



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF MICHAEL CARGILL

CASE NO. 1100052

DESCRIPTION OF VEHICLE: Oldsmobile Intrigue (OR 946BCN)

DATE OF HEARING: March 25, 2010

APPEARANCES:

Mr. Michael Cargill, Appellant

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

Mr. Cargill appeared at the hearing and testified on his own behalf. No person appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Cargill and the documents admitted into evidence (Exhibits 1 through and including 11).

A police report, uniform citation, and traffic violation tow report submitted by Officer J. Corona, Portland Police Bureau (Exhibits 6-8), indicates that he initiated a traffic stop on March 21, 2010, against Mr. Benjamin Lee Flowers, who was driving a 2001 Oldsmobile Intrigue owned by Mr. Cargill. The officer indicates "He had no ID at all and I took him into custody for failing to display a license" (Exhibit 6). The officer also wrote "Flowers said the vehicle was insured but there was no proof." Officer Corona issued Mr. Flowers an Oregon Uniform Citation and Complaint for Driving While Suspended, in violation of ORS 811.175, and Driving Uninsured, in violation of ORS 806.010 (Exhibit 7). Officer Corona ordered the vehicle towed pursuant to PCC 16.30.220K, for driving while suspended and driving uninsured (Exhibit 8).

Mr. Cargill testified that in fact the vehicle was insured on the date Mr. Flowers was pulled over and that proof of the insurance was in an envelope, along with the registration, in the car's glovebox. He stated he retrieved this envelope and the documents from the car when he got it out of storage. He also stated he had a copy of his insurance policy showing the vehicle was insured from January through July 2010. Mr. Cargill testified that he had no knowledge of Mr. Flowers' driving suspension and felt it was unfair that he had to pay to retrieve his vehicle.

The Hearings Officer must find a tow is valid if the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. PCC 16.30.220K1 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator has committed the offense of driving uninsured in violation of ORS 806.010.

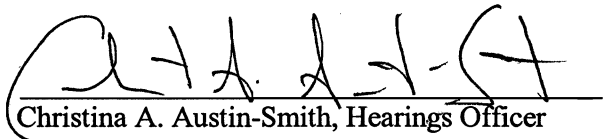
ORS 806.011 requires proof of insurance be carried in each motor vehicle operating in the State. In addition, it states, "Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." PCC 16.30.220K2 permits a police officer, without prior notice, to order a vehicle towed when the officer has probable cause to believe that the vehicle's operator is driving while suspended in violation of ORS 811.175.

The Hearings Officer finds the reports of Officer Corona concerning the traffic stop and reasons for ordering the tow to be relevant and credible. Even if the proof of insurance was in the vehicle on the night Mr. Flowers was pulled over, this fact alone does not invalidate the tow. The Hearings Officer finds Officer Corona had probable cause to believe that Mr. Flowers was driving uninsured that night because he failed to produce a valid insurance card when asked, and in fact stated "the vehicle was insured but there was no proof." In addition, the Hearings Officer finds that the fact that Mr. Flowers was driving while suspended was an additional reason under PCC 16.30.220K to justify the officer's tow order.

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 26, 2010
CAAS: cb


Christina A. Austin-Smith, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 5268

Exhibit #	Description	Submitted by	Disposition
1	Tow hearing request form	Cargill, Mike	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Towed Vehicle Record	Police Bureau	Received
6	Custody Report	Police Bureau	Received
6a	Narrative	Police Bureau	Received
6b	Continuation report	Police Bureau	Received
7	Citation & Complaint	Police Bureau	Received
8	Traffic Violation Tow Report	Police Bureau	Received
8a	Narrative	Police Bureau	Received
9	Notice of Impoundment (too light to read well)	Police Bureau	Received
10	Blank page	Police Bureau	Received
11	Property/Evidence Receipt	Police Bureau	Received