

MEMORANDUM OF LAW

DATE: December 2, 1991

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Seizing Vehicles in Prostitution Cases

You reported to Councilmember McCarty by memorandum of July 30, 1991, that the City Attorney will provide a review on the feasibility of an ordinance requiring the confiscation of vehicles belonging to the customers of prostitutes. The City of Portland, Oregon has been enforcing such an ordinance since December 15, 1989. Your report also states that efforts are needed to amend the state law before a valid local ordinance can be enacted.

This memorandum is restricted to a discussion of legal feasibility. No attempt will be made to undertake an analysis of the financial, administrative or practical problems inherent in a complete feasibility study. Some indication of those problems can be extracted from the "Report to Council Vehicle Forfeiture Ordinance One Year Update" submitted by Commissioner Earl Blumenauer, City of Portland, Oregon, Department of Public Works, dated January 16, 1991, which is attached for information as Attachment One.

The City of Detroit, Michigan also has a "John" program. Attachment Two is a copy of a letter from the Wayne County Prosecuting Attorney dated October 24, 1991, explaining Detroit's implementation of its "John" program.

The scope of this memorandum is limited to a discussion of the preemption problem which prevents the enactment of a motor vehicle forfeiture ordinance for prostitution activity and state law changes needed before such an ordinance can be validly enacted.

Preemption

The State of California's plenary power and its preemption of the entire field of traffic control are stated in Vehicle Code section 21 which provides as follows:

21. Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and

municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.

(Emphasis added)

Thus, unless "expressly provided" by the legislature, a city has no authority over vehicular traffic control. *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982).

The California Motor Vehicle Code does not expressly authorize local authorities to enact an ordinance mandating the confiscation of a motor vehicle in which prostitution activity takes place. Express authority is needed to enact such an ordinance.

A similar problem was posed when local authorities enacted a "cruising" ordinance. An amendment to state law was enacted to permit local regulation of "cruising" after the California First District Court of Appeals held that a Los Gatos "cruising" ordinance was preempted by state law. *Aguilar v. Municipal Court*, 130 Cal. App. 3d 34, 37 (1982). The pertinent portion of the opinion at 37 follows:

(1a) The Town of Los Gatos contends the cruising ordinance is not preempted by the Vehicle Code because it does not regulate a matter covered by the code. To the contrary, the ordinance does fall within "matters covered by this code"--motor vehicle traffic control--a field which has been preempted by the state since 1935.

The California State Legislature enacted a 1982 amendment to Vehicle Code section 21100 by adding subdivision (k) which now allows local authorities to adopt rules and regulations by ordinance or resolution regarding the regulation of "cruising."

Proposed Amendment

An amendment to section 22660 of the Vehicle Code could be enacted allowing local authorities to adopt rules and regulations by ordinance or resolution regarding the regulation of vehicles within which an act of prostitution has occurred. Section 22660 could be amended by adding the underlined wording to provide as follows:

Local Abatement Procedure

22660(a) Notwithstanding any other provision of law, a city, county, or city and county may adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof from private or public property, and for the recovery, pursuant to Sections 25845 or 38773.5 of the Government Code, or assumption by the local authority, of costs of administration and the removal.

(b) Notwithstanding any other provision of law, a city,

county, or city and county may adopt an ordinance establishing procedures for declaring any motor vehicle a public nuisance when used for the purpose of lewdness, prostitution or any act in violation of Penal Code section 647(b), or used by, or kept for the use of prostitutes, and may establish procedures to enjoin and abate such declared nuisance.

Summary

California state law preempts the field of traffic control which precludes any city from enacting an ordinance mandating the confiscation of any motor vehicle belonging to the customers of prostitutes. The preemptive issue can be obviated by an amendment to the state law expressly allowing local authorities to enact such an ordinance.

Please contact me if I can assist you further in this matter.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:rlc:520.1(x043.2)

11/07/91

Or.Dept:Police

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