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November 18, 2011

OPINION NO. 2011-14

CRIMINAL; NEVADA TRANSPORTATION
AUTHORITY; PARKING: Private party
booting of vehicles is illegal pursuant to
NRS 205.274 and NRS 205.0832.

Andrew J. MacKay, Chairman
Nevada Transportation Authority
1755 East Plumb Lane, Suite 216
Reno, Nevada 89502

Dear Chairman MacKay:

You have requested an opinion from the Attorney General's Office regarding the legality of private parties booting vehicles on private property. The Opinion Request specifically exempted from review those county or municipal entities which have specifically authorized booting and set up a regulatory structure to govern said activity. There are four specific questions asked regarding the legality of private parties booting vehicles on private property in jurisdictions where county or municipal entities have not specifically authorized booting.

QUESTION ONE

Does a non-governmental, non-law enforcement person or entity commit a violation of NRS 205.274 (Injuring or Tampering with a Vehicle) by immobilizing another person's vehicle through booting?¹

¹ "Booting" a vehicle means placing a device on a tire of the vehicle that renders the vehicle inoperable. A "boot" has two primary parts—an "arm" and a "jaw." Those two parts are bolted together, and a lock is placed to prevent the two parts from being unbolted. The jaw fits around the wheel of a vehicle. There is a plate attached to the arm which covers the hub and lug nuts of the vehicle to prevent removal of the wheel once the boot is in place. *Thomas v. U.S.*, 985 A.2d 409, 410 (D.C. Cir. 2009).

ANALYSIS

NRS 205.274, entitled "Injuring or tampering with vehicle; penalties," states:

1. Any person who shall individually or in association with one or more other persons willfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying such vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, or who shall in any manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, shall be guilty of a public offense proportionate to the value of the loss resulting therefrom.

NRS 205.274(1). Tamper" is defined as "to meddle so as to alter a thing, especially to make illegal, corrupting or perverting changes." BLACKS LAW DICTIONARY 1456 (6th ed. 1990).²

The placing of a boot on a vehicle is done to temporarily prevent its useful operation against the will and without the consent of its owner. There is no legal authority approving such conduct by non-governmental or non-law enforcement persons or entities. Therefore, booting is a violation of NRS 205.274.

CONCLUSION TO QUESTION ONE

A non-governmental, non-law enforcement person or entity commits a violation of NRS 205.274 (Injuring or Tampering with a Vehicle) by immobilizing another person's vehicle through booting.

QUESTION TWO

Does a non-governmental, non-law enforcement person or entity commit a violation of NRS 205.0832 (Theft) by immobilizing another person's vehicle through booting, with the intent to restore the owner's right to use of the vehicle only upon the payment of compensation?

² There is no definition of "tamper" contained in the Nevada Revised Statutes.

ANALYSIS

NRS 205.0832, entitled "Actions which constitute theft" states:

1. Except as otherwise provided in subsection 2, a person commits theft if, without lawful authority, the person knowingly:

(a) Controls any property of another person with the intent to deprive that person of the property.

(b) Converts, makes an unauthorized transfer of an interest in, or without authorization controls any property of another person, or uses the services or property of another person entrusted to him or her or placed in his or her possession for a limited, authorized period of determined or prescribed duration or for a limited use.

NRS 205.0832. There are two definitions which are important to understanding the foregoing statute. NRS 205.0823 defines "Control" to mean an "act so as to prevent a person from using his or her own property except on the actor's terms." NRS 205.0824 defines "Deprive" as:

[A] means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to *withhold it with the intent to restore it only upon the payment of a reward or other compensation*, or to transfer or dispose of it so that it is unlikely to be recovered.

NRS 205.0824 (emphasis added).

The booting of a vehicle by a non-governmental, non-law enforcement person or entity is theft in violation of NRS 205.0832, as the person performing the action knowingly controls the property of another and deprives them of the use of that property until such time as some sort of payment is made or other compensation exchanged without any legal authority approving such conduct.

CONCLUSION TO QUESTION TWO

A non-governmental, non-law enforcement person or entity commits a violation of NRS 205.0832 (Theft) by immobilizing another person's vehicle through booting, with the intent to restore the owner's right to use of the vehicle only upon the payment of compensation.

QUESTION THREE

If private party booting of vehicles would generally constitute a violation of NRS 205.274 and/or NRS 205.0832, is such conduct nonetheless lawful due to specific authorization under NRS 487.038?

ANALYSIS

NRS 487.038 provides authority for an owner or person in lawful possession of real property to have an unauthorized vehicle parked thereon to be towed therefrom under certain circumstances. It provides in the pertinent sections:

1. Except as otherwise provided in subsections 3 and 4, the owner or person in lawful possession of any real property may, after giving notice pursuant to subsection 2, utilize the services of any tow car operator subject to the jurisdiction of the Nevada Transportation Authority to remove any vehicle parked in an unauthorized manner on that property to the nearest public garage or storage yard if:

(a) A sign is displayed in plain view on the property declaring public parking to be prohibited or restricted in a certain manner; and

(b) The sign shows the telephone number of the police department or sheriff's office.

.....

6. The provisions of this section do not limit or affect any rights or remedies which the owner or person in lawful possession of real property may have by virtue of other provisions of the law authorizing the removal of a vehicle parked on that property.

NRS 487.038(1) and (6). This is the only statutory authority granting a private party authority to act regarding unauthorized vehicles parked on private property.³ There are no Nevada statutes or regulations authorizing or regulating the booting of vehicles. "The maxim 'expressio Unius Est Exclusio Alterius,'" meaning that "the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967). Accordingly, the procedures outlined in NRS 487.038 are the only ones available to a private property owner or the person in lawful possession thereof regarding removal of a vehicle parked thereon in an unauthorized manner.

³ NRS 116.3102 allows common interest communities to remove unauthorized vehicles parked on property under their control pursuant to NRS 487.038.

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CONCLUSION TO QUESTION THREE

Private party booting of vehicles constitutes violations of NRS 205.274 and NRS 205.0832, and said violations are not cured by any authorization under NRS 487.038.

QUESTION FOUR

In light of the answers to the preceding three questions, is private party booting of vehicles illegal?

ANALYSIS

The Legislature carved out exceptions to NRS 205.274 and NRS 205.0832 in NRS 487.038 by allowing for the removal of unauthorized vehicles by tow car operators licensed and regulated pursuant to NRS Chapter 706, thereby exempting such activity from being classified as tampering or theft. "A specific statute takes precedence over a general statute." *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 330, 849 P.2d 267, 270 (1993). No similar carve-out exists in Nevada law to authorize booting of vehicles.⁴ Therefore, the booting of a vehicle by a private party is illegal pursuant to NRS 205.274 and NRS 205.0832.

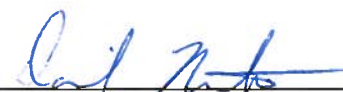
CONCLUSION TO QUESTION FOUR

Private party booting of vehicles is illegal pursuant to NRS 205.274 and NRS 205.0832.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



DAVID NEWTON
Senior Deputy Attorney General
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DWN/DW

⁴ The Office of the Attorney General for the State of California examined the question of private-party booting and found it to be contrary to the laws of that state. See Op. Cal. Att'y Gen. No. 03-1204 (August 12, 2004).