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Prince George's County

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Environmental Matters Committee

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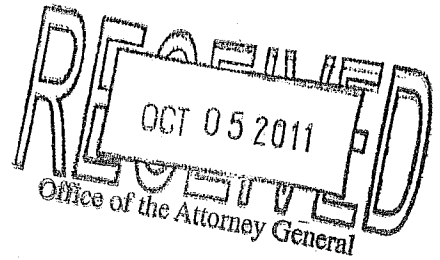
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October 3, 2011

The Honorable Douglas Gansler
Attorney General
State of Maryland
200 St. Paul Pl
Baltimore, MD 21202



Dear Attorney General Gansler,

I am requesting an opinion from the Attorney General on the constitutionality and enforcement of the provisions of § 25-210 of the Transportation Article.

This statute gives an individual the ability to transfer a vehicle to an automotive dismantler and recycler or scrap processor without a certificate of title and without giving notice to the owner of the vehicle. It has been an issue of concern for the General Assembly and was the topic of HB320 during the 2011 Legislative Session.¹ It is also a matter of continuing concern in Prince George's County as it continues to be cited as authority for the practice of recycling, scrap and salvage yards accepting vehicles without a title document or other indicia of ownership.²

On its face, the language of § 25-210 limits applicability of the statute to a specific set of vehicles. They must be "abandoned," more than eight years old, and have no engine or be "totally inoperable." When someone brings such a vehicle to an automotive dismantler, recycler or scrap processor, the statute provides that the receiving business may require that the person who brings in the vehicle execute an "indemnity agreement." The "persons" who may transfer a vehicle under the section are defined to include anyone who possesses or on whose property any abandoned vehicle is found and any person who owns a vehicle for which a certificate of title is defective, lost or destroyed.

Specifically, I am seeking your opinion on the following questions:

1. Is this provision in law constitutional? It would appear to me that it could violate the due process provisions of the state and federal constitutions in that it allows for the taking of the property of another without any kind of provision for notice or time to recover the property.

¹ In response to a request from Delegate Barbara Frush, Assistant Attorney General Kathryn M. Rowe issued a letter opinion on this section of the code on January 25, 2011.

² The Prince George's County Police Department Auto theft unit, for example, reports that at least 500 stolen vehicles have been accepted as salvage in Prince George's County over the last two years, presumably on the basis of this provision of the code.

2. Can an auto dismantler, recycler or scrap processor rely on its provisions as protection from a criminal prosecution if the vehicle they accept was stolen and they do not have a certificate of title or other ownership basis to accept the vehicle?
3. Does the fact that someone has signed an "indemnity agreement" provide any protection to those accepting vehicles under this provision of law? Would this apply to a criminal action?
4. Is there any limit on who may bring in a vehicle? More specifically, when the statute refers to "[a]ny person who possesses" a vehicle, does that mean than anyone who has physical possession of a vehicle – no matter how that possession was achieved – is authorized under the statute? Would this provision, for example, give an auto thief or someone who picks up a car on the street the right to transfer the vehicle and for a scrap yard to accept it?
5. What obligation does the statute impose on the receiving dismantler, recycler or scrap yard to determine whether a vehicle is a qualifying vehicle under the statute? Are they responsible for verifying that the vehicle was eight years old? That it was abandoned. That it had no engine or was totally inoperable? And what would be an appropriate definition for "totally inoperable"?
6. Would failure to adequately determine if a vehicle was a qualifying vehicle under the statute open a dismantler, recycler or scrap processor to civil and criminal liability, especially given the provisions of § 7-104(c)(2) of the Criminal Law Article as they apply to those in the business of buying and selling personal property?

Please feel free to call me at 240-606-1298 if you have any questions or need additional information about any of my questions.

Sincerely,



Doyle L. Niemann

Cc: Delegate Maggie McIntosh
Delegate James Malone
Assistant Attorney General Bob McDonald
Assistant Attorney General Dan Friedman