for approval for imposition of a fee, fine, or cost when the shopping cart has been found on public property since such fine, fee, or cost may only be imposed if the cart was removed from the retail establishment by the owner or owner's employee.

The department, however, has assured this office that should it receive a request for approval for imposition of such a fee, fine, or cost, it would duly consider such a request. If the city is interested in imposing such fees or costs against owners of shopping carts found on public property when the owner or owner's employee removed the cart from the retail establishment, you may wish to contact the general counsel for the department.

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

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk