


Office of the City Manager

December 11, 2014

To: Honorable Mayor and City Council Members
From: Christine Daniel, City Manager 
Subject: Regulation of Off-Street Parking Lots

On April 29, 2014, the Council directed staff to draft an ordinance that would enable owners of private off-street parking lots to manage their parking more effectively.

Staff has been advised of an Attorney General Opinion that concluded such ordinances are not permitted by state law. A copy of the Attorney General opinion is attached.

In brief, the Attorney General opined that no state law authorizes private property owners to issue parking "citations" imposing monetary sanctions to the owners of vehicles parked on their property. The Attorney General specifically stated that she construed *all* demands for payment, however denominated, as "citations" for purposes of the applicable statutes, including, "notice of unauthorized parking fee," "notice of charge for violation," "notice of parking charge," "mail-in parking fee," and the like." The opinion suggests that the exclusive remedy for impermissibly parked vehicles is towing.

Accordingly staff has terminated work on this project.

Attachment:

1: Attorney General Opinion No. 07-804, December 22, 2011

cc: Beth Pollard, Interim Deputy City Manager
Zach Cowan, City Attorney
Ann-Marie Hogan, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Public Information Officer

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 07-804
	:	
of	:	December 22, 2011
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
DIANE E. EISENBERG	:	
Deputy Attorney General	:	
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THE HONORABLE ALAN LOWENTHAL, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. Does California Vehicle Code section 22658, or any other state law, authorize private property owners to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property?
2. May private property owners acquire, by means of issuing a written warning or posting signage, the right to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property?
3. May persons who tow and impound vehicles under Vehicle Code section 22658 require payment of parking citations that have been issued by private property owners, in addition to the towing and storage charges?

4. What rights or remedies are available to the owners of vehicles that have received parking citations imposing monetary sanctions issued by private property owners?

CONCLUSIONS

1. Neither California Vehicle Code section 22658, nor any other state law, authorizes private property owners to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.

2. Absent statutory authorization, private property owners may not acquire, by means of issuing a written warning or posting signage, the right to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.

3. Persons who tow and impound vehicles under Vehicle Code section 22658 may not require payment of parking citations that have been issued by private property owners.

4. Owners of vehicles who have received parking citations imposing monetary sanctions issued by private property owners or their agents do not have rights or remedies per se, but the citations are unenforceable against the vehicle owners.

ANALYSIS

This is the second time in recent years that we have been called upon to consider what measures are available to private property owners who want to enforce parking regulations on their property. In 2004, we concluded that a private security firm hired by the owner of a private parking lot could not legally immobilize an improperly parked vehicle by affixing a “boot” device to it.¹

¹ 87 Ops.Cal.Atty.Gen. 114, 119–120 (2004). As we then noted, the Legislature has expressly authorized the towing of vehicles as a means of preventing impermissible parking on private property. *Id.* at 115-118.

Here, we are asked whether a private property owner may impose monetary sanctions for improper parking, either by means of a privately-issued citation,² or by issuing written warnings or posting signage informing drivers of the intended penalties. We are informed that in some private parking lots held open to the public, owners are attempting to impose monetary sanctions³ on drivers either in lieu of or in addition to having the drivers' cars towed. Typically in such cases, the demand for a monetary sanction is contained in a document that is affixed to the driver's car, similar to a municipal parking ticket. Unlike booting, this practice does not involve vehicle tampering. We nonetheless conclude that the practice is not authorized by law, and therefore is not available to private property owners.⁴

² In addition to "citation," such instruments may bear a variety of names, such as "notice of unauthorized parking fee," "notice of charge for violation," "notice of parking charge," "mail-in parking fee," and the like. We construe all such demands as sanctions intended to be imposed for unauthorized parking, rather than regular fees charged for authorized parking.

³ A sanction is a "penalty or coercive measure that results from failure to comply with a law, rule or order" *Black's Law Dictionary* 1369 (Bryan A. Garner ed., 8th ed., West 2004). Because the questions here pertain to charges to be imposed on drivers who violate the Vehicle Code or a parking lot owner's own parking rules, we are concerned with sanctions rather than with ordinary parking fees or charges. Questions about the permissible terms of a contract for parking services are beyond the scope of this opinion.

⁴ We exclude private nonprofit educational institutions from our analysis, because special rules apply to those institutions and their properties. Pursuant to Vehicle Code section 21113(a), parking on the grounds of a private, tax-exempt educational institution is "subject to any condition or regulation which may be imposed" by the institution's governing board. In addition, under Penal Code section 830.7(b) and Vehicle Code section 1808.25, school security officers may be vested with authority to enforce parking restrictions.

For similar reasons, we also exclude common interest developments and their members from our analysis, to the extent that rules pertaining to parking are incorporated in the development's governing documents. Civil Code section 1363(g) authorizes an association of a common interest development to impose monetary penalties on any association member for a violation of the rules of the association, provided that the association distributes to each member a schedule of the monetary penalties that may be assessed for those violations. Civil Code section 1363(h) further provides that the

Legal Framework

The “rules of the road” promulgated by the California Vehicle Code⁵ govern traffic control,⁶ including certain aspects of the regulation of parking.⁷ The Vehicle Code applies generally to public streets and highways,⁸ but some of its provisions also apply to private property.⁹ Section 22658, referenced in Question 1, is one such provision. Section 22658 is the main section in a constellation of sections authorizing the towing of vehicles from private property, thereby affording private property owners a convenient statutory alternative to bringing a trespass action against the owner of a vehicle parked illegally or impermissibly on the property owner’s land.

Question 1

Our first inquiry is whether section 22658, or any other provision of California law, authorizes a private property owner to issue parking citations imposing monetary sanctions. We begin by examining the language of section 22658, in order to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.”¹⁰ To that end, we

association must fulfill specified requirements for giving the member notice, an opportunity to be heard, and written notification of any disciplinary action imposed. Thus, California law authorizes the association of a common interest development to impose sanctions on its members for violations of the development’s parking rules.

⁵ “Rules of the Road” is the title of Division 11 of the Vehicle Code. Unless otherwise indicated, all code section references in this opinion are to the Vehicle Code.

⁶ Traffic control entails the regulation, warning, or guidance of traffic. *See* § 440 (defining “official traffic control device”).

⁷ *People v. Garth*, 234 Cal. App. 3d 1797, 1799 (1991) (holding that parking is an aspect of traffic control); *Mervynne v. Acker*, 189 Cal. App. 2d 558, 561 (1961) (same).

⁸ § 21001.

⁹ *E.g.* §§ 22500.1 (prohibiting parking in a designated fire lane in a public or private parking lot); 22507.8 (prohibiting parking in space designated for disabled persons without proper placard, including space in private parking lot); 22511.1 (prohibiting parking in space reserved for zero-emission vehicles without valid decal, including space in private parking lot).

¹⁰ *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386 (1987).

do not try to construe isolated words or phrases in the abstract, but rather in context, keeping in mind the wider purposes of the statute.¹¹

Section 22658(a) sets out the circumstances under which a private property owner may have a vehicle towed from the property. For example, a property owner may have a vehicle towed if the owner has posted a sign “prohibiting public parking and indicating that vehicles will be removed at the owner’s expense.”¹² The provision requires such signs to meet certain size requirements and to contain certain language, yet it provides as well that the “sign may also indicate that a citation may also be issued for the violation.”¹³ And another provision states that an owner may have a vehicle towed if “the vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.”¹⁴

It is contended that the terms “citation” and “notice of parking violation” in section 22658 should not be construed as being limited to government-issued parking tickets, but that those terms should also be read as encompassing non-governmental notices that may be issued by a private property owner, and which may impose monetary sanctions to be paid to that property owner, for violations of the Vehicle Code or the private property owner’s parking rules. We disagree. For the reasons that follow, we conclude that only a governmental entity may issue parking citations that impose monetary sanctions.

The Vehicle Code defines a “citation” as “a notice to appear, notice of violation, or notice of parking violation,”¹⁵ and, with respect to parking, a number of sections of the Vehicle Code use the terms “citation” and “notice of parking violation” interchangeably.¹⁶ Section 40200 through 40230 of the Vehicle Code govern the procedures applicable to parking violations. Section 40202 makes clear that a citation or notice of parking violation may be issued only for *illegal* parking—that is, parking in

¹¹ *Id.* at 1387.

¹² § 22658(a)(1).

¹³ *Id.*

¹⁴ § 22658(a)(2).

¹⁵ § 41601.

¹⁶ *E.g.* §§ 22651.7, 40200.4, 40211, 40215, 40230, 40240–40241.

violation of federal, state, or local law.¹⁷ Accordingly, a citation under the Vehicle Code may *not* be issued in connection with parking on private property that merely violates the property owner's rules rather than federal, state, or local law. Further, section 40202 provides only that a "peace officer"¹⁸ or "person authorized to enforce parking laws and regulations" may issue a citation for a parking violation. However, because the Vehicle Code does not specify who, other than a peace officer, may be "a person authorized to enforce parking laws and regulations," the question thus arises whether private property owners are among those persons who may be so authorized.

We have previously concluded that a non-peace officer public employee may enforce parking regulations and issue parking citations.¹⁹ Section 22507.9 also authorizes local authorities to establish a special unit dedicated to the enforcement of disabled parking laws. But the Vehicle Code does not expressly authorize anyone other than these public employees to issue citations.

In a 2002 opinion, we concluded that there is no express grant of authority for a city to contract with a private entity to issue the city's parking tickets.²⁰ We stated that the issuance of parking tickets is "commonly performed as a municipal function," and "cannot reasonably be considered as the type of service that by implication may be contracted out to a private party."²¹ There have been no relevant changes in the law since that time that would cause us to reconsider that opinion, and we reaffirm it here.

Some interested persons have argued that section 22658(p) should, nevertheless, be construed as permitting a private property owner to impose a private parking ticket.

¹⁷ § 40202(a).

¹⁸ "Peace officer" is defined in Chapter 4.5 (§§ 830 et seq.) of Title 3 of Part 2 of the Penal Code. In general, the term denotes specified public employees, including police officers, whose duty is to enforce the law and preserve the public peace.

¹⁹ 63 Ops.Cal.Atty.Gen. 719, 722. In that 1980 opinion, we cited section 22657 in support of our conclusion. That section has been repealed, but its provisions, including the language quoted in the opinion, now appear in substantially similar form in section 22651.

²⁰ 85 Ops.Cal.Atty.Gen. 83, 84 (2002).

²¹ *Id.* at 86.

This provision, which is the penultimate subdivision of the lengthy statute governing towing of illegally and improperly parked vehicles, states:

The remedies, sanctions, restrictions, and procedures provided in this section are not exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be provided in other provisions of law, including, but not limited to, those that are provided in Sections 12110 and 34660.

We believe that the Legislature intended this provision to refer to remedies of the *vehicle owner*, not to remedies available to owners of private parking lots. This subdivision, added to section 22658 in 2006,²² directly follows a litany of remedies for the owners of towed vehicles, including restrictions and sanctions to be imposed on private property owners and towing companies. Indeed, the Legislature's stated purpose in enacting the bill that introduced the subdivision was to enhance protections provided to motorists from unfair vehicle towing practices and unauthorized vehicle towing from private property.²³ Furthermore, the two statutes mentioned in this provision (sections 12110 and 34660) concern, respectively, penalties for conduct leading to kickbacks paid to or by towing companies, and penalties imposed on motor carriers of property—including towing companies—that operate with a suspended permit.

Moreover, even if this provision were construed to include "remedies, sanctions, restrictions or procedures" available to private property owners, any such remedies or sanctions must still "be provided in other provisions of law." Thus, a private property owner could not issue a citation imposing a monetary sanction unless a valid provision of law authorized that conduct.²⁴ We have found no such provision.²⁵

²² 2006 Stat. ch. 609 (Assembly 2210).

²³ Assembly Concurrence in Sen. Amends. to Assembly 2210, as amended Aug. 24, 2006, 2006 Reg. Sess. 1 (Aug. 29, 2006).

²⁴ We briefly take note of section 22953, which governs the towing of vehicles from private property that is held open to the public for the parking of vehicles at no fee. Subdivision (a) requires the owners of no-fee parking lots to wait at least one hour before having an impermissibly parked vehicle towed or removed. Subdivision (d) provides: "It is the intent of the Legislature in the adoption of subdivision (a) to avoid causing the unnecessary stranding of motorists and placing them in dangerous situations, *when traffic citations and other civil remedies are available*, thereby promoting the safety of the

Thus, we conclude that neither California Vehicle Code section 22658 nor any other state law authorizes private property owners to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.

Question 2

The next question for our consideration is whether private property owners may acquire, by means of issuing a written warning or posting signage, the right to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.

Often when private property is held open for public parking, the property owner's conditions, and a warning of the consequences of violating those conditions, are set forth on preprinted entrance tickets, or posted inside the lot on conspicuous signage, or both. It is suggested that such an entrance ticket or sign may give a parking lot owner the right to issue citations to car owners who violate the lot's rules. Some interested parties are of the view that members of the public routinely enter into implied contracts with private parking lot owners.²⁶

general public." (Emphasis added.) The subdivision authorizes the issuance of traffic citations, as that term is used in the Vehicle Code, but it does not authorize the lot owner to issue the citations.

²⁵ Other remedies available to a property owner may include trespass remedies, or section 22952(a) (providing that, in addition to having a vehicle removed in compliance with stated conditions, the operator of a parking lot that charges a fee for parking may charge the vehicle owner parking fees in accordance with the posted fee schedule for however long a vehicle is parked beyond the period of time for which it was authorized to be parked).

²⁶ Some have argued that parking lot arrangements are analogous to bailment contracts. We believe the analogy is inapt. Bailment contracts for the parking or storage of motor vehicles are authorized and regulated by statute; a contract purportedly created in the context of impermissible parking is not. Furthermore, unlike a bailment contract, which *limits* a lot owner's liability to the consumer, a contract related to impermissible parking would *impose* liability on the consumer, who is generally in the weaker bargaining position in a parking-lot situation.

According to this view, a preprinted ticket, or properly posted signage, conveys a lot owner's offer of temporary use of a parking space, and that by accepting the ticket or parking in proximity of the signs a driver accepts the offer and consents to the lot owner's terms. Proponents of this view point out that a party's consent to a contract may be manifested by conduct as well as by words,²⁷ and, more specifically, that a "voluntary acceptance of the benefits of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting."²⁸

We are not persuaded. Absent express statutory authority, a private property owner may not issue a citation to a vehicle owner, and this remains the law even when the owner issues a preprinted ticket claiming otherwise. Moreover, absent legislative authorization and regulation of the practice, allowing private property owners to issue their own parking citations would circumvent many of the consumer-protection purposes embodied in the Vehicle Code statutes governing towing and parking citations. For instance, a parking lot owner would not necessarily afford the vehicle owner an opportunity to contest or appeal the imposition of the citation, as the Vehicle Code does.

We understand that private property owners can suffer economic harm from improper parking, which may reduce the number of patrons of an owner's business. So far, however, the Legislature has chosen to alleviate that harm by authorizing towing as an alternative to suing the vehicle owners for trespass, and has limited the issuance of citations to government employees and agents.

Therefore we conclude that, absent statutory authorization, private property owners may not acquire, by means of issuing a written warning or posting signage, the right to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.²⁹

²⁷ Civ. Code § 1581; *Kritzer v. Citron*, 101 Cal. App. 2d 33, 39 (1950) (consent to contract may be "manifested by acts or conduct and need not necessarily be shown by a writing or express words").

²⁸ Civ. Code § 1589; *see also* Civ. Code § 1584 (acceptance of consideration is acceptance of proposal).

²⁹ This opinion does not apply to a situation in which a person enters into a written contract with a parking vendor for parking services or privileges, for example on a monthly basis. In such a case the terms might include a set fee for parking during

Question 3

May persons who tow and impound vehicles under Vehicle Code section 22658 require payment of parking citations that have been issued by private property owners?

We have concluded that a private property owner may not issue a citation imposing monetary sanctions for illegal or impermissible parking on the owner's property. It follows, then, that persons who tow or impound vehicles may not collect payments demanded by those instruments.

Furthermore, the Vehicle Code sets out a detailed and comprehensive scheme governing the towing and impounding of improperly parked vehicles. Nothing in that scheme permits a towing company to require payment of additional charges on behalf of a private property owner. If a tow company were to exact such a payment, the company may be subject to civil liability.³⁰

Question 4

What rights or remedies are available to the owners of vehicles that have received parking citations imposing monetary sanctions issued by private property owners?

Absent statutory authority, a private property owner may not issue a parking citation imposing monetary sanctions on a vehicle owner. A vehicle owner who has received an unauthorized demand for payment from the private property owner needs no rights or remedies with respect to the payment itself; no payment is due. However, the vehicle owner may have grounds to seek damages arising from the property owner's conduct, such as threatening to report or reporting a delinquency on the part of the vehicle owner to credit reporting agencies.

business hours on weekdays, with extra fees or penalties for parking outside of the agreed limits, or any other terms agreed to by the parties. Nothing in this opinion is intended to limit the permissible terms of written contracts between private parties.

³⁰ See § 22658(h)–(j) (tow company that charges “excessive fee” may be liable to vehicle owner for four times the amount of the fee); *People ex rel. Renne v. Servantes*, 86 Cal. App. 4th 1081, 1095 (2001) (excessive or unauthorized fees by towing companies constitutes unlawful and unfair business practices under Bus. & Prof. Code § 17200 et seq.); *People v. James*, 122 Cal. App. 3d 25, 35 (1981) (same).

Accordingly, we reach the following conclusions:

1. Neither California Vehicle Code section 22658, nor any other state law, authorizes private property owners to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.
2. Absent statutory authorization, private property owners may not acquire, by means of issuing a written warning or posting signage, the right to issue parking citations imposing monetary sanctions to the owners of vehicles parked on their property.
3. Persons who tow and impound vehicles under Vehicle Code section 22658 may not require payment of parking citations that have been issued by private property owners.
4. Owners of vehicles who have received parking citations imposing monetary sanctions issued by private property owners or their agents do not have rights or remedies per se, but the citations are unenforceable against the vehicle owners.
