

1979 WL 43070 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1979

\*1 Robert Drake

Administrative Assistant to the Governor

State House

Post Office Box 11450

Columbia, South Carolina 29211

Dear Mr. Drake:

In our telephone conversation of last week, you requested information from this Office with regard to the State's legal recourses should protesting independent truckers park their vehicles so as to obstruct major roads or highways. Specifically, you posed the following questions:

1. Would the State be liable to the owners of the trucks for damages incurred in moving the vehicles?
2. Would be State be liable for the costs of storing these vehicles?
3. Could the State recover the costs of mobilizing the National Guard?

It should initially be noted that [Section 57-7-210 of the South Carolina Code](#) of Laws, 1976, provides that it shall be unlawful for any person to willfully place obstructions upon any highway. [Section 57-7-220 of the Code](#) permits the Department to have such obstructions immediately removed. In addition, Section 56-5-5610, *et seq.*, of the Code, authorizes any law enforcement officer to seize and have removed any 'abandoned vehicle' on the right of way or any road or highway. In this particular article, 'abandoned vehicle' is defined as a motor vehicle left for a period of forty-eight (48) hours. Moreover, Section 56-5-5810, *et seq.*, of the Code, grants similar authority in instances where motor vehicles are abandoned on 'public or private property'. In this article, 'abandoned vehicle' is defined as a motor vehicle left unattended on public property for more than seventy-two (72) hours.

Question 1: Would the State be liable to the owners of the trucks for damages incurred in moving the vehicles?

Generally a State is immune from suit under the doctrine of sovereign immunity unless it has given its consent to be sued. While there is no specific statute permitting damages against the State for its towing of a vehicle, Section 15-77-230, the South Carolina Governmental Vehicle Tort Claims Act, does provide:

Any person sustaining an injury by reason of the negligent operation of any motor vehicle while being operated by an employee of a government entity while in and about the official business of such government entity may recover in an action against such government entity such actual damages as he may sustain. . . .

Under this provision, the maximum property damages recoverable would be Five Thousand (\$5,000.00) Dollars. Although there is no case law on point, it is my opinion that a strong argument could be made that damages to a vehicle caused by the negligent acts of a National Guardsman in towing the vehicle are recoverable under this Act.

The State's sovereign immunity does not normally protect state employees from personal liability for their injurious acts which exceed their official authority. 72 Am. Jur.2d, States, § 115 (1974). However, with respect to members of the National Guard, [Section 25-1-2170 of the Code](#) provides, *inter alia*:

\*2 . . . nor shall any officer or enlisted man be liable to a civil action or criminal prosecution for any act done while in the discharge of his military duty when such act is in the line of duty.

Furthermore, [Section 56-5-5880 of the Code](#) grants immunity to persons involved in the removal of abandoned vehicles from public property—

No agent or employee of any Federal, State, county or municipal government or other political subdivision, no person or occupant of the premises from which any derelict or abandoned motor vehicle shall be removed, nor any person or firm contracting for the removal of or disposition of any such motor vehicle shall be held criminally or civilly liable in any way arising out of or caused by carrying out or enforcing any provisions of this article unless such person is guilty of willfulness, wantonness or recklessness.

There are no similar immunity provisions, however, in the statutes dealing with the removal of obstructions from the highway or the removal of abandoned vehicles from the right of way or any road or highway.

Question 2: Would the State be liable for the costs of storing these vehicles?

The answer to this question would, of course, depend upon the State's agreement with the bailor. If under the contract, we agreed to be responsible for storage charges, I believe we could recover these costs eventually from the owner of the vehicles.

[Section 57-7-240 of the Code](#) ('Obstruction in Highway') makes the obstructor liable for damages 'arising to any highway'. While there are no cases on point, I would argue that storage costs are an element of damage which should be permitted under this section. However, if the vehicle has been abandoned for a period of forty-eight (48) hours, [Section 56-5-5630\(a\)](#) specifically provides for the payment of all towing, preservation and storage charges before the vehicle can be reclaimed.

Question 3: Could the State recover the costs of mobilizing the National Guard?

I know of no precedent for the State to make such a recovery. This would be similar to recovering from a criminal the costs of his arrest and conviction. However, it is my opinion that a valid argument could be made for recovery in tort under a public nuisance theory. In an old South Carolina case, [State v. Hardin](#), 11 S.C. 360, 369 (1878), the Supreme Court held that 'the mere obstruction of a public road to the impediment of travel constitutes, of itself, a public nuisance'. In an old New Hampshire case, [City of Concord v. Burleigh](#), 67 N.H. 106, 36 A. 606 (1892), the Court held that a city could recover the lawful expenses incurred by a municipality in removing an obstruction from the highway (In this case, defendant moved building into highway making highway impassible). The courts theory in that case was that the obstruction of the highway was a public nuisance. Such a cause of action would, however, be without legal precedent, and the changes of recovery would be at best speculative.

\*3 I hope this will be of some assistance to you. If you need further assistance in this regard, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.  
Senior Assistant Attorney General

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