

45-B Environmental Affairs
45-C Environmental
70 Motor Vehicles
167-A Unknown Owners
172 Water & Water Courses

December 6, 2005
OPINION NO. 05-0381

La. R.S. 9:151 *et seq.*
La. R.S. 29:735
La. R.S. 32:471 *et seq.*
La. Atty. Gen. Op. Nos. 05-0360, 05-0360-A, 05-0373

Hon. Benny Rousselle
President, Plaquemines Parish
Plaquemines Parish Government
106 Avenue "G"
Belle Chasse, LA 70037

Dear President Rousselle:

The right of entry, notice, and due process requirements for the removal of vehicles from private land following Hurricanes Katrina and Rita are largely covered by La. Atty. Gen. Op. Nos. 05-0360, 05-0360-A, and 05-0373. The removal of such vehicles need not comport with La. R.S. 32:471 *et seq.*, as this does not apply to nonabandoned vehicles. Removing these vehicles in an expedient manner is in the interest of protecting the public and the environment from the "imminent threat" presented by the hazardous chemicals and components of these pieces of debris.

You have requested an opinion of this Office as to the proper legal procedures to be followed in the removal of motor vehicles (largely cars and boats) that were relocated to private property by the winds and water of Hurricanes Katrina and Rita. Specifically, your concerns are:

- 1) You anticipate that the Federal Emergency Management Agency (FEMA) will require assurances that the entry of local governmental officials onto private property, without prior landowner approval, to remove the motor vehicles will result in the local government's work not being reimbursable.
- 2) Can the vehicles be removed from the private property without notification to either the landowner or the vehicle owner?
- 3) What due process requirements must be followed in the process of removing these vehicles?

Your concerns regarding right of entry, notice, and due process have largely been addressed by previous opinions of this Office in the wake of Hurricanes Katrina and Rita. Accordingly, we have attached La. Atty. Gen. Op. Nos. 05-0360, 05-0360-A, and 05-0373 for your reference. Additionally, we direct you to the recent Executive Order, KBB-2005-71, that also addresses debris removal matters. However, we realize that vehicles may raise a few other practical matters not addressed in our previous opinions. In light of this, we undertake the brief review and analysis below.

It should be noted that this opinion covers vehicles that are not considered to be abandoned under Louisiana law. Rather, the owners of the vehicles discussed herein have simply yet to be determined. Thus, it is our opinion that the typical procedures that apply to dealing with abandoned vehicles under La. R.S. 32:471 *et seq.* should not apply in the removal of these items from public or private

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property. Louisiana Revised Statutes 32:471 *et seq.* envision the seizure of vehicles that have been intentionally abandoned and are no longer claimed by their owners. The contrary situation is in evidence in your request. According to your request, the vehicles that you are concerned about were separated from their owners by nature during the hurricanes and the owners never actually abandoned them nor did they intend to relinquish their ownership interests therein. Additionally, many of these vehicles are covered by insurance policies and there is little doubt that the insurers would want to identify these movables prior to their final disposition.

As a basic matter, vehicles are included in FEMA's general definition of debris. See FEMA, *Public Assistance Policy Digest*, FEMA-321, 28 (FEMA 2001); FEMA, *Public Assistance Guide*, FEMA-322, 45 (FEMA 1999). Thus, it is our opinion that the removal of vehicles from private property falls squarely under the debris removal advice provided by this Office in our previous opinions. See La. Atty. Gen. Op. Nos. 05-0360, 05-0360-A, and 05-0373.

As an initial matter, we note that La. R.S. 9:151 *et seq.*, also known as the Uniform Unclaimed Property Act of 1997, does not apply to any of the vehicles that may be removed as debris during the cleanup process. This series of laws apply only to intangible property. Thus it is our opinion that all of the tangible things in the hurricane debris stream are excluded from the coverage of these laws. La. R.S. 9:153.

As with all of the debris located on private property that was discussed in the above cited opinions, there must be an "immediate threat" to life, public health and safety, or public or private property in order to justify the public entity's removal of the debris, including vehicles, and ensure FEMA reimbursement for this action. As we have noted in the above cited opinions, in the aftermath of Hurricanes Katrina and Rita, there is virtually no doubt that such an immediate threat exists.

Certainly then, vehicles, including but not limited to, cars and boats present a significant threat to the public health and safety as well as to the environment, necessitating their expedient removal from wherever they are located (either on public or private property). These threats include posing a safety hazard to children who might use the derelict vehicles as playgrounds, rusting automobiles representing a health hazard to those who may come into contact with them as they repopulate the devastated areas, and the damage that such debris is sure to cause to the underlying property through the leakage of hazardous fluids into the surrounding ground or water. The environmental and health hazards of these vehicles have been noted by the Louisiana Department of Environmental Quality (DEQ). DEQ, *Hurricane Katrina Debris Management Plan* (DEQ 2005). The hazards from automobiles include "gasoline and diesel fuel, refrigerants,

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lubricating oils, mercury ABS switches, mercury convenience switches, lead acid batteries, brake and transmission fluid, antifreeze, and tires.” *Id.* at 6. The hazards from boats include “gasoline and diesel fuel, refrigerants, lubricating oils, mercury bilge switches, propane tanks, large appliances, lead acid batteries, transmission fluid and electronics, such as, radar sets, radios, GPS units, and depth finders.” *Id.* at 7.

As we discussed in La. Atty. Gen. Op. No. 05-0373 about the need to return South Louisiana to a state of normalcy in as expedient a manner as possible, it is our opinion that the removal of such vehicles from private property, in addition to advancing the health, safety, and environmental goals noted above, also substantially advances a return to normalcy for both vehicle owners and their insurers who are awaiting the identification and location of their property.

Finally, in furtherance of the goal of protecting the public’s interests, and thereby complying with the requirements to secure FEMA reimbursement for recovery work, we note that the expedient removal of vehicles from both public and private property to the various governmental staging areas that are processing the vehicles reduces the chance that the vehicles will be acquired by individuals who would attempt to mask the flooded or damaged nature of the vehicles and sell them as used vehicles to unsuspecting consumers. Thus it is our opinion that governmental employees’ entry onto private land to remove vehicles left there by the hurricanes is well within the scope of activities sought to protect the public’s interests, health, safety, and the environment. Therefore, compliance with the aforementioned opinions of this Office, as well as Executive Order KBB-2005-71, should ensure that local governments remain within the legal bounds required by FEMA for reimbursement.

One final matter that is implicit, though not stated, in your request is the matter of immunity of the local government from liability for damages caused as a result of debris operations. As was recently stated by this Office, La. R.S. 29:735

grants general immunity to personnel of the State or any political subdivision thereof, for any actions carried out pursuant to the [The Louisiana Homeland Security and Emergency Assistance and Disaster] Act resulting in the death of, or injury to persons, or damage to property as a result of such actions.

La. Atty. Gen. Op. No. 05-0360. This notion of local immunity was supported by the recent case of *Castille v. Lafayette City-Parish Consolidated Government*, 896 So.2d 1261, 2004-1569 (La. App. 3 Cir. 3/2/05), *writ denied*, 902 So.2d 1029, 2005-0860 (La. 5/13/05), which dealt with people injured as a result of debris operations following Hurricane Lili in 2002. The court in this case found that La. R.S. 29:735(A) did immunize the City of Lafayette “from liability for

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injuries or damages sustained as a result of the City's emergency preparedness activities." *Id.* at 1262. This Office is also aware of the divergent outcome of *De La Cruz v. Riley*, 895 So.2d 589, 2004-0607 (La. App. 4 Cir. 2/2/05), *writ denied*, 899 So.2d 581, 2005-0513 (La. 4/22/05), a case with similar facts to *Castille*. This case involved a fatality and injuries resulting from debris from Hurricane Georges causing an automobile accident. However, for reasons unknown to this Office, the defense of immunity was never mentioned by the municipality in *De La Cruz*. Thus, although the facts are similar to *Castille* and the case deals with post-hurricane debris liability, it is our opinion that the legal issues upon which the case was decided are substantially distinguishable from *Castille* and from the subject matter of this opinion request to make the outcome of no moment to the present matter. However, if *De La Cruz* can be cited for anything with respect to debris operations, it certainly stands for the notion that cleanup crews, despite their immune status, must exercise the utmost care in their debris removal activities in order to ensure the best possible protection of the lives and property of the citizens of this State.

We hope this sufficiently answers your inquiry, however if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
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DATE REQUESTED: October 19, 2005

DATE RELEASED: **December 6, 2005**

REQUESTED BY: Hon. Benny Rousselle
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106 Avenue "G"
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