THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2021-0053

APPEAL OF TRADZ, LLC

BRIEF OF THE PETITIONER, TRADZ, LLC, IN THIS RULE 10 DISCRETIONARY APPEAL, WHICH MATTER HAS BEEN APPEALED FROM THE DEPARTMENT OF SAFETY – DIVISION OF MOTOR VEHICLES

Counsel for Tradz, LLC:

Craig Donais, Esq., #12466
Stephen Zaharias, Esq., #265814
Wadleigh, Starr & Peters, P.L.L.C.
95 Market Street
Manchester, NH 03101
603-669-4140
cdonais@wadleighlaw.com
szaharias@wadleighlaw.com

Oral Argument Requested to be Argued by Craig Donais, Esq.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

QUESTIONS PRESENTED.....5

TEXT OF APPLICABLE STATUTES/RULES.....7

STATEMENT OF THE CASE AND STATEMENT OF FACTS.....45

SUMMARY OF THE ARGUMENT.....49

ARGUMENT.....51

I. Standard of Review.....51

II. Because of the lack of a comprehensive definition of what constitutes an "abandoned vehicle," the hearings examiner's decision cannot stand.....52

III. A vehicle that is initially repossessed can certainly become abandoned.....62

IV. A person can certainly abandon his/her own vehicle.....68

V. This matter is not moot.....74

CONCLUSION.....77

REQUEST FOR ORAL ARGUMENT.....78

DECISION APPEALED.....78

CERTIFICATION.....79

ADDENDUM.....80

TABLE OF AUTHORITIES

Case **Page**

Adams v. Woodlands of Nashua, 151 N.H. 640 (2005).....51

Berthiaume v. McCormack, 153 N.H. 239 (2006).....51

Blagbrough Family Realty Tr. v.
A & T Forest Prod., Inc., 155 N.H. 29 (2007).....51

Choquette v. Roy, 167 N.H. 507 (2015).....51

Coulombe v. Gross, 84 N.H. 212 (1930).....71-72

Ellis v. Candia Trailers
& Snow Equip., Inc., 164 N.H. 457 (2012).....51

Fischer v. Superintendent,
Strafford Cty. House of Corr., 163 N.H. 515 (2012).....74

In re Guardianship of R.A., 155 N.H. 98 (2007).....74

In re Liquidation of Home Ins. Co., 157 N.H. 543 (2008).....53

In re Town of Nottingham, 153 N.H. 539 (2006).....55

K.L.N. Constr. Co., Inc. v.
Town of Pelham, 167 N.H. 180 (2014).....55

Kenison v. Dubois, 152 N.H. 448 (2005).....56

Londonderry Sch. Dist. SAU #12 v.
State, 157 N.H. 734 (2008).....74

McCabe v. Arcidy, 138 N.H. 20 (1993).....52

State v. Carter, 167 N.H. 161 (2014).....76-77

TABLE OF AUTHORITIES (Continued)

Case	Page
State v. Turgeon, 101 N.H. 300 (1958)	53
State v. Westover, 140 N.H. 375 (1995)	72
Sutton v. Town of Gilford, 160 N.H. 43 (2010)	61-62, 73

Statutes/Rules/Other Authorities	Page
RSA 259:87-a	52, 54, 63, 66
RSA 260:14	45
RSA 262	in passim
RSA 541:3	49
RSA 541:6	49
Saf-C 1900	in passim
N.H. S. Ct. R. 16	5, 79
Black's Law Dictionary (11th ed. 2019)	46, 55, 69, 73
https://www.law.cornell.edu/wex/	55
https://legal-dictionary.thefreedictionary.com	55

QUESTIONS PRESENTED[1]

1. Whether the hearings examiner erred when upholding DMV's denials of 10 applications by Petitioner for titles as to abandoned vehicles and denied Petitioner's motion for rehearing, when such decisions were premised upon a lack of a definition of what constitutes an "abandoned vehicle." See Appx. p. 3-219;[2] see Transcript.[3]

2. Whether the examiner erred when upholding DMV's denials of 10 applications by Petitioner for titles as to abandoned vehicles and denied Petitioner's motion for rehearing, when such decisions were premised upon the erroneous legal conclusion that a repossessed vehicle can purportedly never become, or otherwise be deemed to be, abandoned. See Appx. p. 3-219; see Transcript.

3. Whether the examiner erred when upholding DMV's denials of 10 applications by Petitioner for titles as to abandoned vehicles and

---

[1] Many of the questions presented are interrelated and may be subsumed within the context of another question; therefore, each question may not be explicitly addressed on an individual basis. See N.H. S. Ct. R. 16(3)(b).

[2] Note that references to the Appendix (or "Appx.") refer to the Appendix that Petitioner is submitting simultaneously with this Brief.

[3] The transcript of the hearing below was submitted to this Court by Petitioner in March 2021. The hearing audio was also provided to this Court.

denied Petitioner's motion for rehearing, when such decisions were premised upon the erroneous legal conclusion that a person supposedly cannot abandon his/her own vehicle. See Appx. p. 3-219; see Transcript.

4. Whether this matter is moot by virtue of one of the vehicles being sold to a third-party buyer. See Appx. p. 3-219; see Transcript.

TEXT OF APPLICABLE STATUTES/RULES

Section 262:1

262:1 Penalties. –
I. A person who, with fraudulent intent:
(a) Alters, forges or counterfeits a certificate of title or certificate of origin;
(b) Alters or forges an assignment of a certificate of title or a certificate of origin, or an assignment or release of a security interest, on a certificate of title or a certificate of origin or a form the director prescribes;
(c) Has possession of or uses a certificate of title or certificate of origin knowing it to have been altered, forged or counterfeited; or
(d) Uses a false or fictitious name or address, or makes a false statement, or fails to disclose a security interest, or conceals any other material fact, in an application for a certificate of title or certificate of origin, or in any proof or statement in writing in connection therewith, shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.
II. A person who:
(a) With fraudulent intent, permits another, not entitled thereto, to use or have possession of a certificate of title;
(b) Wilfully fails to mail or deliver a certificate of title or application therefor to the department within 20 days after the time required by this title;
(c) Wilfully fails to deliver to his transferee a certificate of title within 20 days after the time required by this title; or
(d) Wilfully violates any provision of this chapter, except as provided in paragraph I, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. RSA 269-A:31. 1967, 357:1. 1973, 528:155. 1977, 166:1; 196:4. 1981, 146:1. 1987, 263:3, eff. Jan. 1, 1988. 2014, 278:7, eff. Sept. 26, 2014.

Section 262:2

262:2 Report of Theft; Recovery of Unclaimed Vehicle. –
I. A peace officer who learns of the theft of a vehicle not since recovered, or of the recovery of a vehicle whose theft or conversion he knows or has reason to believe has been reported to the department, shall forthwith report

the theft or recovery to the department.
II. An owner or a lienholder may report the theft of a vehicle, or its conversion, if a crime, to the department, but the director may disregard the report of a conversion unless a warrant has been issued for the arrest of a person charged with the conversion. A person who has so reported the theft or conversion of a vehicle shall, forthwith after learning of its recovery, report the recovery to the department.
III. An operator of a place of business for garaging, repairing, parking, or storing vehicles for the public, in which a vehicle remains unclaimed for a period of 30 days, shall within 5 days after the expiration of that period, report the vehicle as unclaimed to the director. A vehicle left by its owner whose name and address are known to the operator or his employee is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this paragraph forfeits all claims and liens for its garaging, parking, or storing and shall be fined not more than $25 for each day the failure to report continues. The report required under this paragraph shall be by verified mail, as defined in RSA 21:53.
IV. The department shall maintain and appropriately index weekly any cumulative public records of stolen, converted, recovered and unclaimed vehicles reported to it pursuant to this section. The director may make and distribute copies of the records so maintained to police officers upon request without fee and to others for the fee, if any, the commissioner prescribes.
V. The director may suspend the registration of a vehicle whose theft or conversion is reported to him pursuant to this section; until the department learns of its recovery or that the report of its theft or conversion was erroneous, it shall not issue a certificate of title for the vehicle.

Source. RSA 269-A:32. 1967, 357:1. 1981, 146:1. 2012, 207:3, eff. Aug. 12, 2012. 2019, 242:3, eff. Oct. 10, 2019.

Section 262:3

262:3 False Report. – A person who knowingly makes a false report of the theft or conversion of a vehicle to a police officer or to the director shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. RSA 269-A:33. 1967, 357:1. 1973, 528:156. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:3-a

262:3-a Notification of Repossession. – Any person who repossesses a motor vehicle, as defined in RSA 259:87-a, shall notify, within 2 hours after the repossession, a police officer of the town or city where the act of repossession occurred of the fact of the repossession and the name, address and telephone number of the owner and lienholder. If no police officer is available to receive the notification, then notification shall be given to the sheriff's department of the county where the act of repossession occurred. The police department or sheriff shall keep a record of such notification for 30 days after the notification.

Source. 1993, 58:2, eff. June 15, 1993.

Section 262:4

262:4 Impeachment of Credibility of Defendant. – In a prosecution for a crime specified in this subdivision, a certified copy of a conviction under RSA 262:1, I is admissible to impeach the credibility of the defendant.

Source. RSA 269-A:34. 1967, 357:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:5

262:5 Penalties Additional to Other Statutes. – The penal provisions of this chapter in no way repeal or modify any existing provision of criminal law but are additional and supplementary thereto.

Source. RSA 269-A:35. 1967, 357:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:6

262:6 Identification Marks. – No motor vehicle shall be registered unless it shall have permanently cut, impressed, or embossed on some portion thereof a factory, serial, or vehicle identification number or mark. Any person who shall knowingly have in his possession any motor vehicle

from which such number or mark shall have been removed, defaced, obliterated, or changed, shall forthwith file with the department a sworn statement giving the reason therefor, a description of the vehicle, and the source of his title. If satisfied as to the facts the director may grant permission to cut, impress, or emboss permanently into the motor of such vehicle a special identification number or mark which shall thereafter be deemed sufficient for the purpose of registration of such vehicle.

Source. 1931, 79:1. RL 116:5. RSA 260:7. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:7

262:7 Changed or Removed Vehicle Identification Number. – Any person who buys, receives, possesses, sells or disposes of a motor vehicle or an engine for a motor vehicle, knowing that a vehicle identification number of said motor vehicle or engine has been removed, defaced, obliterated, or changed shall be guilty of a misdemeanor; provided, however, if upon discovery by any person that a vehicle identification number has been removed, defaced, obliterated, or changed, he shall report the same to the nearest police station and shall not be charged with a violation of this section.

Source. RSA 260:7-a. 1967, 214:1. 1973, 528:132. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:8

262:8 Concealing Identity of Vehicle. – Any person who buys, receives, possesses, sells or disposes of a motor vehicle or an engine for a motor vehicle, with knowledge that a vehicle identification number of the motor vehicle or engine has been removed, defaced, obliterated, or changed and with intent to conceal or misrepresent the identity of the motor vehicle or engine shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

Source. RSA 260:7-b. 1967, 214:1. 1973, 528:133. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:9

262:9 Penalty for Removing. – No person shall willfully remove, deface, obliterate, change, or cause to be removed, obliterated, defaced, or changed any factory, serial, or other vehicle identification number or mark on or from any motor vehicle. Whoever violates any provision of this section shall be guilty of a misdemeanor.

Source. 1931, 79:1. RL 116:6. RSA 260:8. 1973, 528:134. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:10

262:10 Removal of Vehicle Identification Plate. – It shall be a misdemeanor for any person or persons to remove or cause to be removed a vehicle identification number plate assigned to a vehicle by the manufacturer or the director for the purpose of concealing the identity of a vehicle, and it shall be unlawful for any person or persons to have in his possession for such purpose such a vehicle identification number plate.

Source. RSA 269-A:20-a. 1969, 504:6. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:11

262:11 Examination of Vehicles. – The director or his agents, including title investigators, are authorized to examine any vehicle on the premises of any new or used car dealer, at any body shop, auction, salvage yard, or any shop where vehicles are repaired or restored for the purpose of checking vehicle identification numbers or investigating any violation in the process of selling, repairing, junking, dismantling or crushing a vehicle.

Source. RSA 269-A:20-b. 1977, 191:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:12

262:12 Taking Without Owner's Consent. – If any person shall willfully, or mischievously take, drive, or use any motor vehicle without the consent of the owner or person having control thereof, but not with intent to steal the same, he shall be guilty of a misdemeanor.

Source. 1945, 80:1. RSA 263:82. 1971, 26:1. 1973, 528:146. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:13

262:13 Possession of Master Keys. –
No person shall have in his possession a motor vehicle master key except for the following:
I. Motor vehicle dealers registered under RSA 261:104.
II. Garage mechanics, parking lot attendants or others engaged in the business of repairing, storing or maintaining physical security over motor vehicles.
III. Law enforcement officers.
IV. Locksmiths, key makers or other persons engaged in the business of designing, making, altering, duplicating or repairing locks or keys.
V. A common or contract carrier when such keys are for use incidental to the conduct of its business.
VI. Officers or employees of any automobile club or association if such keys are for use in connection with the activities of such club or association.
VII. Employees of any governmental agency if such keys are for use in connection with the activities of such agency.

Source. RSA 263:82-b. 1967, 222:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:14

262:14 Master Keys; Prohibited Acts. – No person shall purchase, print, circulate, distribute, sell, or offer for sale advertising or publications containing advertisements promoting the sale of master keys as defined herein except in connection with trade publications or other advertisements intended primarily for those engaged in the activities specified in RSA 262:13.

Source. RSA 263:82-c. 1967, 222:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:15

262:15 Master Keys; Penalty. – Any person who violates the provisions of RSA 262:13 and 14 shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

Source. RSA 263:82-d. 1967, 222:1. 1973, 528:147. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:16

262:16 Counterfeit, Unauthorized or Forged Stickers, or Decals or Facsimile; Altered or Modified Temporary Motor Vehicle Registration Plates. –

I. Any person who shall make, cause to be manufactured or issued, or shall display, use, offer for sale, possess, sell or alter an unofficial inspection sticker or an unofficial vehicle registration validation decal with intent to defraud or facilitate a fraud shall, if a natural person, be guilty of a misdemeanor; and any other person shall be guilty of a felony.

II. Any person who, without authority from the director, shall make, cause to be manufactured or issued, display, use, offer for sale, possess, sell or alter an official inspection sticker or an official vehicle registration decal with intent to defraud or facilitate a fraud shall be guilty of a misdemeanor if a natural person or a felony if any other person.

III. Any person who displays a facsimile of an official inspection sticker upon any vehicle, or who displays a facsimile of a motor vehicle registration validation decal upon a vehicle, or displays an official inspection sticker and knows or should have known that the inspection sticker was improperly issued or obtained, or who displays an official vehicle registration validation decal and knows or should have known that the registration decal was improperly issued or obtained shall be guilty of a violation.

IV. Any person who alters or displays on any vehicle, an altered or modified temporary motor vehicle registration plate, and who knows or should have known that the temporary registration was altered, or falsely obtained, shall be guilty of a violation.

Source. RSA 260:16-b. 1973, 159:1. 1979, 358:1, I. 1981, 146:1. 1983, 431:8. 1997, 12:1, 2, eff. Jan. 1, 1998.

Section 262:16-a

262:16-a Seizure of Unauthorized Documents and Plates. – The director and such employees of the department, and peace officers as he shall designate, are hereby authorized to take possession of any certificate of title, registration or license issued by this or any other state, which has been revoked, cancelled, or suspended, or which is fictitious, stolen or altered.

Source. 1981, 479:21, eff. Jan. 1, 1982 at 12:01 a.m.

Section 262:17

262:17 Odometer Tampering; Certification of Mileage. –
I. A person is guilty of an offense if:
(a) He changes, tampers with or defaces, or attempts to change, tamper with or deface, any gauge, dial, or other mechanical instrument, commonly known as an odometer or an hour meter in a motor vehicle, highway building appliance, snowmobile or boat, which, under normal circumstances and without being changed, tampered with or defaced, is designated to show by numbers or words the distance which the motor vehicle, highway building appliance, snowmobile or boat has traveled or the use sustained with the intention of misrepresenting to a prospective or eventual purchaser the number of miles traveled or the use sustained by said motor vehicle, highway building appliance, snowmobile or boat; or
(b) Being the owner of or agent for the owner of a motor vehicle, highway building appliance, snowmobile or boat, he knowingly fails to certify the actual mileage of such motor vehicle, highway building appliance, snowmobile or boat to the best of his knowledge at the time of sale, trade or other type of transaction resulting in an assignment of title of the motor vehicle, highway building appliance, snowmobile or boat; or
(c) Being the transferee of or agent for the transferee of a motor vehicle, he knowingly accepts an assignment of a certificate of title from the previous owner unless the actual mileage of the motor vehicle at the time of sale, trade, or other type of transfer resulting in an assignment of title to the

motor vehicle has been entered on the certificate of title and certified by the previous owner to the best of his knowledge.
II. Evidence that any odometer or hour meter shows less mileage or fewer hours after it has come into the possession of any person than was shown before it came into his possession shall be prima facie evidence of a violation of paragraph I(a) of this section, except for those odometers which have been repaired or replaced as provided in 15 U.S.C., section 1987(a).
III. Certification of actual mileage pursuant to paragraph I(b) of this section shall be:
(a) By an entry on the certificate of title or the application for a title if a certificate of title is required;
(b) By a notarized statement signed by the seller if no certificate of title is required.
IV. A person who commits an offense under this section shall be guilty of a misdemeanor for the first offense and, for a subsequent offense, shall be guilty of a class B felony if a natural person or a felony if any other person.

Source. RSA 260:91, 92. 1971, 533:1. 1973, 528:136. 1977, 184:1. 1981, 146:1; 429:1, 2. 1983, 289:1, eff. Aug. 17, 1983.

Habitual Offenders

Section 262:18

262:18 Declaration of Policy. –
It is hereby declared to be the policy of New Hampshire:
I. To provide maximum safety for all persons who travel or otherwise use the ways of the state; and
II. To deny the privilege of driving motor vehicles on such ways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her court and the statutorily required acts of her administrative agencies; and
III. To discourage repetition of criminal acts by individuals against the peace and dignity of the state and her political subdivisions and to impose increased and added deprivation of the privilege to drive motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws.

Source. RSA 262-B:1. 1969, 433:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:19

262:19 Procedure. –

I. When the director determines that any person is an habitual offender within the meaning of RSA 259:39, he shall issue an order requiring that person to appear for a hearing to show cause why he should not be barred from driving a motor vehicle upon the ways of this state. The show cause order shall incorporate a certified transcript or abstract of the person's conviction record, which shall be prima facie evidence that the person named therein was duly convicted, by the court in which such conviction or holding was made, of each offense shown by such transcript or abstract. If any person shall deny any of the facts stated in the transcript or abstract, he shall have the burden of proving that such is untrue. For the purposes of this chapter, a plea of nolo contendere shown on such transcript or abstract shall not make the same inadmissible.

II. If a person denies he was convicted of any offense necessary for a holding that he is an habitual offender and if the director cannot, on the evidence available to him, make such a determination, the director may certify the decision of such issue to the court in which the conviction was made. The court to which certification is made shall immediately conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the director.

III. If the director finds that the person is not the same person named in the transcript or that the abstract does not contain the number of valid convictions required by RSA 259:39, the proceeding shall be dismissed. If the director finds that the person is the same person named in the transcript or abstract and that the person is an habitual offender, the director shall, by appropriate order, revoke the person's driver's license and direct the person not to drive a motor vehicle on the ways of this state for a period of one to 4 years effective upon the date of the order or upon dates of final conviction of the offense that resulted in certification. All licenses or permits to operate a motor vehicle on the ways of this state must be surrendered to the director. A copy of the order shall become part of the record of the division of motor vehicles.

IV. No conviction for an offense specified under RSA 259:39 shall be annulled until at least 7 years after the conviction date. No court shall

vacate, expunge, delete, cancel or otherwise remove such a conviction for at least 7 years subsequent to the conviction date, unless it is determined by a court of competent jurisdiction that the conviction was illegal or otherwise improper and invalid.
V. The director may use convictions obtained in another state for the offense of reckless operation, driving while intoxicated, operating after suspension or revocation, manslaughter resulting from the operation of a motor vehicle, and negligent homicide resulting from the operation of a motor vehicle for the purpose of certifying an habitual offender.
VI. A person who had his license revoked pursuant to RSA 262:19, III prior to July 17, 1987, may petition the director after a minimum of one year of such revocation for restoration of his driving privileges. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conditions under which the director may restore a driver's license revoked under such conditions prior to the expiration of the original period of revocation.

Source. RSA 262-B:3. 1969, 433:1. 1973, 584:2. 1975, 496:2. 1981, 146:1. 1983, 373:2. 1985, 213:10. 1987, 238:2, 3. 1988, 238:1, 2. 1998, 325:1, eff. Jan. 1, 1999.

Section 262:20

262:20 Repealed by 1985, 213:26, I, eff. Jan. 1, 1986. –

Section 262:21

262:21 Repealed by 1985, 213:26, I, eff. Jan. 1, 1986. –

Section 262:22

262:22 Prohibition. –
No license to drive motor vehicles in New Hampshire shall be issued to an habitual offender:
I. Until such time as the period of revocation imposed pursuant to RSA 262:19, III has been served;
II. Until such time as financial responsibility requirements are met, or until the commissioner, for good cause shown, grants a waiver of the requirements. Such waiver shall only be granted where the habitual

offender has not driven a motor vehicle in violation of the order and has not held a license for 5 years or more; and
III. Until the license of such person to drive a motor vehicle in this state has been restored in writing by an order of the director or of a court of record entered in a proceeding as hereinafter provided.

Source. RSA 262-B:6. 1969, 433:1. 1981, 146:1. 1985, 213:11. 1987, 238:4. 2012, 60:1, eff. May 14, 2012.

Section 262:23

262:23 Penalty. –
I. It shall be unlawful for any person to drive any motor vehicle on the ways of this state while an order of the director or the court prohibiting such driving remains in effect. If any person found to be an habitual offender under the provisions of this chapter is convicted of driving a motor vehicle on the ways of this state while an order of the director or the court prohibiting such operation is in effect, he or she shall be guilty of a felony and sentenced, notwithstanding the provisions of RSA title LXII, to imprisonment for not more than 5 years. No case brought to enforce this chapter shall be continued for sentencing; provided, however, that any sentence or part thereof imposed pursuant to this section may be suspended in cases in which the driving of a motor vehicle was necessitated by situations of apparent extreme emergency which required such operation to save life or limb. Any sentence of one year or less imposed pursuant to this paragraph shall be served in a county correctional facility. The sentencing court may order that any such offender may serve his or her sentence under home confinement pursuant to RSA 651:19 based on the rules and regulations of the county correctional facility where the sentence is to be served, provided the offender first serves 14 consecutive days of imprisonment prior to eligibility for home confinement. Habitual offenders shall only be eligible for the home confinement program once per lifetime. Any sentence of more than one year imposed pursuant to this paragraph shall be served in the state prison.
II. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his license, permit or privilege to drive is suspended or revoked, or is charged with driving without a license, the court before hearing such charge shall determine

whether such person has been held an habitual offender and by reason of such holding is barred from driving a motor vehicle on the ways of this state. For the purposes of this section, in determining whether the person has been held an habitual offender and by reason of such holding is barred from driving a motor vehicle on the ways of this state, a certified copy of the individual's motor vehicle record on file with the division shall be as competent evidence in any court within this state as the original record would be if produced by the director as legal custodian thereof.
III. Notwithstanding paragraph I, any person who qualifies under RSA 259:39 whose certification was not based on any conviction under RSA 265-A:2, I or any misdemeanor or felony motor vehicle conviction pursuant to RSA title XXI, and who has not been convicted of any such offense, or any reasonably similar offense in any jurisdiction within the United States and Canada, since the date of the certification shall be guilty of a class A misdemeanor and may be sentenced to one year or less. Any person incarcerated on June 8, 1992, pursuant to certification as an habitual offender under RSA 259:39, who does not have a conviction under RSA 265-A:2, I involving a vehicle or any misdemeanor or felony motor vehicle convictions pursuant to RSA title XXI, may apply immediately to the superior court for sentence review and reduction.

Source. RSA 262-B:7. 1969, 433:1. 1973, 528:142; 584:5. 1981, 146:1; 543:7, 8. 1985, 213:12. 1988, 238:3, 7. 1992, 31:1. 2000, 307:1, 2. 2001, 169:4. 2003, 237:10. 2006, 260:18, eff. Jan. 1, 2007. 2016, 312:1, eff. Jan. 1, 2017. 2018, 71:1, eff. Jan. 1, 2019.

Section 262:24

262:24 Restoration of License. – Upon the expiration of the revocation period imposed pursuant to RSA 262:19, III, or under conditions established by the commissioner pursuant to RSA 262:19, VI, such person may petition the director for restoration of his license to drive a motor vehicle on the ways of this state. Upon such petition, and for good cause shown, the director may restore to such person the license to drive a motor vehicle on the ways of this state upon such terms and conditions as the director may prescribe subject to other provisions of law relating to the issuance of drivers' licenses.

Source. RSA 262-B:8. 1969, 433:1. 1973, 584:6. 1981, 146:1. 1985, 213:13. 1987, 238:5. 1988, 238:4, eff. April 30, 1988.

Section 262:25

262:25 Appeal. – An appeal to the superior court of Merrimack county may be had from any final action or order of the director pursuant to this chapter within 30 days of the date of the final action or order. All findings of the director upon all questions of fact properly before him shall be deemed prima facie lawful and reasonable and shall not be disturbed on appeal, unless the court finds that they could not reasonably have been made. The action or order appealed from shall not be set aside or vacated unless the party appealing shall prove that the director acted illegally with respect to jurisdiction, authority, or observance of law. An appeal to the supreme court of New Hampshire may be had from any action or order of the superior court entered under RSA 262:25 in the same manner and form as such an appeal would be noted, perfected, and tried in any other criminal action.

Source. RSA 262-B:9. 1969, 433:1. 1973, 584:7. 1981, 146:1. 1985, 213:14. 1987, 238:5, eff. July 17, 1987.

Section 262:26

262:26 Existing Law. – Nothing in this subdivision shall be construed as amending, modifying or repealing any existing law of New Hampshire or any existing ordinance of any political subdivision relating to the driving or licensing of vehicles, the licensing of persons to drive vehicles or providing penalties for the violation thereof; or shall be construed so as to preclude the exercise of the regulatory powers of any division, agency, department or political subdivision of the state having the statutory power to regulate such driving and licensing.

Source. RSA 262-B:10. 1969, 433:1. 1981, 146:1, eff. Jan. 1, 1982.

Reciprocal Provisions as to Arrest of Nonresidents

Section 262:27

262:27 Issuance of Citation to Resident of Reciprocating State. –
I. Other provisions of law to the contrary notwithstanding, a police officer making an arrest for a traffic violation shall issue a citation as appropriate to any motorist who is a resident of or holds a license issued by a reciprocating state and shall not, subject to the exceptions noted in RSA 262:27, II, require such motorist to post bail or bond to secure appearance for trial, but shall accept such motorist's personal recognizance that he will comply with the terms of such citation; provided, however, that a person so arrested shall have the right upon his request to post bail or bond in a manner provided by law and, in such case, the provisions of this subdivision shall not apply.
II. No motorist shall be entitled to receive a citation under the provisions of RSA 262:27, I, nor shall any police officer issue such citation under said paragraph, if the offense for which the citation would be issued is one of the following:
(a) An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of this state; or
(b) An offense, the conviction of or the forfeiture of collateral for which requires the suspension or revocation of the motorist's license.
III. Upon the failure of any nonresident to comply with the terms of such a traffic citation, the court having jurisdiction may issue a warrant for his arrest and he shall be subject to the penalty provisions of RSA 642:8. The court shall notify the department of the failure of the cited nonresident to appear. Said notification shall clearly identify the person arrested; describe the violation, specifying the section of the statute, code or ordinance violated; shall indicate the location of the offense, give description of vehicle involved, and show the registration or license number of the vehicle.

Source. RSA 264-A:2. 1971, 349:1. 1981, 146:1. 1988, 110:11. 1989, 386:10, eff. June 5, 1989.

Section 262:28

262:28 Department to Transmit Court Notification to Reciprocating State; Suspension of Resident's License for Noncompliance With Citation Issued by Reciprocating State. –

I. Upon receipt of a court notification pursuant to RSA 262:27, III, the department shall transmit a certified copy of said notification to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed.

II. Upon receipt from the licensing authority of a reciprocating state in which an arrest was made, of a certification of noncompliance with a citation issued in a reciprocating state by a person holding a driver's license issued by this state, the director forthwith shall suspend such person's license. The order of suspension shall indicate the reason for the order, and shall notify the motorist that his license shall remain suspended until he has furnished evidence satisfactory to the department that he has fully complied with the terms of the citation which was the basis for the suspension order.

III. A copy of any suspension order issued hereunder shall be furnished to the licensing authority of the reciprocating state in which the arrest was made.

IV. It shall be the duty of the director to ascertain and remain informed as to which states are "reciprocating states" hereunder and, accordingly, to maintain a current listing of such states, which listing he shall from time to time cause to be disseminated among the appropriate departments, divisions, bureaus and agencies of this state, the principal executive officers of the several counties, cities and towns of this state and the licensing authorities in all other states which are, have been, or claim to be a "reciprocating state" pursuant hereto.

Source. RSA 264-A:3. 1971, 349:1. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:28-a

262:28-a Foreign Diplomatic and Consular Officers. –

I. This section shall apply only to persons who display drivers' licenses issued by the United States Department of State to a law enforcement officer, or who otherwise claim immunities and privileges under Title 22, Chapter 6 of the United States Code with respect to violations of RSA

630:2, RSA 630:3, or any provision of this title.
II. If a person who is subject to this section is stopped by a law enforcement officer who has probable cause to believe that the person has violated RSA 630:2, RSA 630:3, or any provision of this title, the law enforcement officer shall:
(a) As soon as practicable, contact the United States Department of State office in order to verify the driver's status and immunity, if any;
(b) Record all relevant information from any driver's license or identification card, including a driver's license issued by the United States Department of State; and
(c) Within 5 work days after the date of the stop, forward to the department:
(1) A vehicle accident report, if the person was involved in a vehicle accident; and
(2) A copy of the citation or other charging document, if a citation or other charging document was issued to the person; or
(3) A written report of the incident, if a citation or other charging document was not issued to the person.
III. The department shall:
(a) File each vehicle accident report, citation or other charging document, and incident report that the department receives under this section.
(b) Keep convenient records or make suitable notations showing:
(1) Conviction; and
(2) Vehicle accident.
(c) Send a copy of each document and record received under this section to the Bureau of Diplomatic Security, Office of Foreign Missions, United States Department of State.
IV. The provisions of this section shall not prohibit or limit the application of any other provision of law to a person who has or claims immunities or privileges under Title 22, Chapter 6 of the United States Code.

Source. 2001, 150:1, eff. Jan. 1, 2002.

Nonresident Violator Compact

Section 262:29

262:29 Agreement Authorized. – The director is authorized and directed to execute all documents and perform all other acts necessary to enter into and carry out the provisions of the nonresident violator compact.

Source. RSA 264-B:1. 1979, 358:7. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:30

262:30 Entry Into Compact and Withdrawal. –
I. Entry into the compact shall be made by a resolution of ratification executed by the director and submitted to the chairman of the board of compact administrators.
II. The effective date of entry shall be specified by the director, but it shall not be less than 60 days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the director has been received.
III. The director may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction.
IV. The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.
V. The compact shall be known as the nonresident violator compact of 1977.

Source. RSA 264-B:2. 1979, 358:7. 1981, 146:1, eff. Jan. 1, 1982.

Abandoned Vehicles

Section 262:31

262:31 Authority to Take. – An authorized official may take a vehicle into his or her custody and may cause the same to be taken away and stored at some suitable place only as provided in this subdivision.

Source. 1931, 83:1. RL 121:1. RSA 266:1. 1981, 146:1; 361:1, 3. 2010, 344:1, eff. Sept. 18, 2010.

Section 262:32

262:32 Reasons for Removal and Impoundment. –
An authorized official may cause the removal and storage of a vehicle if he has reasonable grounds to believe that:
I. A vehicle has been left unattended on the paved portion of a toll road, turnpike, or interstate and defense highway for a period of greater than 4 hours;
II. A vehicle has been left unattended on any way or the right-of-way thereof for a period of greater than 24 hours;
III. A vehicle is obstructing any way or the access thereto, or access to a public building, or is or will be a menace to traffic if allowed to remain, or is obstructing snow removal or highway maintenance operations;
IV. The owner or legal occupant of private property has complained that a vehicle is obstructing the passage of vehicles from a public street or highway onto the driveway of such private property;
V. A vehicle is reported stolen, or is apparently abandoned, or without proper registration, or apparently unsafe to be driven;
VI. The owner or custodian of the vehicle is under arrest or otherwise incapacitated, and the vehicle will be a menace to traffic if permitted to remain; or
VII. A vehicle has been left unattended within a state-owned park and ride facility for a period of greater than 21 days.
VIII. A vehicle is parked or has been left unattended on election day for longer than 3 hours in an area designated for voters who are temporarily present for the purpose of voting.

Source. 1931, 83:1. RL 121:1. RSA 266:1. 1981, 146:1; 361:1, 3. 2006, 254:3. 2008, 210:3, eff. Aug. 15, 2008. 2020, 36:4, eff. Jan. 1, 2020.

Section 262:33

262:33 Procedure for Removal and Impoundment. –
I. Upon satisfying the requirements of RSA 262:32, such vehicle may be removed and stored in a suitable place, and all reasonable charges incurred

as a result of such removal and storage shall be a lien against the vehicle which shall be paid by the owner, custodian, or person claiming such vehicle, except as otherwise provided in this section.
II. Whenever a vehicle is towed pursuant to RSA 262:32 the owner or other person lawfully entitled to the possession of the vehicle shall be entitled to recover said vehicle and release of the above lien by payment of all reasonable towing and storage charges. If the owner or other person lawfully entitled to possession of the vehicle wishes to challenge whether there was sufficient grounds for towing and impoundment, he or she may pay over to the custodian of the vehicle an amount equal to the towing and storage charges to secure the release of such vehicle, and, within 15 days of the towing and impoundment, request in writing a hearing.
III. The hearing shall be held before the head of the law enforcement agency which employs the authorized official who caused the vehicle to be removed and stored, or his or her designee. In the event such agency head or his or her designee determines sufficient grounds did not exist for the removal and storage of the vehicle, the law enforcement agency shall reimburse the owner or other person lawfully claiming possession for any amount paid to the custodian to secure release of the vehicle.
IV. Nothing in this section shall prevent a review of the reasonableness of the towing or other action as may be permitted by laws of this state by a court of competent jurisdiction.

Source. 1931, 83:1. RL 121:3, 4. RSA 266:3, 4. 1981, 146:1; 361:1, 3. 2010, 344:2, eff. Sept. 18, 2010.

Section 262:34

262:34 Notice of Removal. – Whenever an authorized official or the owner or person in lawful possession of private property directs the removal and storage of a vehicle as permitted in this subdivision, he or she shall, if he or she knows or is able to ascertain from the registration records of the division the name and address of record of the registered owner of the vehicle, attempt to give or have given by the most practicable means, notice of the fact of such removal and the place to which said vehicle has been removed. If the authorized official does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give notice to the owner as provided in this section, such notice shall be filed

with the director within 30 days of the removal, which notice shall be placed on file and results of owner and lienholder information shall be mailed to the custodian of the vehicle, by said director and open to public inspection.

Source. 1981, 361:1, 3. 1989, 253:8, eff. July 25, 1989. 2017, 31:2, eff. May 9, 2017.

Section 262:35

262:35 Exemption From Liability. – No custodian shall be liable for damages to such vehicle while it is in his or her custody, providing due care is exercised to prevent negligent acts.

Source. 1931, 83:1. RL 121:2. RSA 266:2. 1981, 146:1; 361:1, 3. 2010, 344:3, eff. Sept. 18, 2010.

Section 262:35-a

262:35-a Review of Fees for Removal and Impoundment. –
I. All fees charged for the removal and storage of any vehicle caused to be removed by an authorized official pursuant to RSA 262:32 or RSA 262:40-a shall be reasonable, and may reflect market variables, including, but not limited to, distance traveled to and from the storage facility, vehicle size and weight, the amount of time needed to remove and store the vehicle, any special equipment needed, and personnel costs. If the owner or other person lawfully entitled to possession of the vehicle wishes to challenge the reasonableness of the fee charged, the owner or other person may pay over to the custodian of the vehicle an amount equal to the towing and storage charges to secure the release of the vehicle, and, within 15 days of the release of the vehicle, request in writing a review by the commissioner of safety. The commissioner of safety or designee shall review the claim to determine if there are sufficient grounds to conduct a hearing to determine whether the charge was reasonable. If the commissioner or designee determines that a hearing is necessary, the hearing shall be scheduled by the bureau of hearings within 20 days after review by the commissioner, at which time the extent of removal and storage fees shall be determined. The commissioner or designee shall approve or disapprove of the decision of

the bureau of hearings within 7 days after the hearing was held. Notwithstanding RSA 262:25, any person aggrieved by a decision of the commissioner or designee under this section may appeal the decision to the superior court in the same manner as that prescribed in RSA 263:75, II and III. If no request for review is filed within the 15-day period, the owner or other person lawfully entitled to possession of the vehicle shall be deemed to have waived all rights to review under this section and shall be liable for the total amount billed.

II. Nothing in this section shall prevent a review of the reasonableness of the towing or other action as may be permitted by laws of this state by a court of competent jurisdiction.

III. Any time that a person is storing a vehicle pursuant to the provisions of this subdivision, the person may remove any items from within the vehicle that are not a part of or accessories to the vehicle. The person may hold any such items, other than wallets, purses, life essential clothing, mail, legal documents, car seats, eyeglasses, medicine, medical equipment, or house keys pending payment of any fees due under this subdivision. If fees remain unpaid after 20 days, the person may dispose of the items.

Source. 2001, 213:1. 2003, 119:1. 2010, 344:4, eff. Sept. 18, 2010.

Section 262:36

262:36 Repealed by 1989, 253:9, I, eff. July 25, 1989. –

Section 262:36-a

262:36-a Disposal by Storage Company. –

I. If the owner of a motor vehicle removed or stored pursuant to RSA 262:33 or RSA 262:40-a does not claim the vehicle within 20 days, and the vehicle is more than 5 model years old at the time of removal, the storage company may dispose of such vehicle after giving notice pursuant to RSA 262:38, provided that no notice by publication shall be required.

II. If the vehicle is 5 model years old or less at the time of removal and the vehicle has not been claimed within 30 days, the storage company may dispose of such vehicle after giving notice pursuant to RSA 262:38.

III. If the value of the vehicle is less than $1,000 or the vehicle is so vandalized, damaged, or in disrepair as to be unusable as a motor vehicle

and only fit for salvage as determined in good faith through the application of reasonable automotive industry standards, the storage facility may dispose of the vehicle in 15 days without the notice required by RSA 262:38 and RSA 444. If the last place of abode of the owner of such vehicle is known to or may be ascertained by such storage facility by the exercise of reasonable diligence, the storage facility shall give notice of the time and place of the sale to the owner by verified mail as defined in RSA 21:53, or in person, at least 10 days prior to the disposal and upon written notice to the director subject to such rules as the department shall adopt pursuant to RSA 541-A.

IV. If the towing or storage facility has knowledge or has been notified that the owner of the vehicle is hospitalized or incarcerated as a result of an accident, the time allowed for claiming the vehicle under paragraph I shall be extended for an additional 14 days or until the person has been released from the medical facility or place of incarceration, whichever occurs first.

Source. 1989, 253:5. 2010, 344:5. 2012, 207:4, eff. Aug. 12, 2012. 2019, 242:3, eff. Oct. 10, 2019.

Section 262:37

262:37 Sale Authorized. – If the vehicle shall have been stored pursuant to this subdivision and all the requirements of RSA 262:36-a have been met, the custodian of the vehicle may sell the same, at the custodian's place of business at public auction, for cash.

Source. 1931, 83:1. RL 121:6. RSA 266:6. 1981, 146:1; 361:1, 3. 1989, 253:6. 2010, 344:6, eff. Sept. 18, 2010.

Section 262:37-a

262:37-a Access to Records. – The custodian of the vehicle may obtain the name and last known mailing address of the last registered owner of a vehicle stored pursuant to this subdivision, and a law enforcement officer with jurisdiction, upon request of the operator of a tow truck, shall give to the tow truck operator, upon receipt of such information, the name and mailing address of the registered owner of the vehicle if the owner or custodian of the vehicle was not present or able to give that information at

the scene. If the law enforcement officer is aware that the owner or custodian of the vehicle was removed to a medical or correctional facility, the law enforcement officer shall notify the tow truck operator of that fact.

Source. 2010, 344:7, eff. Sept. 18, 2010.

Section 262:38

262:38 Notice of Sale. – Notice of sale shall be given by posting notices thereof in 2 or more public places in the town or city where the property is stored, at least 14 days before the sale and, if the current retail value of the vehicle exceeds $1,000, as determined in good faith and by a credible method, by publishing the notice at least once in a newspaper of general circulation in the area. If the last place of abode of the owner of such vehicle is known to or may be ascertained by such garage owner or keeper by the exercise of reasonable diligence, a notice of the time and place of the sale shall be given by the garage owner by registered or certified mail, or in person, at least 14 days prior to the sale.

Source. 1931, 83:1. RL 121:7. RSA 266:7. 1981, 146:1; 361:1, 3. 2010, 344:8, eff. Sept. 18, 2010. 2017, 31:3, eff. May 9, 2017.

Section 262:39

262:39 Application of Proceeds. – The balance of the proceeds of sale, if any, after payment of the amount of the liens and the reasonable expenses incident to the sale, shall be paid to the owner of such vehicle or his legal representative if claimed at any time within one year from the date of sale. If such balance shall not be claimed within said period, it shall be paid into the state treasury for the use of the state.

Source. 1931, 83:1. RL 121:8. RSA 266:8. 1981, 146:1; 361:1, 3, eff. Jan. 1, 1982 at 12:01 a.m.

Section 262:40

262:40 Vehicles Involved in Crimes. – Whenever a vehicle is reasonably believed to have been used in connection with a criminal offense, and a peace officer has ordered the removal and impoundment of

such vehicle, the custodian of said vehicle shall release it upon authorization of the removing agency or a court of competent jurisdiction.

Source. 1981, 361:1, 3, eff. Jan. 1, 1982 at 12:01 a.m.

Section 262:40-a

262:40-a Vehicles Removed From Private and State Property; Conspicuous Notice in Parking Lots and Garages. –

I. The owner or person in lawful possession of any private property or the manager of a state-owned park and ride facility on which a vehicle is parked without permission or is apparently abandoned may:

(a) Cause the removal of the vehicle in a reasonable manner provided he or she gives notice of such removal to a peace officer as soon as reasonably possible; or

(b) Notify a peace officer that he or she wishes to have such a vehicle removed from the property, whereupon the peace officer or another authorized official shall cause the removal of such vehicle pursuant to the removal, impoundment, and notice procedures required by this subdivision.

II. The department of transportation shall give authorized persons permission to remove vehicles which are abandoned, as described in RSA 262:32, at state-owned park and rides.

III. The department of transportation shall give authorized persons permission to move any vehicle within a state-owned park and ride facility when such vehicle is improperly parked in a bus storage or travel lane which is properly marked. The owner of the vehicle shall be responsible for the costs of moving the vehicle.

IV. The costs of removing a vehicle under this section, including reasonable towing and storage costs, shall, consistent with RSA 262:35-a, be the responsibility of the last registered owner according to department records, unless said last registered owner is able to establish a transfer of ownership to some other person prior to abandonment or that the vehicle was reported stolen to a law enforcement agency at the time of abandonment, in which case the last owner shall be liable. If a vehicle is towed from a parking lot or parking garage, charges for removal and storage shall not be assessed against the vehicle owner unless there is posted in the parking lot or parking garage conspicuous notice that illegally parked vehicles are subject to towing at the owner's expense.

V. Any police department which receives a request to have a vehicle removed or receives notice of a removal as provided in this section shall maintain a log of such requests and notices.

Source. 1981, 361:1, 3. 1989, 253:2. 1994, 295:1. 2006, 254:1, 2. 2007, 175:1. 2008, 210:4, 5. 2010, 344:9, eff. Sept. 18, 2010.

Section 262:40-b

262:40-b Repealed by 1989, 253:9, II, eff. July 25, 1989. –

Section 262:40-c

262:40-c Abandoning a Vehicle; Penalty. –

I. No person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his or her own without the permission of the owner or lessee of said property or, in the case of public property, of the police department having jurisdiction over the property and no person shall abandon a vehicle at a storage facility after being notified in person or by registered or certified mail to redeem the vehicle. For the purposes of this section, a vehicle shall be considered abandoned if it has been left for more than 24 hours without the appropriate permission being given or at a storage facility after having been given 10 days' notice to redeem it.

II. A storage facility to which an abandoned vehicle has been towed may dispose of such vehicle after complying with the notice requirements of RSA 262:36-a or RSA 262:38, as applicable. It shall be a rebuttable resumption that the notice was received if it was given pursuant to the provisions of this subdivision.

III. The last owner of record of a motor vehicle found abandoned, as shown by the files of the department, shall be deemed prima facie to have been the owner of such motor vehicle at the time it was abandoned and to have been the person who abandoned the motor vehicle or caused or procured its abandonment, unless said last registered owner is able to establish a transfer of ownership prior to abandonment, in which case the transferee shall be liable, or that the vehicle had been reported stolen to a law enforcement agency at the time of abandonment.

IV. Any person who violates the provisions of this section shall be guilty of

a violation and shall be subject to a fine of not less than $100 and not more than $500 plus penalty assessment, and may be subject to the loss of driver's license or driving privilege and registration or privilege of registering as provided in RSA 263:56 and RSA 261:179.
V. The commissioner of safety or designee may assess costs of abandoning a vehicle, including but not limited to, reasonable towing, processing, disposal, and storage costs, against any person convicted of abandoning a vehicle in violation of this section, and the director shall, unless there is just cause to do otherwise, suspend the driver's license or driving privilege, and registration or privilege of registering of any person who has not paid such costs.

Source. 1989, 253:3. 2003, 119:2. 2010, 344:10, eff. Sept. 18, 2010.

Penalties and Court Appearances

Section 262:41

262:41 General Penalty. – Unless otherwise provided in statute, any person convicted of a violation of any provision of this title, or of any rule made under authority thereof, shall be fined $50 plus penalty assessment for a first offense. For any subsequent offense committed during any calendar year such person shall be fined $100 plus penalty assessment.

Source. 1921, 119:15. PL 102:21. RL 118:23. RSA 262:28. 1959, 155:1. 1973, 530:37. 1981, 146:1, eff. Jan. 1, 1982. 2015, 202:1, eff. Jan. 1, 2016.

Section 262:42

[Text of section republished.]
262:42 Placing Complaint on File. – Except as herein otherwise provided, a complaint against a person for the violation of any provision of this title may be placed on file at the discretion of the court, if the violation appears to have been unintentional, or if no person or property could have been endangered thereby.

Source. 1921, 119:15. PL 102:22. RL 118:24. RSA 262:29. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:42-a

262:42-a Prohibition on Placing on File or Masking Convictions Incurred by Holders of Commercial Driver Licenses or Persons Required to Hold Such Licenses. – The court shall not place on file, mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent the conviction of a holder of a commercial driver license, or a person required to hold a commercial driver license, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

Source. 2008, 149:1, eff. Jan. 1, 2009.

Section 262:43

262:43 Appearance by Counsel or Others. – Any person charged with violation of the provisions of any law relative to the use and driving of vehicles, except where the penalty involves imprisonment, may, without personal appearance, appear by counsel or by any citizen of good character in answer to said charge.

Source. 1953, 239:3; 260:3. RSA 262:37. 1981, 146:1, eff. Jan. 1, 1982.

Section 262:44

262:44 Waiver in Lieu of Court Appearance; Default. –
Any person charged with a violation of the provisions of title XXI on vehicles, excluding a violation of RSA 263:1-a, RSA 265:79, RSA 265-A:2, RSA 265-A:3, RSA 265:115, RSA 265:117, a speeding offense under RSA 265:60 for which the defendant must appear in court, and any offense which is a misdemeanor or felony, may plead guilty, nolo contendere, or not guilty by mail in the following manner:
I. Such defendant shall receive, in addition to the summons, a uniform fine schedule entitled "Notice of Fine, Division of Motor Vehicles" which shall

contain the normal fines for violations of the provisions of title XXI on vehicles for which a plea may be entered by mail. The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally shall do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the director of the division of motor vehicles within 30 days of the date of the summons. The director of the division of motor vehicles may accept payment of the fine by credit card in lieu of cash payment. Any transaction costs assessed by the issuer of the credit card shall be paid out of the portion of the fine amount which is credited to the highway fund and not out of the penalty assessment charged by the district court. The director of the division of motor vehicles shall remit the penalty assessments collected to the state treasurer to be credited and continually appropriated to the state general fund and to the victims' assistance fund and the judicial branch information technology fund in the percentages and manner prescribed in RSA 106-L:10. Fines shall be paid over to the state treasurer, and shall be credited to the highway fund within 14 days of their receipt.

II. If the defendant wishes to enter a not guilty plea, he shall enter such plea on the summons and return it to the division of motor vehicles within 30 days of the date of the summons. The division shall transmit the plea to the appropriate court and the court shall schedule a trial. Upon the conclusion of the trial, the court shall transmit the result of the trial to the division for division records.

III. (a) Whenever a defendant:

(1) Does not enter a plea-by-mail with the director of the division of motor vehicles within 30 days of the date of the summons or, if required to appear in court personally, does not appear personally or by counsel at the court on or before the required date or move for a continuance; or

(2) Fails to pay a fine or other penalty in connection with a conviction of a title XXI offense or payment of such fine or other penalty is uncollectible or unacceptable pursuant to RSA 6:11-a, the defendant shall be defaulted. In cases where the defendant has failed to enter a plea-by-mail with the director, the director of designee shall determine what the fine would be

upon a plea of guilty or nolo contendere and shall impose an administrative processing fee in addition to the fine and penalty assessment. In cases where the defendant has defaulted on a court obligation, the court shall determine what the fine would be upon a plea of guilty or nolo contendere and shall impose an administrative processing fee in addition to the fine and penalty assessment. In any case, the defendant's driving privileges shall be suspended as provided in RSA 263:56-a.

(b) Whenever a defendant otherwise fails to appear for a scheduled court appearance in connection with a summons for any violation level offense for which a defendant may plea by mail, the court shall proceed to hear the state's evidence, by offer of proof or otherwise, and enter a finding in accordance therewith. If a finding of guilty is made, the court shall set the fine, and the clerk shall mail or deliver to the defendant's last known address a notice of finding and imposition of fine form approved by the administrative justice of the district court, appointed under supreme court rule. Payment in full shall be required within 30 days from the date of the notice. Any defendant who fails to make the payment shall be subject to the provisions of RSA 262:44, III(a)(1)-(2). No finding made by the court shall be set aside except for cause.

(c) In defaulted court cases for violations of title XXI, the court shall notify the director of the division of motor vehicles of the defendant's default, and the amounts of the fine and other penalties, on a form prescribed by the director or by electronic means. The amount of the administrative processing fee shall be determined by the New Hampshire supreme court in accordance with the provisions of RSA 502-A:19-b, V and shall be retained by the court for the benefit of the state in those cases in which the fee is assessed by the court. In other cases, the fee shall be retained by the department of safety for the benefit of the state.

IV. The court may, in its discretion, issue a bench warrant for the arrest of any defendant who:

(a) Has defaulted as provided in RSA 262:44, III; or

(b) Fails to pay a fine or other penalty imposed in connection with a conviction of any offense which a court has determined the defendant is able to pay, or payment of a fine or other penalty is uncollectible or unacceptable, pursuant to RSA 6:11-a; or

(c) Fails to comply with a similar court order of the director or a court on any matter within the director's or court's jurisdiction.

V. For cause, the court in its discretion may refuse to accept a plea by mail

and may impose a fine other than that prescribed by the uniform fine schedule. the court may order the defendant to appear personally in court for the disposition of the case.
VI. The uniform fine schedule referred to in paragraph I shall be developed pursuant to RSA 502-A:19-b, V.
VII. The commissioner of the department of safety shall adopt rules, pursuant to RSA 541-A, relative to the forms and procedures required for the division of motor vehicles and department of safety to carry out their duties and responsibilities under this section.
VIII. The commissioner of the department of safety shall make an annual report 60 days after the close of each fiscal year to the fiscal committee of the general court on fines and fines in default, paid and unpaid, for each year beginning with 1993.

Source. RSA 262:37-a. 1975, 116:1. 1981, 146:1. 1992, 257:23. 1993, 140:1. 1999, 261:4. 2004, 183:2. 2006, 260:19. 2008, 223:2, 3; 237:6. 2009, 144:117. 2012, 247:26. 2013, 144:105, eff. July 1, 2013. 2016, 319:9, eff. July 1, 2016. 2017, 206:14, eff. Sept. 8, 2017. 2019, 346:160, eff. July 1, 2019.

Section 259:87-a

259:87-a Repossess. – "Repossess" shall mean the act of obtaining physical possession of a motor vehicle by a lienholder or any person acting on his behalf for any actual or claimed breach of any condition contained in a security agreement.

Source. 1993, 58:1, eff. June 15, 1993.

PART Saf-C 1913 ABANDONED OR UNCLAIMED VEHICLES

Saf-C 1913.01 Abandoned or Unclaimed Vehicles.

(a) Pursuant to RSA 262:33, in the event a garage owner or storage company lawfully comes into the possession of a motor vehicle, he/she shall have a lien on the vehicle for the charges for storage and removal. In the event the motor vehicle owner fails to claim or pay such charges within the prescribed period, the garage owner or storage company of such abandoned or unclaimed vehicle shall submit a report to the director on form TDMV 71.

(b) An employee of a garage, dealership or towing service shall furnish the following on form TDMV 71:

(1) Date vehicle was removed to the premises;

(2) Vehicle's year, make and registration number;

(3) Vehicle identification number;

(4) Condition of vehicle;

(5) Damage to vehicle, if any;

(6) Owner's name and address, if known;

(7) Name, address and telephone number of garage;

(8) Indication as to whether:

a. Report made by police or towing service;

b. Market value of vehicle is under or over $1,000;

c. Vehicle is in condition for legal use on a public way;

d. Request has been made for sale under 20 days without notice;

e. NCIC check has been conducted; and

f. Owner has been notified; and

(9) Date of notification.

(c) A garage owner or storage company may sell an abandoned or unclaimed motor vehicle in the event the vehicle has been stored pursuant to RSA 262:37 and the requirements of RSA 262:36-a and RSA 262:38 are satisfied.

(d) In the event an applicant for title purchased the motor vehicle at public auction at the seller's place of business, the applicant shall furnish the following to the bureau:

(1) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

(2) A properly executed report of sale or transfer of a non-titled motor vehicle, form TDMV 22A;

(3) An affidavit on the prescribed form from the seller, garage owner or storage company who acquired the vehicle pursuant to RSA 262:40-a, containing a description of the circumstances of the acquisition and the procedures that were followed for the eventual sale of the motor vehicle;

(4) The appropriate fee, pursuant to RSA 261:20; and

(5) A properly executed verification of vehicle identification number, form TDMV 19A.

(e) A garage owner or storage company who has filed a notice to the director of an unclaimed or abandoned vehicle on TDMV 71, pursuant to RSA 262:36-a, III, may dispose of the vehicle upon obtaining permission from the director.

Source. #4823, eff 6-1-90; ss by #4981, eff 11-16-90; ss by #6293, eff 7-23-96; ss by #8123, INTERIM, eff 7-17-04, EXPIRED: 1-13-05

New. #8339, eff 4-26-05 (from Saf-C 1913.02); ss by #10190, eff 9-27-12

Saf-C 1913.02 Approval for Disposal.

(a) Upon receipt of a notice to the director of an unclaimed vehicle on form TDMV 71, pursuant to RSA 262:36-a, III, the director shall review the form and issue an approval for disposal if:

(1) The current market value is less than $1,000, as determined by the garage owner or storage company;

(2) The vehicle is more than 5 model years old at the time of removal; or

(3) The vehicle is so vandalized, damaged, or in disrepair as to be unusable as a motor vehicle and only fit for salvage as determined in good faith through the application of reasonable automotive industry standards.

(b) Prior to issuing an approval for disposal, the director shall inspect any vehicle described on form TDMV 71 to verify the information supplied pertaining to the condition of the vehicle or to verify the vehicle's identification number.

(c) In the event the director determines that a vehicle meets the provisions of RSA 262:36-a, III and this rule, the director shall approve disposal of the vehicle by the garage owner or storage company.

Source. #4823, eff 6-1-90; ss by #4981, eff 11-16-90; ss by #6293, eff 7-23-96; ss by #8123, INTERIM, eff 7-17-04, EXPIRED: 1-13-05

New. #8339, eff 4-26-05 (from Saf-C 1913.03); ss by #10190, eff 9-27-12

Saf-C 1913.03 Receipt of Approval. Upon receipt of an approval for disposal of an unclaimed vehicle, a garage owner or storage company may dispose of the vehicle without the notice required by RSA 262:38 and RSA 444.

Source. #4823, eff 6-1-90; ss by #4981, eff 11-16-90; ss by #6293, eff 7-23-96; ss by #8123, INTERIM, eff 7-17-04, EXPIRED: 1-13-05

New. #8339, eff 4-26-05 (from Saf-C 1913.04); ss by #10190, eff 9-27-12

PART Saf-C 1914 MECHANIC'S LIEN

Saf-C 1914.01 Scope. This section shall establish the procedures for issuing a title to a vehicle sold at a lienholder's public auction. This section shall not affect or apply to any lien that arises by operation of law to a manufacturer of materials, other than the garage or repair dealer, for a vehicle.

Source. #4823, eff 6-1-90; ss by #4981, eff 11-16-90; ss by #6293, eff 7-23-96; ss by #8123, INTERIM, eff 7-17-04, EXPIRED: 1-13-05

New. #8339, eff 4-26-05 (from Saf-C 1905.01); ss by #10190, eff 9-27-12

Saf-C 1914.02 Application for Title to a Vehicle Sold at a Lienholder's Public Auction.

(a) A person who maintains or owns a public garage or trailer court for the parking, storage or care of motor vehicles brought to the person's premises, and placed in such person's care, shall have a statutory lien for the charges that arise for the parking, storage or care of the vehicle, pursuant to RSA 450:1. Any person who provided labor, materials or money in repairing, refitting or equipping any motor vehicle shall have a statutory lien for the expenses incurred pursuant to RSA 450:2. These liens shall arise, while the motor vehicle remains in the mechanic's possession, pursuant to RSA 450:1 and RSA 450:2.

(b) Pursuant to RSA 450:3, after a period of 60 days, if a motor vehicle remains in the possession of the lienholder and the charges have remained unpaid for that period, the vehicle may be sold by the lienholder at public auction for satisfaction of the lien.

(c) An applicant for title who purchased a motor vehicle at a lienholder's public auction shall furnish the following to the bureau:

(1) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, or dealer, as applicable;

(2) The appropriate fee, pursuant to RSA 261:20;

(3) A bill of sale from the lienholder;

(4) A properly executed verification of vehicle identification number, form TDMV 19A; and

(5) Written documentation completed by the lienholder setting forth the facts of how the lien arose and the procedures that were followed for the eventual sale of the vehicle at public auction.

Source. #8339, eff 4-26-05 (from Saf-C 1905.02); ss by #10190, eff 9-27-12

PART Saf-C 1916 REPOSSESSED VEHICLES

Saf-C 1916.01 Application for Title to a Repossessed Vehicle.

(a) Each applicant for title to a vehicle purchased after repossession shall furnish the following to the bureau:

(1) The existing title for the repossessed vehicle, with the lien release properly executed and assigned by the lienholder pursuant to Saf-C 1903.02;

(2) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

(3) The appropriate fee, pursuant to RSA 261:20; and

(4) An affidavit of repossession, form TDMV 16, executed by the lienholder and delivered to the buyer upon resale of the vehicle.

(b) Each lienholder shall furnish the following on form TDMV 16:

(1) Name and address of lienholder;

(2) Name and address of debtor;

(3) Dollar amount of lien;

(4) Date of lien;

(5) Vehicle's year, make, color and body style;

(6) Vehicle identification number;

(7) Date of default and subsequent possession of vehicle by lienholder; and

(8) Signature of lienholder and date signed.

(c) Each applicant for title to a vehicle purchased after repossession, in which there is no title to the vehicle, because, for example, the vehicle was repossessed from a foreign jurisdiction, such as a military repossession, shall furnish the following to the bureau:

(1) The documents set forth in (a)(2) through (a)(4) above, and one of the following:

a. The existing manufacturer's certificate of origin, with the lien release properly executed and assigned by the lienholder, pursuant to Saf-C 1903.02; or

b. A properly executed verification of vehicle identification number, form TDMV 19A, along with the original or certified copy of the registration.

Source. #4823, eff 6-1-90; ss by #4981, eff 11-16-90; ss by #6293, eff 7-23-96; ss by #8123, INTERIM, eff 7-17-04, EXPIRED: 1-13-05

New. #8339, eff 4-26-05; ss by #10190, eff 9-27-12

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This case concerns multiple applications for titles to abandoned vehicles that Petitioner submitted to DMV. DMV erroneously denied Petitioner's title applications, and the hearings examiner later erroneously upheld such denials. Appx. p. 3-219; Transcript. Specifically, the abandoned-vehicle title applications at issue concern: (1) 2009 BMW, VIN# **********836[4]; (2) 2019 Kia, VIN# **********213; (3) 2020 Kia, VIN# **********478; (4) 2014 BMW, VIN# **********543; (5) 2012 Chrysler, VIN# **********896; (6) 2013 Hyundai, VIN# **********395; (7) 2019 Subaru, VIN# **********628; (8) 2000 Chevrolet, VIN# **********145; (9) 2006 Chevrolet, VIN# **********752; and (10) 2019 Hyundai, VIN# **********335. See id.

As discussed in Petitioner's Statement Per Saf-C 203.03 and the Motion for Rehearing, which facts and arguments are incorporated herein by reference, all the vehicles at issue were clearly abandoned at some point prior to Petitioner applying to DMV for titles to the vehicles. Appx. p. 3-28, 203-211.

For example, as to the 2009 BMW, the 2019 Kia, and the 2020 Kia, the testimony and other evidence at the hearing demonstrated that those three vehicles were abandoned at the Dan O'Brien car dealership, and that Petitioner had proper authorization from Jason Asbury, the General Sales Manager of that dealership, to remove those vehicles from the premises, as

[4] The VIN numbers have been redacted for privacy purposes per the Driver Privacy Act in RSA 260:14 et seq.

each was abandoned. Jason Asbury even provided Petitioner with the factory keys for each vehicle before Petitioner towed them. See Appx. p. 3-181, 203-211; see also Transcript.

As to the 2014 BMW, Petitioner provided, among other evidence, a handwritten note from the owner thereof to remove said vehicle from her property, as that vehicle was abandoned. There appears to be no better evidence of such voluntary surrender, relinquishment, or disclaiming – and thus abandonment – of the BMW than that handwritten note, which was attached as Exhibit C to Petitioner's Statement Per Saf-C 203.03. See id. (e.g., Appx. p. 28); see also Black's Law Dictionary (11th ed. 2019) (defining "abandoned property" as "[p]roperty that the owner voluntarily surrenders, relinquishes, or disclaims").

As to the remaining vehicles, the evidence showed that, although they may have begun as repossessions, the vehicles became abandoned once the third party that hired Petitioner to initially tow the vehicles: (a) canceled/closed each towing and garage order (even though such work was already completed) and/or failed and refused to pay Petitioner for the towing and garage services that Petitioner was hired to perform (and did perform); and (b) failed and refused to retrieve the vehicles from Petitioner's lot, even though Petitioner had towed such vehicles at the third-party's request. See Appx. p. 3-181, 203-211; see also Trans.

To say that such vehicles were not abandoned simply belies reality. This is especially so after Petitioner notified, or at least attempted to notify, each such third party – as well as the vehicle owners, the lienholders, and all others required to be notified per RSA 262 – about the same and no responses were received. No rational conclusion can be reached other than

that such vehicles were abandoned with Petitioner, as they were voluntarily surrendered, relinquished, or disclaimed. See Appx. p. 3-181, 203-211; see also Transcript.

Moreover, with respect to each vehicle at issue, Petitioner promptly complied with all requirements relative to abandoned vehicles in RSA 262 by, among other things: (a) providing all proper notification of the towing to the police, vehicle owners, lienholders and the public as to each vehicle (and with respect to any auctions concerning the vehicles); and (b) providing all required forms, such as Form TDMV 71, Form DSMV 505, Form TDMV 109, Form TDMV 22A, and Form TDMV 19A, and other information to DMV for purposes of obtaining each vehicle title. Such was confirmed during the hearing. See id.

Importantly, the above-mentioned notification process served to confirm the abandonment of each vehicle at issue. This is because, once the vehicle owners and lienholders received notices and then refused to retrieve the vehicles from Petitioner (or otherwise failed to respond to the notices that were sent to them), the only rational conclusion is that the vehicles were abandoned, as no one claimed them.

Moreover, there is no dispute that Petitioner complied with all requirements in the applicable statutory and regulatory scheme pertaining to obtaining titles for abandoned vehicles, and any suggestion to the contrary by the examiner is not supported by the evidence presented. The titles, therefore, should have issued to Petitioner, as discussed in various pleadings filed below, which facts and arguments are incorporated herein by reference. See Appx. p. 3-181, 203-211; see also Transcript.

Nonetheless, DMV denied each title application, and the hearings examiner upheld such denials. In rendering his decision (and subsequently denying Petitioner's Motion for Rehearing), the examiner concluded, among other things, that a vehicle that was initially towed as a repossessed vehicle can never become abandoned, such that titles to those vehicles cannot be obtained via the abandoned vehicle title process in RSA 262 and the related regulatory framework. The examiner also concluded that a person cannot abandon his/her own vehicle. Appx. p. 195-202, 216-219.

In reaching such conclusions, the hearings examiner did not define "abandoned vehicle" – perhaps such is a function of the fact that, as explained by Petitioner, there is no statutory provision within RSA 262 or any other applicable statute, regulation, case law or other authority of which Petitioner is aware that comprehensively defines "abandoned vehicle." Appx. p. 3-28, 195-211, 216-219.

Thus, the hearings examiner's decision that the vehicles here somehow cannot fit the definition of an abandoned vehicle when that term is left undefined strains logic and defies common sense – this is especially so given that the examiner did not even attempt to define the term. The decision is especially confounding when one considers the fact that a person can clearly abandon his/her own vehicle and given that, depending upon the circumstances, a repossessed vehicle can certainly become abandoned (and/or simultaneously meet the definition of abandoned and repossessed).[5] These and other related issues are explained at length in

[5] In fact, even if an individual requested to have his/her vehicle towed as abandoned, that individual would later receive the required notice from the tow company, and then that person would have an opportunity – at least

Petitioner's Statement Per Saf-C 203.03 and Motion for Rehearing, which arguments are incorporated herein by reference. Appx. p. 3-28, 195-211, 216-219.

After the examiner issued his erroneous decision on December 18, 2020, Petitioner timely filed its Motion for Rehearing on January 8th. See RSA 541:3 (providing 30 days to file a motion for rehearing). The hearings examiner then denied said Motion in a decision dated January 27, 2021. Appx. p. 203-211, 216-219. Petitioner, thereafter, timely filed a Notice of Appeal with this Court, which was accepted. See RSA 541:6.

SUMMARY OF ARGUMENT

Simply put, the decision in this case rests upon irrational and, frankly, nonsensical conclusions of law concerning abandoned vehicles. Such conclusions are rendered even more unreasonable given that "abandoned vehicle" is not comprehensively defined in the applicable statutory or regulatory scheme, and so there is nothing precluding application of that term to the circumstances here.

Given the lack of authority – whether in the form of caselaw, statutory/regulatory definitions, or otherwise – surrounding what constitutes an abandoned vehicle, there is no legitimate support for the examiner's conclusion, especially when such is premised upon the erroneous assertions that, purportedly: (a) a person can never abandon his/her own vehicle; and (b) a vehicle that begins as a repossession can never become abandoned.

---

until any auction was completed – to change his/her mind about abandoning the vehicle and could decide to, instead, redeem the vehicle.

Petitioner posits that people can surely abandon their own vehicles – it is preposterous to conclude otherwise. Petitioner also posits that vehicles that are initially towed on a repossession order from a lender can, depending upon the circumstances, become abandoned, as abandonment and repossession are not necessarily mutually exclusive concepts. Such conclusions are not only guided by common sense and logic, but such conclusions also follow given the lack of a conclusive definition of "abandoned vehicle" in the applicable statutory/regulatory scheme. Under any common meaning and reasonable interpretation of that term, the vehicles at issue here were certainly abandoned, and, thus, it was erroneous for DMV and the hearings examiner to conclude otherwise.

Given that the examiner's decision was premised upon such erroneous understandings concerning abandoned vehicles, his conclusion must be reversed, or at least vacated and remanded with instructions to engage in an appropriate analysis.

Finally, it is important to note that the decision rendered by this Court on these weighty legal issues will have wide-ranging ramifications. This is so not only with respect to Petitioner, who has submitted dozens of title applications and other documents to DMV with respect to various abandoned vehicles (including many beyond the 10 specific vehicles at issue), but also with respect to numerous other towing companies and dealerships that regularly tow and sell abandoned vehicles in New Hampshire. Accordingly, clarity on this issue, which should resolve in Petitioner's favor, is of vital importance. Such also provides one reason, among others, as to why this case is not moot and should be decided on its merits.

ARGUMENT

I. Standard of review.

To the extent that any issues on appeal involve questions of law or the application of law, this Court reviews the same de novo. See, e.g., Berthiaume v. McCormack, 153 N.H. 239, 244 (2006).

As to any matters of statutory interpretation, such constitute "a question of law, which we review de novo." Adams v. Woodlands of Nashua, 151 N.H. 640, 641 (2005). "The starting point in any statutory interpretation case is the language of the statute itself. Where the language of a particular statutory provision is at issue, we will focus upon the statute as a whole, not on isolated words or phrases. We will not consider what the legislature might have said or add words that the legislature did not include." Id.

To the extent that any issues here involve the interpretation of the hearings examiner's decision, such is another "question of law, which we review de novo." Choquette v. Roy, 167 N.H. 507, 513 (2015). Likewise, this Court will review "a trial court's application of law to facts de novo." Blagbrough Family Realty Tr. v. A & T Forest Prod., Inc., 155 N.H. 29, 33 (2007).

As to factual issues, this Court will generally "defer to the trial court's judgment on such issues as resolving conflicts in testimony, assessing the credibility of witnesses, and determining the weight of the evidence." Ellis v. Candia Trailers & Snow Equip., Inc., 164 N.H. 457, 466 (2012). "Our standard of review is not whether we would rule differently, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence." Id. However, this Court

need not defer to such factual findings if "they are not supported by the evidence or are erroneous as a matter of law." McCabe v. Arcidy, 138 N.H. 20, 24 (1993).

II. Because of the lack of a comprehensive definition of what constitutes an "abandoned vehicle," the examiner's decision cannot stand.

As a threshold matter, the hearings examiner's decision here is flawed for the simple reason that he concluded that the vehicles here were not – and could not be – abandoned, even though there is no comprehensive definition of what constitutes an "abandoned vehicle." Nor did the examiner even attempt to define that term. Appx. p. 195-202, 216-219. Without any such definition, it was erroneous as a matter of law for the examiner to, nonetheless, conclude that the vehicles somehow "cannot fit the definition of an abandoned vehicle." Appx. p. 202.

Unlike the term "repossess," which is defined in RSA 259:87-a, the terms "abandoned" and "abandoned vehicle" are not comprehensively defined in the statutory/regulatory scheme pertaining to abandoned vehicles.[6] See RSA 262; Saf-C 1900 et seq. Nor is there anything in the applicable statutory/regulatory scheme the notes the timing of when abandonment of a vehicle occurs. See id.

The only applicable provision that even somewhat addresses when a vehicle may be abandoned is found in RSA 262:40-c, I. Said provision states that "[n]o person shall abandon a motor vehicle . . . on any way or on

[6] A detailed discussion concerning the concept of repossessed vehicles becoming (and/or simultaneously being) abandoned is set forth below, as is a discussion concerning the abandonment of one's own vehicle.

any property other than his or her own without the permission of the owner or lessee of said property . . . and no person shall abandon a vehicle at a storage facility after being notified . . . to redeem the vehicle. For the purposes of this section, a vehicle shall be considered abandoned if it has been left for more than 24 hours without the appropriate permission being given or at a storage facility after having been given 10 days' notice to redeem it." RSA 262:40-c, I (emphasis added).

By its own terms, however, RSA 262:40-c, I – via the phrase "[f]or the purposes of this section" – is clearly limited to only that discrete statutory provision and does not apply beyond that section or more broadly to all statutory/regulatory provisions relating to abandoned vehicles. See id.; see also State v. Turgeon, 101 N.H. 300, 303 (1958) (explaining that the words "for the purposes of this section" in a statute "demonstrate a legislative purpose not to apply the definition to the preceding section" (emphasis omitted)).

Importantly, there is nothing within RSA 262:40-c, I, that comprehensively defines the term abandoned vehicles. Rather, the plain language of this particular provision only provides one non-exhaustive example of what necessarily (by use of "shall") constitutes an abandoned vehicle, without limiting that definition in any way to preclude other examples of what may also constitute an abandoned vehicle – whether for purposes of this specific statutory provision or with respect to any other statutory/regulatory provision. See RSA 262:40-c, I; see also In re Liquidation of Home Ins. Co., 157 N.H. 543, 553 (2008) (explaining the general rule that "in statutes the word 'may' is permissive only, and the word 'shall' is mandatory" (quotation omitted)).

In other words, RSA 262:40-c, I, merely provides, for purposes of that statutory provision only, one limited instance of what certainly amounts to an abandoned vehicle, but the statutory provision fails to comprehensively define, dictate, or determine what else may also constitute an abandoned vehicle for purposes of that statutory provision, the remainder of the statutory scheme, or for purposes of the related regulatory framework. This is so even though there are numerous other statutory/regulatory provisions that concern abandoned vehicles. See generally RSA 262; Saf-C 1900 et seq.

Thus, at best, we are left only with an incomplete and partially applicable definition of what may constitute an abandoned vehicle for purposes of only one particular provision of the statutory scheme. This is especially so when there is no other statutory or regulatory provision, any case law in New Hampshire, or any other applicable authority of which Petitioner is aware that provides a comprehensive definition of "abandoned vehicle" that is applicable to all pertinent statutory/regulatory provisions that use, rely upon, or otherwise refer to said term (or any variants of that term). See id.

Under these circumstances, therefore, the term "abandoned vehicle" has effectively been left undefined by the legislature. Such, of course, differs drastically from the approach that the legislature took with respect to, for example, those vehicles that have been repossessed – a term that has been properly defined. See RSA 259:87-a.

Accordingly, given the lack of a comprehensive definition here, this Court should ascribe to that phrase[7] its "plain and ordinary meaning." In re Town of Nottingham, 153 N.H. 539, 553 (2006) (quotation omitted). In doing so, this Court should look to the "common usage" of the term abandoned by "using the dictionary for guidance." K.L.N. Constr. Co., Inc. v. Town of Pelham, 167 N.H. 180, 185 (2014).

Here, Black's Law Dictionary defines "abandoned" with respect to property as "[p]roperty that the owner voluntarily surrenders, relinquishes, or disclaims." Black's Law Dictionary (11th ed. 2019) (defining "abandoned property"). Other dictionaries provide similar, yet somewhat varied, definitions. See https://www.law.cornell.edu/wex/abandoned_property (last accessed July 30, 2021) (defining "abandoned property" as "[p]ersonal property left by an owner who intentionally relinquishes all rights to its control"); https://legal-dictionary.thefreedictionary.com/abandoned+property (last accessed July 30, 2021) (defining "abandoned property" as "property left behind (often by a tenant) intentionally and permanently when it appears that the former owner (or tenant) does not intend to come back, pick it up, or use it. Examples may include possessions left in a house after the tenant has moved out or autos left beside a road . . .").

As can be seen by these definitions, abandonment can occur in various ways, including by surrendering, relinquishing or disclaiming an item. Given such varying definitions, the term "abandoned" as it applies to

---

[7] Because there is no dispute that the automobiles at issue constitute "vehicles," the focus here is upon whether they were "abandoned," as such issue lies at the heart of this case. The analysis is limited accordingly.

vehicles, necessarily imputes a potentially broad set of circumstances in which a vehicle could be classified as abandoned. Thus, there are numerous ways in which a vehicle could become, or otherwise be considered, abandoned. See, e.g., Kenison v. Dubois, 152 N.H. 448, 451 (2005) (explaining that "varying definitions" in dictionaries of the term "occupant" demonstrate that said term "has the potential to encompass either a broad or a narrow class of persons depending upon the context in which the term is used").

There are, in fact, too many examples of how abandonment may occur to include all such examples here. Nonetheless, the following provides a brief overview of some examples in which vehicles could – and should – eventually be deemed abandoned. Please note, however, that the following is not an exhaustive list of all possible ways in which a vehicle could be abandoned or otherwise evidence abandonment.

The first example is the classic example of when a vehicle – usually (but not always) in a dilapidated/inoperable condition, sometimes as the result of an accident – has been deserted by the vehicle owner on a public way or in some other area that the vehicle owner does not own (such as a vacant lot or private lot owned by a business). These circumstances, particularly if the vehicle had been left in such location without permission for a while, would lead any reasonable person to conclude that said vehicle was abandoned, as such factors provide significant evidence that the vehicle owner has voluntarily surrendered, relinquished or disclaimed his/her vehicle and has no intention of retrieving or using it.

The same result follows when a person, via an explicit oral or written statement, expresses a desire to intentionally surrender, relinquish,

or disclaim, and, thus, abandon, his/her own vehicle. This could happen whether the vehicle is subject to a lien or owned free-and-clear. Although this situation may be relatively rare, such uncommonness does not render vehicles in these situations any less abandoned than other circumstances.[8]

Abandonment can be evidenced in other ways as well. As is pertinent to this case, a vehicle can become abandoned after a towing company (like Petitioner) tows a vehicle at the request of a third-party (usually as a result of the vehicle owner failing to make required payments to the lienholder), and then after such towing services are performed, neither the vehicle owner nor lienholder desires to pay such towing and related storage costs, nor does anyone desire to otherwise retrieve the vehicle from the towing company. These vehicles could also be initially towed at the request of a lender, or by a property owner when the vehicle is left on that property owner's property without authorization. Such vehicles, which perhaps begin as repossessions, later become abandoned – this concept is addressed further below.

There are several other scenarios as well concerning abandoned vehicles, or potentially abandoned vehicles. For example, stolen vehicles could be left in random locations; although such may appear to be abandoned (depending upon, for example, its condition and the surrounding circumstances, such as its location), the vehicle might not necessarily be abandoned by the owner or lienholder since a criminal third party stole it

---

[8] Although the hearings examiner alleged that a person cannot abandon his or her own vehicle, such is belied by the general definitions discussed above. This issue – which is of vital importance here – is also addressed further below.

(and perhaps damaged it, unbeknownst to the owner/lienholder). Similarly, a friend could borrow a vehicle and thereafter leave it on the property of another – such vehicle might appear abandoned, even though the owner/lienholder did not, in fact, abandon it. Nevertheless, any of these vehicles might be towed at the request of an authorized individual, such as by a property owner noticing a random vehicle in his/her lot.

Suffice it to say, when vehicles are towed in the first instance, it is difficult, if not impossible, to conclusive determine whether a vehicle is truly abandoned. The notification procedure set forth in RSA 262 is designed to provide notice to the owner and lienholder of a towed vehicle, as well as to give the vehicle owner/lienholder an opportunity to redeem that vehicle before it is sold at auction. See RSA 262; Saf-C 1900 et seq.

Thus, regardless of the scenario applied and the factual circumstances at issue, the abandonment of any vehicle cannot be conclusively confirmed until some point after: (a) the towing company provides proper notice per applicable provisions of RSA 262 to the vehicle owner(s)/lienholder(s) that the vehicle was towed; (b) the towing company provides other required notice, including notice to police as to the vehicle removal and notice to the public as to any auction; (c) the towing company provides the DMV with all required forms and information pertaining to the vehicle; and (d) then either the owner/lienholder expressly disclaims the vehicle, the owner/lienholder refuses to retrieve or otherwise claim the vehicle from the towing company, the owner/lienholder fails to respond in any way to the notifications, and/or the owner/lienholder refuses to pay the reasonable towing and storage fees that have accumulated relative to the

vehicle,[9] thereby making it clear that the owner/lienholder no longer wants the vehicle. See RSA 262; Saf-C 1900 et seq.[10]

This process is intended to cover effectively all scenarios applicable to any vehicle, no matter the initial reason for the towing. Indeed, the entire intention and purpose of the notification procedure in RSA 262 appears to be designed to allow vehicle owners/lienholders an opportunity to retrieve or otherwise claim or recover a vehicle that has been towed for whatever reason; but, once such opportunity is not seized by the owner/lienholder, then – as set forth above – the vehicle unquestionably

---

[9] There are numerous reasons why an owner/lienholder might refuse to pay towing/storage fees that accumulate with respect to a vehicle. Perhaps the vehicle was, before the tow, worth a minimal amount of money, and, thus, worth less than the fees that have accumulated – from an economic standpoint it would make little sense to pay fees that exceed the value of a vehicle. Or, perhaps the vehicle had been rendered inoperable by virtue of a criminal third-party. It is also possible for a vehicle to be rendered unattractive to the owner/lienholder for less obvious reasons, such as due to an unpleasant odor emanating from it. There are myriad hypothetical reasons why someone may refuse to retrieve or otherwise claim a towed vehicle, but such occurs frequently in the towing business, thereby leaving tow companies with numerous abandoned vehicles that the owners and lienholders simply do not want.

[10] This idea also conforms with RSA 262:40-a, I, which allows any "owner or person in lawful possession of any private property . . . on which a vehicle is parked without permission or is apparently abandoned may . . . Cause the removal of the vehicle in a reasonable manner." (Emphasis added). As discussed herein, abandonment cannot be confirmed until after the vehicle has been towed and the owner/lienholder have been notified per RSA 262 – by use of "apparently abandoned" in RSA 262:40-a when referring to the vehicle's status when it is initially towed, the statutory scheme appears to agree with Petitioner's position.

becomes fully abandoned for the towing company to then auction off. Such is even suggested by RSA 262:40-c, I. See id.; RSA 262:40-c, I.

In other words, once this notification process is completed, and neither the owner nor lienholder claims the vehicle (and/or they fail to respond to the notifications or perhaps refuse, based upon the vehicle's relative value or for any other reason, to pay the reasonable storage, towing and other fees that have accumulated), then at that point it can be definitively determined that the vehicle has been abandoned. Although there may be numerous factors suggesting abandonment before that point in time – i.e., given the vehicle's location before it was towed, the length of time it had been in a certain location prior to being towed, the condition of the vehicle, etc. – there is simply no way to confirm abandonment until after the notification process per RSA 262 has been completed and no one claims or desires the vehicle (or no one responds to the notifications that are sent out), despite such notification. At that point in time, and only then, can the abandonment determination be conclusively made.[11] See id.

Some of these concepts are discussed further below, but the fact remains that, given the lack of a comprehensive definition of what constitutes an abandoned vehicle, the plain and ordinary meaning of that phrase enables a vehicle to potentially be abandoned under any number of

---

[11] If, after this notification procedure is completed, there is still any doubt as to whether a vehicle is abandoned or not, such abandonment can be further confirmed at the vehicle's auction. If neither the owner nor lienholder appears at such auction to even attempt to redeem the vehicle (which auctions are, of course, always properly noticed by Petitioner in conformance with RSA 262), then, at that point, there can be no question that the vehicle has been abandoned.

different factual scenarios. As noted above, however, to the extent that there are any questions about whether a vehicle is abandoned, such is later confirmed via the notification process in RSA 262 and the related regulatory scheme. Thus, if after all notice has been provided and all other statutory/regulatory requirements are met, but still no one responds to any of the notices or there is a failure to retrieve or claim the vehicle from the company that towed it, the only reasonable and logical conclusion is that said vehicle has been abandoned.

Despite the above, the examiner in this case concluded – without any support and in a conclusory fashion – that none of the vehicles here could "fit the definition of an abandoned vehicle." Appx. p. 202. This is so even though the examiner never pointed to any definition concerning abandoned vehicles and never even attempted to define the term himself. Appx. p. 195-202, 216-219.

Without a definition, and without the examiner even trying to define what constitutes an abandoned vehicle, it is baffling that he nevertheless concluded that the vehicles somehow "cannot fit the definition of an abandoned vehicle." Appx. p. 202. Simply put, this conclusion strains logic and defies common sense.

In other words, there is no rational or valid basis for the examiner's legal determination that these vehicles were not and could not have been abandoned. As such, the decision here is erroneous as a matter of law, thereby requiring reversal. Or, at the very least, such legal errors require a vacating of the examiner's decision with instructions to apply the proper definition of an abandoned vehicle to the facts here. Cf., e.g., Sutton v. Town of Gilford, 160 N.H. 43, 55 (2010) (explaining that this Court "will

affirm the trial court's legal rulings unless they are erroneous as a matter of law" (quotation omitted)).

III. A vehicle that is initially repossessed can certainly become abandoned.

In his decision, the examiner erroneously concluded that a vehicle that initially begins as a repossession cannot be abandoned, and, thus, cannot be titled via the abandoned vehicle process in RSA 262 – this premise undergirds most of the decision below. Appx. p. 195-202, 216-219.

According to the examiner, Petitioner incorrectly tried to "categorize vehicles as 'abandoned' that were actually repossessed vehicles," and that such allegedly amounted to an impermissible "effort to try to turn a repossession process into an abandoned vehicle" so as to "attempt to circumvent" certain titling requirements. Appx. p. 201. The examiner continued by claiming that the vehicles each represented "an attempt to avoid repossession requirements by claiming an abandoned vehicle," and, thus, he upheld the denials of each title "on the basis that the process followed constituted an attempt to circumvent repossession requirements by attempting to categorize them as 'abandoned vehicles'. The vehicles cannot fit the definition of an abandoned vehicle when they are actually repossessed vehicles." Appx. p. 202.

Respectfully, such conclusions are erroneous, without legal or factual support, and strain logic and common sense. Thus, and as discussed below, the decision must be reversed or at least vacated with appropriate instructions, as a significant portion of the decision was premised upon this

flawed assumption by the examiner that a vehicle somehow cannot ever be abandoned if it was initially repossessed.

First, as discussed above, there is no comprehensive definition concerning what constitutes an "abandoned vehicle" in RSA 262 or in any other statute, regulation, or other authority. Such, of course, contrasts with the term "repossess," which is appropriately defined. As noted in RSA 259:87-a, the term "repossess" is defined as "the act of obtaining physical possession of a motor vehicle by a lienholder or any person acting on his behalf for any actual or claimed breach of any condition contained in a security agreement."

Petitioner acknowledges that there may be somewhat different statutory and regulatory requirements to obtain titles to repossessed vehicles as opposed to obtaining titles to abandoned vehicles. See RSA 262; Saf-C 1900 et seq. Petitioner also acknowledges that some vehicles at issue in this case were initially repossessions.

However, there is nothing in the statutory or regulatory scheme that discusses the timing of when abandonment occurs. Nor is there anything in the statutory/regulatory scheme that prohibits a vehicle that may begin as a repossession from later becoming abandoned; likewise, there is nothing precluding a vehicle from being both a repossession and an abandoned vehicle simultaneously. As noted above, abandonment cannot – logically speaking – conclusively be determined until after the notification process to the lienholder and owner is completed and no one claims or retrieves the vehicle thereafter.

With respect to a vehicle that is initially towed as a repossession, such can quickly become abandoned. The example is simple, and such

occurred with respect to several vehicles at issue here: First, a lienholder (or third-party on behalf of a lienholder) hires Petitioner at an agreed-upon rate to tow a vehicle, presumably because the owner has defaulted on his/her loan obligations; second, Petitioner tows the vehicle, as directed by the lienholder (or third-party); third, Petitioner submits to the lienholder (or third-party) an invoice for the towing, storage and other services that Petitioner rendered, and which costs were agreed upon prior to the tow; fourth, Petitioner provides all such required notice to the lienholder, owner, and anyone else required to be notified about the towing and storage of the vehicle; fifth, the lienholder (and/or third-party) and owner refuse to pay Petitioner the costs related to the towing and storage of the vehicle – this typically happens when such costs exceed the vehicle's value, which vehicles are sometimes retrieved in a dilapidated condition and not worth much money, or, alternatively, no responses are received from the vehicle owner or lienholder despite notifications being sent; and, finally, neither the owner nor the lienholder retrieve or claim the vehicle from Petitioner, or they explicitly refuse to retrieve or claim it (or again, no responses are received from the owner/lienholder), thereby effectively disclaiming, relinquishing, or otherwise surrendering the vehicle to Petitioner.

At that point, what began as a repossession necessarily turns into an abandoned vehicle. This is especially so under any reasonable interpretation of the term "abandoned vehicle," which, as discussed above, is not comprehensively defined.

Importantly, there is nothing in the statutory or regulatory scheme that prohibits this result. That is, there is no statutory or regulatory provision that prohibits a vehicle from starting as a repossession and later

becoming abandoned. Simply put, the facts and circumstances surrounding each vehicle control whether it is eventually abandoned, and oftentimes, abandonment cannot be confirmed until after the notification process is followed and either no meaningful response from the vehicle owner/lienholder is received or there is an explicit refusal by the owner/lienholder to retrieve the vehicle – at such a point, abandonment of the vehicle cannot be any clearer.

Once abandonment occurs, logic dictates that the statutory and regulatory process pertaining to abandoned vehicles should apply with respect to obtaining titles to such vehicles. This is so even if that process may be somewhat different than the process for obtaining titles to repossessed vehicles. See RSA 262; Saf-C 1900 et seq.

Stated differently, because of the lack of a comprehensive definition pertaining to abandoned vehicles, vehicles can certainly become abandoned after they were initially repossessed, and once such occurs, the statutory and regulatory requirements pertaining to obtaining titles to abandoned vehicles should apply, as the requirements related to repossessions would effectively be rendered moot or would perhaps simply provide an alternative method for obtaining titles. See id.

This is especially so given that there is nothing in the statutory/regulatory scheme that prevents a vehicle from simultaneously meeting the definition of a repossession and an abandoned vehicle. In such a case[12], logic and common sense suggest that the title to such a vehicle

---

[12] An example is when, as set forth above, a vehicle is initially towed as part of a repossession order, but, after the notification process is followed, and no on claims or retrieves the vehicle (or explicitly refuses to retrieve it,

could be obtained either through the process pertaining to abandoned vehicles or through the process pertaining to repossessions. This is particularly so when the statutory/regulatory scheme is silent on the topic and does not require that one process necessarily be used over the other. See id.

Petitioner should not be punished by DMV or the examiner for complying with the abandoned vehicle title process, especially when, as discussed above, the vehicles at issue were clearly abandoned following the notification procedure that Petitioner engaged in relative to each vehicle, which confirmed the abandoned status of each. Whether such vehicles began as repossessions by lienholders or even via a request by the owner to take the vehicle away is irrelevant because there is nothing preventing that same vehicle from later becoming abandoned, or simultaneously meeting both the definition of a repossession and an abandoned vehicle, particularly when "abandoned vehicle" is not properly defined. Thus, just because a vehicle might be repossessed at some point does not render it impossible for the vehicle to also be, or later become, abandoned.

Yet, the examiner here concluded the opposite. That is, the examiner concluded that any vehicle that begins as a repossession is effectively precluded from ever becoming abandoned, such that the titling and statutory/regulatory process applicable to abandoned vehicles can

---

or no responses to the notifications are received), then the vehicle is abandoned at that point. Although such vehicle may meet the definition of "repossess" in RSA 259:87-a, that vehicle is also necessarily abandoned, such that the titling requirements pertaining to abandoned vehicles can apply.

supposedly never apply to a vehicle that begins as a repossession. Appx. p. 195-202, 216-219. Under the hearings examiner's rationale, these vehicles would end up going into a status that could never be cleared unless the lienholder followed through with their contractual obligation to pay for any of the towing, storage and other fees that accrued relative to a vehicle – surely this Court cannot permit such an inequitable result. See id.

As set forth above, this conclusion by the examiner has no valid legal or factual basis, nor does common sense support it. Simply put, there is nothing in the statutory or regulatory scheme that prohibits Petitioner (or any other individual/entity) from obtaining the title to any vehicle through the process applicable to abandoned vehicles, so long as each vehicle is eventually abandoned, and so long as all of the required information and appropriate forms applicable to obtaining titles to abandoned vehicles are provided to DMV per the statutory/regulatory scheme.

Here, given that each vehicle at issue eventually became abandoned – even if some of them began as repossessions – the requirements pertaining to obtaining titles to abandoned vehicles were certainly applicable here. Thus, any suggestion by the examiner that a repossessed vehicle somehow cannot also be abandoned or later become abandoned such that the titling requirements pertaining to abandoned vehicles would not apply, is simply an erroneous conclusion.[13]

---

[13] Importantly, DMV has no knowledge or any way to confirm – without perhaps confirmation from the tow company or from the lienholder directly – whether a repossession order has, in fact, been issued with respect to any vehicle, as there is no system that exists in New Hampshire (of which Petitioner is aware) that would provide DMV with such information. Without the same, DMV is in no position to deny title applications for

Moreover, because Petitioner complied with all statutory and regulatory requirements with respect to the title applications for each abandoned vehicle, there is no valid support for the examiner's decision to uphold DMV's denials of these title applications. See Appx. p. 3-28, 203-211. Thus, the decision below should be reversed, or at least vacated with instructions to apply the correct law.

IV. A person can certainly abandon his/her own vehicle.

According to the examiner, a person supposedly cannot abandon his/her own vehicle. In particular, the examiner wrote that, as to the 2014 BMW, such could "not be considered an 'abandoned vehicle,'" even though the vehicle owner requested that it be towed by Petitioner and even hand-wrote a note to that effect. Appx. p. 28, 202. Per the examiner, such purportedly amounted to "another work around to avoid [certain] titling requirements and to turn it into an abandoned vehicle," Appx. p. 202, and that, although the handwritten note provided "authority from the lawful owner of the vehicle to tow the vehicle," such supposedly did not "constitute abandonment," Appx. p. 219.

Respectfully, the decision concerning this vehicle – which is at least implicitly premised upon the assumption that someone cannot abandon his/her own vehicle, even when there is a handwritten note evidencing such abandonment – is simply erroneous and cannot be upheld.

---

abandoned vehicles based upon DMV's inkling that a vehicle may have initially been repossessed – from DMV's perspective, such is simply an unsupported and unverifiable assumption upon which erroneous determinations are routinely made by DMV. The hearings examiner then compounded such error here by virtue of the erroneous legal conclusions made, as discussed above.

As seen in Exhibit C to Petitioner's Statement per Saf-C 203.03, which Petitioner relied upon at the hearing below, the owner of the 2014 BMW explicitly wrote that she "authorize[d] Tradz LLC to take a . . . black bmw that belonged to me." Appx. p. 28. Use of the past-tense with respect to the word "belonged" imputes that the owner disclaimed, surrendered, or otherwise relinquished her rights and ownership of the vehicle and explicitly allowed Petitioner to take possession of the same, which vehicle was located on the prior owner's own property. Such, of course, is strong evidence of abandonment and strong evidence that said vehicle was abandoned to Petitioner, as Petitioner was plainly authorized by the owner to take this vehicle that no longer belonged to, or was desired anymore by, the prior owner. See Black's Law Dictionary (11th ed. 2019) (defining abandoned property as "[p]roperty that the owner voluntarily surrenders, relinquishes, or disclaims").

Such abandonment was later confirmed when Petitioner (like with respect to all other vehicles at issue) complied with the requirements relative to abandoned vehicles in RSA 262[14] but no one – including the owner and lienholder – provided any affirmative responses to the notices that Petitioner sent out concerning the towing of the vehicle so as to claim or otherwise express interest in retrieving (or paying the towing/storage fees related to) the vehicle. See Appx. p. 3-28, 203-211. Thus, the only

[14] For example, Petitioner: (a) provided all proper notification to the police, the owner, lienholder and the public with respect to the vehicle; and (b) provided all required forms and other information to DMV for purposes of obtaining the title to this vehicle, just like Petitioner did with respect to every vehicle at issue.

reasonable and logical conclusion – particularly when combined with the owner's handwritten note – is that this vehicle was abandoned. Accordingly, and given Plaintiff's compliance with all the statutory/regulatory requirements pertaining to abandoned vehicles, there was nothing prohibiting Plaintiff from then selling this abandoned vehicle at a properly noticed auction and thereafter obtaining title to the vehicle from DMV.

Yet, DMV refused to provide Petitioner with the vehicle's title, as this vehicle supposedly could not have been abandoned. The examiner then affirmed that decision, as discussed above. Such, of course, is an erroneous decision, which is premised, in part, upon the examiner's implicit assumption that a person cannot abandon his/her own vehicle. Appx. p. 195-202, 216-219.

In addition to common sense and logic dictating a conclusion contrary to the examiner's decision, statutory authority and caselaw compel the reversal of the examiner's decision.

First, RSA 262:40-c, I, provides that "[n]o person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his or her own without the permission of the owner or lessee of said property." (Emphasis added). Such plain language necessarily allows a person to abandon his or her own vehicle on his or her own property, which is exactly what occurred in this case with the 2014 BMW. As discussed above, the prior owner of the BMW abandoned it to Petitioner, with such abandonment occurring on the prior owner's own property. Appx. p. 3-28, 203-211. Thus, RSA 262:40-c, I, explicitly contradicts the conclusion of the examiner as to this vehicle, thereby requiring reversal.

Additionally, there is a plethora of caselaw that holds that one can abandon his/her own property. Such is even in the context of vehicles, as found by this Court. For example, in Coulombe v. Gross, 84 N.H. 212 (1930) – a conversion case in which the "issue of liability turned upon the ownership of an automobile" – this Court discussed abandonment with respect to a motor vehicle and explained that a statement made by plaintiff (i.e., "The car is yours.") could be construed to mean that plaintiff "disclaimed and relinquished any rights he might have in the title to the car. And this would constitute an abandonment, with its operation as a matter of law to transfer to the defendant such title as the plaintiff in fact had." Coulombe, 84 N.H. 212, 148 A. 582, 583. This Court explained:

> [I]t is the law generally that any act intended as a disownership and in full relinquishment of personal property amounts to a loss of the actor's interest in it so as to bar him from further claim to it. It is an act of which the law takes cognizance and to which it gives certain effects. . . . While intent to transfer title or any interest therein is not an element of the abandonment, and while only the executed intent to discard the interest is all that is necessary, yet there is an ensuing vesting of title in the beneficiary of the abandonment through operation of law. Unlike the relationship in a sale or gift where transfer of title is intended as a part of a single transaction in the meeting of minds, an abandonment followed by acceptance of its benefit accomplishes the same result, although the parting with title and its acquisition by another are separate and unrelated acts. It follows that neither agreement nor consideration is a requisite of a valid abandonment. Nor are the reasons for making it material. Whether the property is not regarded as worth[]while to own, or the claim to it as worth the undertaking to enforce, or whether some other reason prompts the act, its effect to transfer to the person in whose favor it may happen to operate such title as the abandonment loses, is the same as though it were a transaction of sale or gift.

> While relinquishment in fact must accompany the purpose to abandon, yet the situation may be such that expression of the purpose is a full and complete relinquishment. An interest in property in another's possession may as readily be lost by a statement in renunciation of the claim to it as title to property in one's own possession may be lost by throwing the property away. The verbal act of yielding and foregoing the claim when nothing further remains to be done is as effective as a physical disposal of the property to which the claim attaches.
>
> If the plaintiff, not regarding his claim to the car to have sufficient merit to make it worth[]while to stand on it, intentionally abandoned and relinquished it, a good defense to the action thereby existed.

Id. at 583-84.

Thus, this Court has already concluded that an individual may abandon his/her own vehicle, including in circumstances similar to what occurred with the 2014 BMW here. See id. The examiner, therefore, had no valid legal basis to conclude otherwise.

Additionally, abandonment of one's own property has been found in other contexts as well by this Court, including with respect to constitutional search matters. See, e.g., State v. Westover, 140 N.H. 375, 379-80 (1995) (explaining that when a "person abandons a possession . . . he or she gives up the right to be secure from unreasonable searches of that possession," and noting that whether "property has been abandoned is generally a question of fact based upon evidence of a combination of act and intent" (quotation omitted)).

Regardless of the type of case, the consistent conclusion by this Court – which is supported by logic and common sense – is that a person can, of course, abandon his/her own property, whether that property is a

vehicle, a cellphone, clothing, or anything else. See Black's Law Dictionary (11th ed. 2019) (defining property, in part, as "[a]ny external thing over which the rights of possession, use, and enjoyment are exercised"). Such only depends upon the circumstances, as noted in the cases cited above.

Yet, the hearings examiner effectively concluded that the vehicles at issue, including the 2014 BMW, could not have been abandoned by the prior owners under any circumstances. Appx. p. 195-202, 216-219. As set forth above, this conclusion contravenes explicit statutory provisions that permit people to abandon their own vehicles, as well as caselaw from this Court that states that one can abandon his/her own property. Accordingly, the examiner's decision, which is premised upon the flawed assumption that a person cannot abandon his/her own vehicle, is erroneous as a matter of law and must be reversed. See, e.g., Sutton, 160 N.H. at 55 (explaining that this Court "will affirm the trial court's legal rulings unless they are erroneous as a matter of law" (quotation omitted)).[15]

[15] The same result follows even if the owner voluntarily abandons his/her own vehicle while the lienholder still holds an interest in the vehicle due to an outstanding loan. When such occurs, the notification process provides an opportunity for the lienholder (and the owner as well) to potentially redeem the vehicle from the towing company, including at the auction. However, if the lienholder (and owner) then refuses to redeem the vehicle or otherwise claim it (or simply fails to respond to the notification), then the vehicle is clearly abandoned at that point. Accordingly, and as explained above, this notification process in the statutory scheme is vital to the determination as to whether a vehicle is abandoned.

V. This matter is not moot.

As a final matter, the examiner briefly noted that, because Petitioner conveyed one of the vehicles to a third-party purchaser, such allegedly rendered DMV's denial of title concerning that vehicle (and/or perhaps other vehicles as well) as "moot." Appx. p. 201-202. Petitioner respectfully disagrees.

Generally, "a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead." Londonderry Sch. Dist. SAU #12 v. State, 157 N.H. 734, 736 (2008) (quotation omitted). "The question of mootness is not subject to rigid rules, but is regarded as one of convenience and discretion." In re Guardianship of R.A., 155 N.H. 98, 100-01 (2007). A "decision upon the merits may be justified where there is a pressing public interest involved or future litigation may be avoided." Id. Additionally, a case that "presents an issue capable of repetition, yet evading review," is not moot. Fischer v. Superintendent, Strafford Cty. House of Corr., 163 N.H. 515, 518 (2012) (quotation omitted).

As a threshold matter, it should be noted that the examiner's comment about purported mootness only applied to one vehicle. Appx. p. 201-202. Thus, there are no alleged mootness issues with respect to any of the other vehicles identified herein. This alone suggests that this appeal is not moot, as the same legal matters at issue here affect and apply to all the vehicles identified herein. Accordingly, even if the sale of one vehicle to a third-party buyer resolved the title application for that one vehicle, the same legal issues are still present and live with respect to the remaining vehicles,

thereby requiring resolution by this Court of all legal questions presented herein.

Moreover, this appeal is not moot with respect to any vehicle because, as explained in Petitioner's Rule 10 Notice of Appeal, the legal matters at issue here concern issues of broad public interest. Petitioner is not the only towing company in New Hampshire that tows abandoned vehicles and then applies for titles with DMV. Nor are the 10 specific vehicles identified herein the only abandoned vehicles that Petitioner has retrieved and then applied to DMV for titles. See Notice of Appeal.

Rather, there are dozens of other abandoned vehicles at issue between DMV and Petitioner, and which other vehicles DMV has erroneously denied for effectively the same improper reasons as the 10 specific vehicles identified in this case. Such decisions from DMV have, in large part, derived from the same disagreement between the parties about what constitutes an abandoned vehicle, whether a repossessed vehicle can be abandoned, and whether one can abandon his/her own vehicle – the same legal issues underpinning this action and which Petitioner addressed above. See Notice of Appeal.

As discussed in the Notice of Appeal, the numerous denials by DMV of Petitioner's title applications (and other paperwork) relating to abandoned vehicles has caused significant financial harm to Petitioner and continues to cause damages to Petitioner to this very day. This is because, due to DMV's improper actions and erroneous denials of anything that Petitioner submits to DMV, Petitioner either cannot sell the non-titled vehicles to third-party buyers or Petitioner must sell the abandoned vehicles to third-party buyers at a significantly reduced price due to the lack of a

title from DMV (thereby substantially reducing Petitioner's proceeds). See id. This is an ongoing problem, but one that will, hopefully, be rectified by this Court through a decision here.

Suffice it to say, the significant legal issues presented in this appeal – which will affect not just the 10 vehicles identified herein but will also affect numerous other abandoned vehicle title applications (and related paperwork) that Petitioner has submitted to DMV, as well as any other abandoned vehicle title applications submitted by other towing companies – are ones that concern pressing public matters that will have wide-ranging effects on the robust towing industry in this state.

This is not to mention the fact that the resolution of these legal issues will avoid a significant amount of future litigation, especially if Petitioner appeals any other of DMV's erroneous denials of title applications (or other filings) submitted by Petitioner pertaining to abandoned vehicles. Likewise, because these same legal issues arise with respect to every abandoned vehicle, even those that may be eventually sold to a third-party buyer, this case would also squarely fall within the "capable of repetition but evading review" category of cases too.

This is especially so when the titling process is intended to be resolved as an administrative matter within days or weeks, while litigating against the DMV relative to every title application through a hearings process (and appeals) can take many months, if not years. Thus, some vehicles might be sold to third-party buyers who are willing to purchase such vehicles without a title, thereby creating an environment in which the legal issues surrounding abandoned vehicles would be "capable of repetition but evading review." See, e.g., State v. Carter, 167 N.H. 161,

164-65 (2014) (concluding that certain pre-indictment discovery issues are capable of repetition yet evading review because a subsequent indictment typically takes "far less" time than an appeal).

Accordingly, this case and the significant legal questions raised in this appeal, are not moot. This Court should, therefore, address the merits thereof, which, as explained above, should resolve in Petitioner's favor.

CONCLUSION

In sum, the hearings examiner erred in multiple ways. This is particularly so given that the examiner: (a) erroneously decided that the vehicles at issue "cannot fit the definition of an abandoned vehicle," even though there is no comprehensive definition of "abandoned vehicle" in the statutory/regulatory scheme, and despite the fact that the examiner himself did not even attempt to define what constitutes an abandoned vehicle; (b) erroneously determined that a vehicle that begins as a repossession can never become abandoned – a conclusion that is not supported by any authority, let alone common sense; and (c) erroneously concluded that a person cannot abandon his/her own vehicle, which proposition ignores clear statutory language and caselaw in this state, not to mention basic logic.

All these errors constitute errors of law that necessitate reversal of the decision here, as they undergird the erroneous conclusion that DMV properly denied Petitioner's title applications as to the various vehicles identified herein. Although reversal is warranted, at the very least, these legal errors require the examiner's decision to be vacated with instructions to engage in a proper analysis, which will inevitably lead to a different result.

REQUEST FOR ORAL ARGUMENT

Pursuant to New Hampshire Supreme Court Rule 16, Petitioner request 15 minutes of oral argument to be presented by Craig Donais, Esq.

DECISION APPEALED

The decisions appealed are in writing and are included in the addendum hereto. Said decisions are also included in the Appendix accompanying this brief.

Respectfully submitted,

TRADZ, LLC

By its Attorneys,

WADLEIGH, STARR & PETERS, PLLC

Date: August 27, 2021

By:/s/ Craig Donais
Craig Donais, Esq., NH Bar #12466
Stephen Zaharias, Esq., NH Bar #265814
95 Market Street
Manchester, NH 03101
(603) 669-4140
cdonais@wadleighlaw.com
szaharias@wadleighlaw.com

CERTIFICATION

I hereby certify that a copy of this brief has this 27th day of August 2021 been served upon all counsel of record by e-filing with this Court. I further certify that this brief complies with the word limitations set forth in Rule 16, as there are 9,437 words in this brief, exclusive of any pages containing the table of contents, tables of citations, pertinent texts of statutes, rules, regulations, and other such matters. I also certify that this brief complies with all typeface and other formatting requirements set forth in Rule 16.

/s/ Stephen Zaharias
Stephen Zaharias, Esq.

ADDENDUM

See attached.

State of New Hampshire

DEPARTMENT OF SAFETY

BUREAU OF HEARINGS

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

REPORT OF HEARINGS EXAMINER

RESPONDENT:	Tradz LLC
HEARING DATE:	12/4/20
DATE OF REPORT:	12/18/20
HEARING LOCATION:	WEBEX
HEARING #:	202013765
REFERENCE:	TITLE DENIAL
PRESIDING HEARING EXAMINER:	Michael P. King, Esq.
STATE REPRESENTED BY:	Attorney Mary Maloney, NHDOS Attorney Christina Wilson, NHDOJ
RESPONDENT REPRESENTED BY:	Attorney Stephen Zaharais
OTHER PERSON(S) PRESENT:	Priscilla Vaughan, Chief, Title Bureau Michael Todd, Deputy Director, NHDMV George Condodemetraky Susan Condodemetraky Stephan Condodemetraky James Dale Anthony Liccardi Jason Asbury Jocelyn Maloney Jason Robarge

BACKGROUND:

This was the third scheduling of this hearing. The matter was initially scheduled in response to an order from Schulman, J., Merrimack County Superior Court. In the course of an existing Superior Court action, he questioned whether the respondent in this case had "exhausted administrative remedies".

The first hearing took place on 11/6/20. The matter was continued, in part, due to the technological limitations of having 8 people on a conference phone call, and, in part, due to a lack of definition of what the issues were to be decided. The

state also asserted that the particular title applications raised by the respondent had not yet been denied and the matter was not ripe for decision.

This second hearing took place on 11/20/20. The state indicated that denials that had been issued for the titles referenced at the prior hearing. However, the state questioned if the hearing had been scheduled under the proper statutory authority. The hearings examiner questioned the propriety of proceeding only on the denial of three titles that could not have possibly been the subject of the Superior Court order. The respondent argued that the court proceeding was "all encompassing". For matters of clarity and to insure all issues have been properly noticed, the matter was continued a second time to 12/4/20 to be held by WEBEX.

EXHIBITS:

State:

1. Title application paperwork - 2009 BMW (12 pages)
2. Title application paperwork - 2020 Kia (15 pages)
3. Title application paperwork - 2019 Kia (15 pages)
4. Title application paperwork - 2019 Subaru Impreza (7 pages)
5. Title application paperwork - 2012 Chrysler (10 pages)
6. Title application paperwork - 2013 Hyundai (14 pages)
7. Title application paperwork - 2014 BMW (13 pages)
8. Title application paperwork - 2019 Hyundai (11 pages)
9. Title application paperwork - 2000 Chevy 3500 (9 pages)
10. Title application paperwork - 2008 Chevrolet Silverado (6 pages)
11. Tradz LLC Case Summary - Merrimack County Superior Court (9 pages)
12. Tradz LLC Amended Complaint - Merrimack County Superior Court (21 pages)
13. Email dated 1/25/20 from Tradz to Priscilla Vaughan (with handwritten notes) (3 pages)
14. Title application paperwork - 2009 BMW (same vehicle as Exhibit 1) (6 pages)
15. Hearing Memorandum (13 pages)

Respondent:

1. Petitioner's Statement per Saf-C 203.03 (25 pages)

SYNOPSIS OF EVIDENCE:

While the documentary evidence presented in this case is substantial, the issue to be decided is straightforward. The state's position is that the 10 title

applications in question are repossessed vehicles and cannot be properly titled utilizing abandoned vehicle documentation. The respondent takes a contrary position.

STATUTE AND RULE REFERENCES:

Saf-C 1913.01 Abandoned or Unclaimed Vehicles.

(a) Pursuant to RSA 262:33, in the event a garage owner or storage company lawfully comes into the possession of a motor vehicle, he/she shall have a lien on the vehicle for the charges for storage and removal. In the event the motor vehicle owner fails to claim or pay such charges within the prescribed period, the garage owner or storage company of such abandoned or unclaimed vehicle shall submit a report to the director on form TDMV 71.

(b) An employee of a garage, dealership or towing service shall furnish the following on form TDMV 71:

(1) Date vehicle was removed to the premises;

(2) Vehicle's year, make and registration number;

(3) Vehicle identification number;

(4) Condition of vehicle;

(5) Damage to vehicle, if any;

(6) Owner's name and address, if known;

(7) Name, address and telephone number of garage;

(8) Indication as to whether:

a. Report made by police or towing service;

b. Market value of vehicle is under or over $1,000;

c. Vehicle is in condition for legal use on a public way;

d. Request has been made for sale under 20 days without notice;

e. NCIC check has been conducted; and

f. Owner has been notified; and

(9) Date of notification.

(c) A garage owner or storage company may sell an abandoned or unclaimed motor vehicle in the event the vehicle has been stored pursuant to RSA 262:37 and the requirements of RSA 262:36-a and RSA 262:38 are satisfied.

(d) In the event an applicant for title purchased the motor vehicle at public auction at the seller's place of business, the applicant shall furnish the following to the bureau:

(1) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

(2) A properly executed report of sale or transfer of a non-titled motor vehicle, form TDMV 22A;

(3) An affidavit on the prescribed form from the seller, garage owner or storage company who acquired the vehicle pursuant to RSA 262:40-a, containing a description of the circumstances of the acquisition and the procedures that were followed for the eventual sale of the motor vehicle;

(4) The appropriate fee, pursuant to RSA 261:20; and

(5) A properly executed verification of vehicle identification number, form TDMV 19A.

(e) A garage owner or storage company who has filed a notice to the director of an unclaimed or abandoned vehicle on TDMV 71, pursuant to RSA 262:36-a, III, may dispose of the vehicle upon obtaining permission from the director.

Saf-C 1916.01 Application for Title to a Repossessed Vehicle.

(a) Each applicant for title to a vehicle purchased after repossession shall furnish the following to the bureau:

(1) The existing title for the repossessed vehicle, with the lien release properly executed and assigned by the lienholder pursuant to Saf-C 1903.02;

(2) A properly executed application for title, form TDMV 23, prepared by the local town or city clerk, dealer or lienholder, as applicable;

(3) The appropriate fee, pursuant to RSA 261:20; and

(4) An affidavit of repossession, form TDMV 16, executed by the lienholder and delivered to the buyer upon resale of the vehicle.

(b) Each lienholder shall furnish the following on form TDMV 16:

(1) Name and address of lienholder;

(2) Name and address of debtor;

(3) Dollar amount of lien;

(4) Date of lien;

(5) Vehicle's year, make, color and body style;

(6) Vehicle identification number;

(7) Date of default and subsequent possession of vehicle by lienholder; and

(8) Signature of lienholder and date signed.

(c) Each applicant for title to a vehicle purchased after repossession, in which there is no title to the vehicle, because, for example, the vehicle was repossessed from a foreign jurisdiction, such as a military repossession, shall furnish the following to the bureau:

(1) The documents set forth in (a)(2) through (a)(4) above, and one of the following:

a. The existing manufacturer's certificate of origin, with the lien release properly executed and assigned by the lienholder, pursuant to Saf-C 1903.02; or

b. A properly executed verification of vehicle identification number, form TDMV 19A, along with the original or certified copy of the registration.

259:87-a Repossess. - "Repossess" shall mean the act of obtaining physical possession of a motor vehicle by a lienholder or any person acting on his behalf for any actual or claimed breach of any condition contained in a security agreement.

261:4 Application for Certificate. -

III. If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:
(a) Any certificate of title issued by the other state or country. Said certificate shall either be printed in the English language, or a notarized translation of the certificate shall be provided.
(b) Any other information and documents the director reasonably requires to establish the ownership of the vehicle and the existence or nonexistence of security interests in it.
(c) The certificate of a person authorized by the director that the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or any other proof of the identity of the vehicle the director reasonably requires.

261:7 Issuance of Certificate; Records. -

I. The department shall file each application received and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle.

261:11 Refusal of Certificate. -

The department shall refuse issuance of a certificate of title if any required fee is not paid or if it has reasonable grounds to believe that:
I. The applicant is not the owner of the vehicle;
II. The application contains a false or fraudulent statement; or
III. The applicant fails to furnish required information or documents or any additional information the director reasonably requires.

262:3-a Notification of Repossession. -

Any person who repossesses a motor vehicle, as defined in RSA 259:87-a, shall notify, within 2 hours after the repossession, a police officer of the town or city where the act of repossession occurred of the fact of the repossession and the name, address and telephone number of the owner and lienholder. If no police officer is available to receive the notification, then notification shall be given to the sheriff's department of the county where the act of repossession occurred. The police department or sheriff shall keep a record of such notification for 30 days after the notification.

DISCUSSION:

The titles in question fall into two categories: the three vehicles towed from Dan O'Brien Kia (Exhibits 1, 2 and 3) and 7 other vehicles (Exhibits 4-10).

The three vehicles towed from Dan O'Brien Kia were:

2009 BMW (Exhibit 1)
2020 Kia Sorrento (Exhibit 2)
2019 Kia Sedona (Exhibit 3)

The petitioner asserts that these vehicles were removed as "abandoned vehicles" by authority of an official of Dan O'Brien Kia and that the proper notification was made to the Concord Police by petitioner per Saf-C 262:40-a as a "standard industry practice".

RSA 262:40-a states that "the owner or person in lawful possession of any private property" may cause the removal of "a vehicle which is parked without permission or is apparently abandoned . . . provided he or she gives notice of such removal to a peace officer as soon as reasonably possible." "Industry practice" does not negate clear statutory criteria. The DMV investigation revealed that there was no record of Dan O'Brien Kia giving notice of removal to a peace officer. Furthermore, it strains credulity that two late model Kia vehicles were "parked without permission or . . . apparently abandoned" at a Kia dealership. This was clearly an attempt to categorize vehicles as "abandoned" that were actually repossessed vehicles.

In addition, as it pertains to each of these vehicles, it is an attempt to circumvent the requirements of titling a vehicle that has been brought in from another state. There are specific requirements that pertain to vehicles brought from out of state (see RSA 264:11 III). That requirement does not simply vanish because it was left at a dealership in New Hampshire.

As such, the denial of the title application is UPHELD as to Exhibits 1, 2 and 3. IN addition to the upholding of the denial, the state has presented evidence that the Petitioner has attempted to convey Exhibit 1 to a third party purchaser rendering the denial of title as moot.

A similar rationale applies to the remainder of the applications. Each of these vehicles had liens on them. Some of the vehicles were last titled and registered in another state (Exhibits 4 and 7). This was a concerted effort to try to turn a repossession process into an abandoned vehicle. As the state asserted in their brief, you cannot have two statutory criteria at odds with one another. The intent of the legislature in implementing the abandoned vehicle law was not to allow one party to ask another party to tow a vehicle subject to a lien so that it can be disposed of or resold more easily. It is to insure payment to tow companies for services rendered when they respond to an accident scene, tow during a snow

emergency or remove vehicles from private property that is posted. The process initiated by the Petitioner was not contemplated in the passage of this legislation.

Exhibit 7 (2014 BMW) was towed from a location in Massachusetts at the request of the owner of the vehicle. This is another work around to avoid the MA titling requirements and to turn it into an abandoned vehicle. The petitioner claims that the owner abandoned the vehicle and requested the tow, but this is not the forum to determine if this transaction complied with MA law. Absent that, this will not be considered an "abandoned vehicle".

Exhibits 5, 6, 8, 9 and 10 all originated in New Hampshire. All were subject to liens. Each represents an attempt to avoid repossession requirements by claiming an abandoned vehicle.

DISPOSITION:

The denials of each of the 10 titles at issue are upheld on the basis that the process followed constituted an attempt to circumvent repossession requirements by attempting to categorize them as "abandoned vehicles". The vehicles cannot fit the definition of an abandoned vehicle when they are actually repossessed vehicles. In addition, the vehicle described in Exhibit 1 has been sold to a third party and the issue as to that title is moot.

/s/_____
Michael P. King.
Chief Hearings Examiner

Report printed: 12/18/20
Report emailed: 12/18/20

cc: Atty. Maloney
Atty. Wilson
Atty. Zaharais

State of New Hampshire
DEPARTMENT OF SAFETY
BUREAU OF HEARINGS
James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

RULING ON MOTION FOR REHEARING

RESPONDENT: Tradz LLC
HEARING DATE: 12/4/20

BACKGROUND:

This matter was heard on 12/4/20 and a decision rendered on 12/18/20.

By pleading dated 1/8/21, the Petitioner filed a "Motion for Rehearing". The state responded by objection dated 1/13/21.

SYNOPSIS OF MOTION:

The Petitioner noted that the original decision failed to include appellate rights. The primary basis of the motion relates to the interpretation of the term "abandoned vehicle" as applied to the facts of this case.

STATUTE AND RULE REFERENCES:

262:40-c Abandoning a Vehicle; Penalty. -
I. No person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his or her own without the permission of the owner or lessee of said property or, in the case of public property, of the police department having jurisdiction over the property and no person shall abandon a vehicle at a storage facility after being notified in person or by registered or certified mail to redeem the vehicle. For the purposes of this section, a vehicle shall be considered abandoned if it has been left for more than 24 hours without the appropriate permission being given or at a storage facility after having been given 10 days' notice to redeem it.
II. A storage facility to which an abandoned vehicle has been towed may dispose of such vehicle after complying with the notice requirements of RSA 262:36-a or RSA

262:38, as applicable. It shall be a rebuttable resumption that the notice was received if it was given pursuant to the provisions of this subdivision.
III. The last owner of record of a motor vehicle found abandoned, as shown by the files of the department, shall be deemed prima facie to have been the owner of such motor vehicle at the time it was abandoned and to have been the person who abandoned the motor vehicle or caused or procured its abandonment, unless said last registered owner is able to establish a transfer of ownership prior to abandonment, in which case the transferee shall be liable, or that the vehicle had been reported stolen to a law enforcement agency at the time of abandonment.
IV. Any person who violates the provisions of this section shall be guilty of a violation and shall be subject to a fine of not less than $100 and not more than $500 plus penalty assessment, and may be subject to the loss of driver's license or driving privilege and registration or privilege of registering as provided in RSA 263:56 and RSA 261:179.
V. The commissioner of safety or designee may assess costs of abandoning a vehicle, including but not limited to, reasonable towing, processing, disposal, and storage costs, against any person convicted of abandoning a vehicle in violation of this section, and the director shall, unless there is just cause to do otherwise, suspend the driver's license or driving privilege, and registration or privilege of registering of any person who has not paid such costs.

DISCUSSION:

The appellate rights were inadvertently omitted from the original decision. The "Motion for Rehearing" as filed is the appropriate pleading under RSA 541:3

The primary basis for determining that a vehicle is abandoned is found in RSA 262:40-c. This statute was amended effective 9/18/10 to include "at a storage facility." The prior version of RSA 262:40-c did not allow for a vehicle to be abandoned "at a storage facility". That would appear to be the statutory basis for the Petitioner's position. As such, it would be helpful to review the legislative history behind that amendment.

For purposes of this analysis, it is assumed without deciding, that the vehicles towed by or on behalf of Tradz and then retained for a period of time constitutes "at a storage facility" as contemplated by RSA 262:40-c.

The changes that included this language and other changes to sections of RSA 262:40-c were a collaborative effort of State Senator Letourneau, the Department of Safety, New Hampshire Towing Association and Towmasters. The New Hampshire Automobile Dealers Association submitted separate written testimony.

One of the introductory paragraphs in the written testimony contains this language:

> "State and local law enforcement and DOT's (sic) rely on a quick and professional response from wrecker services to remove wrecked and abandoned vehicles from the highways to prevent lengthy and costly backup and dangerous chain-reaction collisions."

In another section of the written testimony that begins with "Section 10", this language is found:

> "Under this bill, it covers not only abandoning a vehicle on the highway or on someone else's property but also abandoning it at a towing or storage facility after the required notice has been given to come and pick it up . . ."

And also:

> "it refers to both license and registration or the privilege to drive or have a vehicle registered, so the penalty will apply to a resident of another state who abandons a vehicle here . . ."

One of the primary intentions of the legislation was to enhance the chances that tow companies would be reimbursed for the towing and storage costs when responding to a call to tow a vehicle from a highway, whether simply abandoned or to clear a crash site. The liable party is designate as the registered owner of the vehicle. The enforcement mechanism for collecting the fee involved a potential suspension of license and/or registration. There was no evidence that the petitioner availed itself of this collection mechanism. Unlike the scenarios presented in the legislative testimony, the Petitioner was not "stuck" with a tow bill incurred by performing a tow requested by an "authorized official" (see RSA 262:32).

The statute was not intended to allow an employee of a car dealership to call a business like the Petitioner's business to tow late model, valuable vehicles subject to liens from their lot as "abandoned" when all the facts and circumstances indicate that the vehicle was parked at the dealership to initiate a repossession. The documentation provided by the Petitioner indicates that the tow was authorized by the "property owner". The testimony at the hearing was that the individual who authorized the tow was, at that time, a General Sales Manager. When the DMV conducted an investigation, the General Manager of the dealership disavowed any knowledge of the tow or having given anyone the authority to arrange for a tow. Thus, the preponderance of the evidence is that the tow was not authorized by the "property owner".

The Petitioner refers to a handwritten note pertaining to a 2014 BMW as evidence of "abandonment". It is difficult to determine how this piece of paper can be construed to constitute abandonment. It is authority from the lawful owner of the vehicle to tow the vehicle. It does not meet any of the criteria listed in RSA 262:32 as a reason for "removal or impoundment". The owner gave specific authorization to conduct the tow. Again, it is difficult to reconcile this scenario with the specific intent of the legislation for abandonment at a tow facility.

As for the remainder of the vehicles, the Petitioner admits that each of these vehicles was towed in conjunction with a "repossession" process. (See Petitioner's statement, Paragraph 25), they argue that what started as a repossession ended as an abandoned vehicle. As stated in the original decision, this process is an attempt by the Petitioner to bypass the "repossession" laws and claim the abandoned vehicle process. This was clearly not the intention of the statute and that argument is rejected.

Even if the Petitioner's interpretation of an abandoned vehicle is correct, there is no evidence that the Petitioner met all of the statutory requirements of RSA 262:40-c. That statute requires "notice by registered or certified mail" to the owner to redeem the vehicle. The information submitted by the Petitioner simply says notice was given and fails to indicate the manner of such notice.

DISPOSITION:

For the reasons stated herein, the Motion for Rehearing is DENIED.

APPEAL:

This decision may be appealed to the New Hampshire Supreme Court within 30 days in accordance with RSA 541:6.

/s/_____
Michael P. King.
Chief Hearings Examiner

Report printed: 1/27/21
Report emailed: 1/27/21

cc: Atty. Maloney
Atty. Wilson
Atty. Zaharais