BRANDON M. SCOTT
MAYOR

100 Holliday Street, Room 250
Baltimore, Maryland 21202

June 30, 2021

Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202

Re: Section 21-10A-04 of the Transportation Article of the Maryland Code

Dear Attorney General Frosh,

The Baltimore City Council recently considered legislation that would have amended the City's local towing laws. Committee hearings revealed that members of the towing industry had conflicting interpretations of Section 21-10A-04 of the Transportation Article of the Maryland Code. These conflicting interpretations make it difficult for the Baltimore City Department of Transportation to advise the City's Tow Board and to work with the City Council on future local towing legislation. Thus, the Mayor and City Council of Baltimore requests the advice of your office on the following issue:

Specifically, which towing-related fees are included in Section 21-10A-04 of the Transportation Article of the Maryland Code? Which of those fees are doubled in the calculation of the maximum charge? In other words, does "twice the amount of the total fees normally charged or authorized by the political subdivision for the public safety impound towing of vehicles" include all costs to release the car from the impound lot? Or does it only include the fees for the actual towing of the vehicle? What if there is no fee limit set locally, but there is a fee that "is normally charged"? Are only the *towing* fees doubled or are the storage fees also doubled? What is the significance of the words "total fees"?

Enclosed please find the opinion of the Baltimore City Law Department regarding this law.

Please feel free to contact us if you have any questions.

Very truly yours,

Brandon M. Scott
Mayor

cc: Steve Sharkey, Director of Transportation

Ambiguities in Maryland Code, Transportation Article, § 21-10A-04

Section 21-10A-04 (a)(1) of the Transportation Article of the Maryland Code reads as follows:

> (a) Unless otherwise set by local law, a person who undertakes the towing or removal of a vehicle from a parking lot:
>
> (1) May not charge the owner of the vehicle, the owner's agent, the insurer of record, or any secured party more than:
>
> (i) Twice the amount of the total fees normally charged or authorized by the political subdivision for the public safety impound towing of vehicles;
>
> (ii) Notwithstanding§ 16-207(f)(1) of the Commercial Law Article, the fee normally charged or authorized by the political subdivision from which the vehicle was towed for the daily storage of impounded vehicles;
>
> (iii) If a political subdivision does not establish a fee limit for the public safety towing, recovery, or storage of impounded vehicles, $250 for towing and recovering a vehicle and $30 per day for vehicle storage; and
>
> (iv) Subject to subsection (b) of this section, the actual cost of providing notice under this section;

Clarity on what fees can be doubled:

It is unclear if the word "twice" applies to only the fees referred to in subsection (a)(1)(i) ("the amount of the total fees normally charged or authorized by the political subdivision for the public safety impound towing of vehicles") or, whether "twice" applies to all of the fees in subsections (a)(1)(i), (a)(1)(ii), (a)(1), (iii) and (a)(1)(iv).

Research revealed no clarifying cases or Attorney General opinions on this question. However, the best analysis is that "twice" only applies to those fees mentioned in subsection (a)(1)(i) and not any of the other subsections. There are several reasons for this conclusion. First, if the word "twice" were to apply to each of subsections (a)(i) through (a)(iv), it would need to be placed in the text of (a)(1), which modifies the entirety of subsection (a), not placed in subsection (a)(1)(i) only. Statutory construction would dictate that placement of the word was intentional and that it signifies that "twice" is meant to apply only to those items in subsection (a)(1)(i) and not those fees discussed in subsections (a)(1)(ii) through (iv). *See, e.g., Bailey v. United States*, 116 U.S. 501, 506-07 (1995) ("We start, as we must, with the language of the statute . . . . We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. The meaning of statutory language, plain or not, depends on context.").

Second, if the word "twice" were applied to the charge in subsection (a)(1)(iii), the cap would exceed $500.00, an amount that lies outside of the realm of typical towing charges. Rules of statutory construction direct us to avoid construing a statute in a way that would lead to absurd results. *See, e.g., M. Blandon v. State of Maryland*, 304 Md. 316, 319 (1985) (citations omitted).

Furthermore, subsection (a)(1)(iii), which is meant as a guide for counties without set fees for towing and storage, provides an amount for towing that is approximately double the typical amount but provides an amount for storage that is approximately equal to standard storage fees. Specifically, the $250 amount in subsection (a)(1)(iii) for towing is approximately twice a standard amount charged for towing (The City's

amount for towing is $140). Yet, the $30 amount in subsection (a)(1)(iii) for storage is approximately equal to a typical amount of a storage fee. This leads to the conclusion that the word "twice" subsection (a)(1)(i) is meant to only double the actual towing charges and not charges like storage.

Legislative history is also helpful. The original text of Section 21-10A-04 (a)(1) of the Transportation Article of the Maryland Code, passed in 1989 is as follows:

A person who undertakes the towing or removal of a vehicle from a parking lot ~~under 21-10-02 of this Subtitle~~:

(1) May not charge the owner of the vehicle or the owner's agent:
   (i) more ~~for the towing of the vehicle from the parking lot~~ than twice the amount of the total fees normally charged or authorized by the political subdivision for the impound towing of vehicles; ~~or~~ and
   (ii) except as provided in § 16-207(f)(1) of the Commercial Law Article, more than ~~$10~~ $8 per day for storage.

1989 Laws of Md., ch. 462 (strike through is a deletion, and underline is an addition).

This is further evidence that the word "twice" was meant to apply only to "the amount of the total fees normally charged ...for the impound towing of vehicles" because subsection (1)(ii) says very simply "more than $8 per day for storage." Thus, in 1989, the cap was twice the amount for towing and then a separate $8 for storage. If twice were meant to apply to the storage fee, subsection (1)(ii) would have read "more than twice the amount of storage" instead of a specified amount of $8.

State legislation enacted in 2012 also supports this interpretation. 2012 Laws Md., ch. 228 (2012 SB 401). The recitals for that bill show that the intent was to cover the *actual* cost of notice (not double the actual cost):"*authorizing a tower to charge certain persons for the actual costs of providing certain notice*;" 2012 Laws, Md. ch. 228, p. 1. The enrolled version also indicates that this purpose language was in the First Reader version, but then removed and then added back in before final passage. This is strong evidence of the intent to only charge the actual cost of the notice. *See, e.g., Nesbit v. Gov't Emples. Ins. Co.*, 382 Md. 65, 78 (2004) (citing *Tracey v. Tracey*, 328 Md. 380, 385-387, (1992) (earlier and subsequent legislation can be consulted to determine legislative intent.)). Therefore, "twice" in the current subsection (a)(1)(i) of Section 21-10A-04 of the Transportation Article of the Maryland Code likely was never intended to apply to every charge listed in subsections (a)(1)(ii) through (a)(1)(iv), because that would provide more than the actual cost of notice.

State legislation proposed in 2021 but not enacted also supports the interpretation that only the amount of the actual towing fee is to be doubled. 2021 HB 1330. That bill would have added the clarifying language "excluding any administrative fees or additional charges or fees for additional services related to the towing" in subsection (a)(1)(i) of Section 21-10A-04 of the Transportation Article of the Maryland Code. This clarifying language, although the sponsor withdrew the bill, is evidence that the legislature only intended to double the towing fee and not other towing-related charges.

Although it has been argued that the words "total fees" in subsection (a)(1)(i) support the doubling of both the towing and storage charges as well as other related fees, as noted above, this interpretation ignores the placement of the word "twice" and would lead to the doubling of the cost of notice, which makes no sense. The words "*total fees* normally charged ...for the public safety impound towing" most likely relate to the various fees included with towing (*e.g.* hook up plus mileage times rate), not the storage or other fees.

For the many reasons explained above, our conclusion is that Section 21-10A-04 (a)(1) of the Transportation Article of the Maryland only allows the doubling of the fee for the actual towing charge, and not the storage or any other fee.

Clarity on what "normally charged or authorized" means:

Clarity is also needed for the phrase "*normally charged or authorized by the political subdivision*," which is found in both subsections (a)(1)(i) and (a)(1)(ii) of Section 21-10A-04. Is that intended to be a set fee, or also capture a fee limit? The confusion arises when trying to interpret subsection (a)(1)(iii) directive that *"[i]f a political subdivision does not establish a fee limit for the public safety towing, recovery, or storage of impounded vehicles*, $250 for towing and recovering a vehicle and $30 per day for vehicle storage." The City has not established a fee limit for public safety towing but does have a fee that is normally charged or authorized. Is the City capped at $250 for towing and recovering a vehicle and $30 per day for vehicle storage if it does have an amount "normally charged or authorized by the political subdivision," as stated in subsections (a)(1)(i) and (a)(1)(ii) but it does not have a "fee limit," as that phrase is used in subsection (a)(1)(iii)?

The fiscal and policy note analysis on 2021 House Bill 1330 concluded that "Towing and daily storage rates are based on the limits set by the political subdivision for a public safety tow from which the vehicle was towed, or if no limit is established, no more than $250 for towing and $30 per day for storage." 2021 HB 1330, Fiscal Note, p. 2.

Yet, statutory construction principles would dictate that each adjective phrase would have meaning and would not be a synonym for the same concept. *See, e.g. Gillespie v. State*, 370 Md. 219, 222 (2002) (statutory interpretation must give every word effect, avoiding constructions that render any portion of the language superfluous or redundant). Thus, a fee or fees that are "normally charged or authorized by the political subdivision" must be set amounts, and different from when a political subdivision establishes a "fee limit."

The conclusion is that Section 21-10A-04 (a)(1)(iii) of the Transportation Article of the Maryland only applies when a political subdivision has no fee limit. If, like the City, the political subdivision has any fee that is "normally charged or authorized" it is permitted. The amounts of $250 for towing and $30 for storage are not universal limits, they are the default fees when the political subdivision has neither a fee limit nor any fees that are "normally charged or authorized."