

# Texas House of Representatives



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OPINION COMMITTEE

STATE REPRESENTATIVE  
**Kent Grusendorf**

**RQ-0278-GA**

September 24, 2004

Honorable Greg Abbott  
Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-43968-04

I.D. # 043968

Re: Request for Attorney General Opinion. *Is the decision final, after a hearing in a municipal court under § 685.003 of the Texas Transportation Code, if the hearing results in a finding of no probable cause for the nonconsent tow? If not, what is the post-hearing procedure?*

Dear Attorney General Abbott:

What is the post-hearing procedure, if any, that the municipal judge, sitting as a magistrate pursuant to Chapter 685 of the Transportation Code, must follow after concluding a nonconsent tow hearing where it was found that no probable cause existed for the removal and storage of a vehicle and awarding costs to the prevailing party:

- (1) if the person authorizing the tow fails to comply with the statutory requirement to pay or reimburse the costs of the tow and storage of the vehicle to the owner or operator of the towed vehicle [TEX. TRANSP. CODE ANN. § 685.002(b) (Vernon 1999)]?
- (2) if a motion for rehearing or for new trial or notice of appeal is filed by the losing party, or if demand for enforcement is made by the prevailing party?

The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility without the consent of the owner or operator of the vehicle is entitled to a hearing (the "nonconsent tow hearing") [TEX. TRANSP. CODE ANN. § 685.003 (Vernon 1999)] on whether probable cause existed for the removal and placement of the vehicle [TEX. TRANSP. CODE ANN. § 685.009(c) (Vernon Supp. 2004)]. This nonconsent tow hearing may be held before the justice of the peace or a magistrate in whose jurisdiction is the location from which the vehicle was removed. A judge of a municipal court in an incorporated city is also a magistrate [TEX. CRIM. PROC. CODE ANN., § 2.09 (Vernon Supp. 2003)]. The City of Arlington is an incorporated city. The City of Arlington Municipal Court is a municipal court of record, and each judge is empowered by ordinance to exercise magisterial duties conferred by state law [Municipal Court Chapter of the Code of City of Arlington, 1987, § 2.05(C)].

Recently, a City of Arlington municipal court judge, sitting as a magistrate, conducted nonconsent tow hearings and made written findings of fact and conclusions of law as required by

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Chapter 685 [TEX. TRANSP. CODE ANN. § 685.009(d) (Vernon Supp. 2004)]. Questions have arisen as to whether the municipal court decision is final, closing the matter at the court.

**FACTS:**

In three recent nonconsent tow hearings in the City of Arlington Municipal Court involving two different tow companies that had each towed at least one vehicle from apartment complex parking areas serving two different and unassociated apartment communities, the judge serving as a magistrate concluded the hearings and issued written findings of fact and conclusions of law that there was no probable cause for any of the subject tows.

Notice of the hearings had been provided to all parties, e.g. the tow companies, one manager and both apartment complexes (as the "persons who authorized the tow"), and the petitioners. In the first of the hearings only a representative of the tow company appeared, without an attorney, and the apartment complex and the manager failed to appear and defaulted. In the other two hearings, both respondents - the tow company and apartment complex - failed to appear and wholly defaulted.

Section 685.002(b) requires that, upon a finding of no probable cause, "the person ... that authorized the removal shall: (1) pay the costs of the removal and storage; or (2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator. In the first of the hearings, the person whose vehicle was towed had paid the towing and storage fees before the hearing, but she has not yet been reimbursed as required by law. In the second and third hearings, which involved the nonconsent tow of two vehicles from the same apartment complex by the same towing company, the costs for the removal and storage have not yet been paid; both vehicles remain impounded at the storage facility.

After the § 685 nonconsent tow hearings described above, two attorneys began contacting the court in protest, seeking to 'undo' the court's decision. Each attorney represented one of the tow companies and also the apartment complex involved in the same matter. The attorneys submitted various motions: motions for rehearing, motions for new trial, and notice of appeal. At the same time, the petitioners began contacting the court in protest, seeking to enforce the court's decision. They were demanding compliance under the law, seeking reimbursement in the first case and return of their vehicles in other two cases. It is unclear under the law how the court can proceed in these matters. The City of Arlington contends that the hearing decision is final.

**DISCUSSION:**

Although the attorneys who oppose the finding of 'no probable cause' argue forcefully that there is a right for them to receive a rehearing (if civil procedural rules apply) or a new trial (if criminal procedural rules apply) and to appeal regardless of what procedural rules apply, it is unclear which rules of procedure would apply, and the city has been unable to locate a court that would accept an appeal. Although the persons whose vehicles were towed want to be paid or reimbursed, it appears that there is no explicit authority or procedure for the judge sitting as a magistrate under § 685.009 to enforce the finding of no probable cause, even though the decision triggers the statutory requirement, as provided in § 685.002(b), for "the person who authorized the removal" to pay the costs or reimburse the owner or operator.

The Texas Municipal Courts Education Center addressed some of these issues in Chapter 1(D) of the 2004 Bench Book distributed to municipal judges in which the following conclusions were made regarding magisterial duties under Chapters 684 and 685 of the Texas Transportation Code: "The Rules of Evidence do not explicitly apply. ... The proceedings are nominally civil, but the statute does not apply the civil pleading and discovery rules. ... No provision is made for appeal." Specifically, Chapter 685 of the Texas Transportation Code, which provides the right to a hearing on whether probable cause existed for removal and placement of a vehicle, does not specifically state a right to appeal.


According to *TEXAS PRACTICE: MUNICIPAL LAW AND PRACTICE* § 15.19 (1999), the general rule is that "a matter appealed from a municipal court must be a criminal case. If not, there can be no appeal." See, *City of Lubbock v. Green*, 312 S.W.2d 279 (Tex. Civ. App. - Amarillo 1958, no writ). The rationale is that no court has been expressly granted jurisdiction over a civil appeal from a municipal court. However, a statute may create a right to appeal. For example, Chapter 822 of the Health and Safety Code allows a municipal court to conduct a hearing to determine whether a dog is a dangerous dog. Section 822.0423 of that code specifically sets out the right to appeal the decision of the municipal court. The Texas Court of Criminal Appeals has acknowledged in *dicta* that the criminal courts have no jurisdiction over non-criminal matters heard in municipal court and, further, that a statute may provide another court with proper appellate jurisdiction: "Although TEX. GOV'T CODE ANN. § 29.003 (Vernon 2004) appears not to confer civil jurisdiction on municipal courts, TEX. HEALTH & SAFETY CODE ANN. §§ 822.002 & 822.003 (Vernon 2003) may well confer jurisdiction upon those courts for this specific type of action. Nevertheless, because we have no jurisdiction in this instance, we are not at liberty to decide this issue." *Timmons v. Pecorino*, 977 S.W.2d 603, (Tex. Crim. App. - 1998).

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With these comments, we respectfully request your opinion regarding whether a municipal court's decision is final and, if not, what post-hearing procedure would apply after a hearing pursuant to Chapter 685 of the Texas Transportation Code.

Sincerely,

  
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Honorable Mike Krusee  
Chair, Transportation Committee

  
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Honorable Kent Grusendorf  
Chair, Public Education Committee