

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 32

COUNTIES - Duty to take, store, and sell abandoned vehicles and obligation to pay costs;

HIGHWAYS - Duty of county to take, store, and sell vehicles abandoned on public highways other than county roads and obligation to pay costs;

HIGHWAY PATROL - Duty of county to take, store, and sell abandoned vehicles taken into custody by the highway patrol and county's obligation to pay costs;

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MOTOR VEHICLES - Duty of county and city police to take, store, and sell abandoned vehicles and obligation to pay costs;

POLICE - Duty of county and city police to take, store, and sell abandoned vehicles and obligation to pay costs;

SHERIFFS - Duty of county and city police to take, store, and sell abandoned vehicles and obligation to pay costs;

MONTANA CODE ANNOTATED - Sections 61-12-401 to 61-12-404, 61-12-407.

- HELD: 1. The county sheriff is obligated to take, store, and sell abandoned vehicles taken into custody by the Montana Highway Patrol pursuant to section 61-12-401, MCA.
2. The county is obligated to pay all of the expenses connected with the removal, storage, and sale of vehicles taken into custody by the Montana Highway Patrol pursuant to section 61-12-401(1)(a), MCA, or by the sheriff pursuant to section 61-12-401(1)(b) or 61-12-401(3), MCA. The city police are obligated to pay all of the expenses connected with the removal, storage, and sale of vehicles taken into custody by the city police pursuant to sections 61-12-401(1)(c) or 61-12-401(3), MCA. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles, pursuant to section 61-12-407, MCA.

27 October 1987

J. Allen Bradshaw
Granite County Attorney
Granite County Courthouse
Philipsburg MT 59858

Dear Mr. Bradshaw:

You requested my opinion on:

1. Whether a county sheriff is obligated to take, store, and sell abandoned vehicles which have been taken into custody by the Highway Patrol pursuant to section 61-12-401, MCA.
2. Whether a county is obligated to pay all of the expenses related to towing,

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storing, and selling abandoned vehicles located on public highways other than a county road.

In 1967, the Montana Legislature enacted statutes to provide for the removal and disposal of abandoned motor vehicles. Those statutes have subsequently been codified in Title 61, chapter 12, part 4, MCA. The legislative history, while sketchy, suggests that the statutes were enacted to authorize law enforcement officers to remove or to arrange removal of abandoned vehicles. The original legislation pertained to city streets and public property. The law was amended in 1969, 1979, and 1987. The 1969 amendment allowed removal where the vehicle had been abandoned 48 hours or more. 1969 Mont. Laws, ch. 169, § 2. The 1979 amendment allowed the owner or person in possession of private property to request the sheriff or the city police to remove any abandoned vehicles from his property. 1979 Mont. Laws, ch. 445, § 1. The 1987 Legislature reduced the burden on the sheriff to "preserve" such abandoned vehicles while awaiting sale; now, the sheriff need only provide "storage" for the vehicles. 1987 Mont. Laws, ch. 88, § 6.

You indicate in your letter that section 61-12-401, MCA, appears to give the sheriff the discretion to refuse to receive the vehicles and process them for sale. I disagree with that conclusion.

Section 61-12-401, MCA, authorizes the Montana Highway Patrol to take into custody abandoned vehicles found upon the right-of-way of any public highway other than a county road. The sheriff may take into custody vehicles abandoned on the right-of-way of any county road and the city police may take into custody any abandoned vehicle found upon a city street within the city. Section 61-12-401, MCA, does not require law enforcement agencies to take abandoned vehicles into custody. The language is permissive and states that an agency may do so. However, once a decision is made to take the vehicle into custody, sections 61-12-402 to 407, MCA, apply; the language of those statutes is mandatory.

Section 61-12-402, MCA, requires the Montana Highway Patrol to furnish the sheriff a complete description of any vehicle removed at its direction. The description includes year, make, model, serial number, and license number if available. The sheriff is also to be provided with a statement of any costs incurred to that date in the removal, storage, and custody of the vehicle and with any available information concerning its ownership. § 61-12-402(1), MCA. At that point, with respect to

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abandoned vehicles, the duty and authority of the Montana Highway Patrol end. The sheriff and the city police then have the statutory obligation to make all reasonable attempts to locate the owner, lienholder, or person entitled to possession of any vehicle taken into custody pursuant to section 61-12-401, MCA. § 61-12-402(2), MCA. The statutes contemplate that the sheriff is responsible for handling the vehicles removed by the county or by the Montana Highway Patrol and that the city police are responsible for handling the vehicles removed by the city.

The statutes allow the sheriff or city police to declare the vehicle a junk vehicle or to release the vehicle to its rightful owner or possessor. §§ 61-12-402, 61-12-403, MCA. If the owner does not claim the vehicle and it is not declared a junk vehicle, the statute provides that the sheriff or the city police shall sell it at a public auction. § 61-12-404, MCA. Since the sheriff and city police have the duty to dispose of the vehicle, they can recover the costs for the removal, storage, and custody of the vehicle from the proceeds of any sale. § 61-12-407, MCA. Section 61-12-407(2), MCA, provides:

With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, storage, and custody of the vehicle. [Emphasis added.]

That balance is then deposited by the county treasurer into the county road fund or by the city treasurer into the city street fund. § 61-12-407(3), MCA.

In summary, once the decision has been made to take a vehicle into custody, the sheriff or the city police then must follow the statutory procedures set forth to locate the owner, declare the vehicle a junk vehicle, or sell the vehicle at auction. Following a sale, the sheriff or city police may retain the costs incurred in the removal, storage, and custody of the vehicle. There is no statutory provision which allows the Montana Highway Patrol to dispose of vehicles or to recover the costs of removal, storage, and custody of vehicles abandoned on public right-of-ways of any highway other than a county road. The statutes place that responsibility with the sheriff and allow the county to recover costs from the owner or from the sale of the vehicle in that instance. The authority and duty of the

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Montana Highway Patrol end when the sheriff is given notification of the removed vehicle pursuant to section 61-12-402(1), MCA.

THEREFORE, IT IS MY OPINION:

1. The county sheriff is obligated to take, store, and sell abandoned vehicles taken into custody by the Montana Highway Patrol pursuant to section 61-12-401, MCA.
2. The county is obligated to pay all of the expenses connected with the removal, storage, and sale of vehicles taken into custody by the Montana Highway Patrol pursuant to section 61-12-401(1)(a), MCA, or by the sheriff pursuant to section 61-12-401(1)(b) or 61-12-401(3), MCA. The city police are obligated to pay all of the expenses connected with the removal, storage, and sale of vehicles taken into custody by the city police pursuant to sections 61-12-401(1)(c) or 61-12-401(3), MCA. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles, pursuant to section 61-12-407, MCA.

Very truly yours,

MIKE GREELY
Attorney General