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Chief James E. Montgomery
Boise City Police Department
7200 Barrister Drive
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RE: Handicap Parking

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Chief Montgomery:

You have asked for legal guidance on two related questions: First, whether it is optional or mandatory for police officers to enforce handicap parking privileges; and, second, whether the officers may issue a summons by ticketing the illegally parked vehicle rather than personally citing the individual who parks the vehicle.

Handicap parking privileges may apply to parking in public parking areas as well as to parking on property which, though privately owned, is open to the public for vehicular travel. With regard to the former, there is a clear duty on the part of

law enforcement officers to enforce all provisions of state law, including infraction provisions for interfering with handicapped parking privileges. Idaho Code §§ 50-209, 31-2202(2).

With regard to parking on private property open to the public, Idaho Code § 49-594 provides that the owner of real property which is open to vehicular travel by the public may require other, different, or additional conditions for motorists' use of the property than those provisions enumerated in state laws. In the words of the statute, nothing prohibits the owner of such real property from "otherwise regulating such use as may seem best to such owner." Idaho Code § 49-594. In keeping with this policy expression, Idaho Code § 49-698 allows, but does not require private property owners whose property is open to public use to designate parking zones and spaces for the handicapped.

Subsection 2 of Idaho Code § 44-698 makes it an infraction offense to park in spaces designated for the handicapped; because it relates back to Subsection 1, the prohibition applies whether the parking infraction occurs on public property or on private property open to public use where the landowner has designated handicapped parking spaces. Subsection 5 states that "law enforcement officials are empowered to enter upon private property open to public use to enforce the provisions of this section."

The essence of the first question you ask is whether the phrase <u>empowering</u> officers to enforce handicap parking designations on private property thereby creates a duty on the part of law enforcement officers to enforce such provisions. Resolution of this question can only be reached by ascertaining the intent of Idaho Code § 49-698(5) and giving effect to that intent. Grammatically, the statute expresses in the indicative rather than the imperative mood the role of officers in enforcing parking provisions on private land. Because the statute does not say that officers <u>shall</u> enter upon private property to enforce handicap parking, it could be argued that though an owner of real property may have provided parking spaces for the handicapped, he may not want city police officers entering upon the property and writing citations. Thus, Idaho Code § 49-594 might be used to advance the argument that an owner could seek from users of his property compliance with handicapped parking designations in some manner

other than through police citations. But this view is not persuasive; if a land owner does not want police enforcement of handicap parking, he simply need not make the statutory designations for the handicapped.

The grant of power to law enforcement officers to enforce handicapped parking was not intended to give officers a choice whether or not to enforce the law but to make it clear that though handicapped designations might be on private rather than public property, police officers may use their powers to enforce such regulatory provisions once the landowner has designated the handicapped parking area. We hasten to add, however, that nothing in this construction limits the discretion with which law enforcement officers approach their duties to enforce the law. The discretion which bounds their enforcement of parking provisions is the same as that which is inherent in such executive officers generally.

The second question which you have asked is whether police officers may issue a summons to the owner of an illegally parked car simply by ticketing the vehicle, or whether the officers must personally serve a citation upon the person whom they observe operating and parking the vehicle in contravention of the handicap provisions.

Traditionally, parking violations have led to a misdemeanor complaint enforced through the criminal process. Service of the complaint is made by attaching the parking citation to the car since it is presumed that the owner thereof is the offender. Challenges have been made to this mode of criminal enforcement because there usually is no proof as to <u>who</u> illegally parked the car. It is elementary, of course, that criminal sanctions operate <u>in personam</u>, against individual offenders and that proof of the identity of the offender is a jurisdictional element of criminal offenses.

While an infraction is not a criminal offense, but rather a "public civil offense," Idaho Code § 18-111, infractions are, nevertheless, enforced in much the same way that criminal offenses have traditionally been enforced -- that is, by the issuance of a citation to the offender. (See, generally, Idaho Infraction Rule 5.)

Idaho's parking laws, like those of most states, are drafted to impose liability upon <u>the person</u> committing the

infraction. That the citation must accuse the violator and not the offending vehicle is clear from Idaho Code § 49-3402 which deals with the issuance of an infraction citation. It provides:

> It is unlawful and an infraction for <u>any person</u> to do any act forbidden, or fail to perform any act required by the provisions of Chapters 5, 6, 7, and 8, Title 49, Idaho Code.

Similarly, Idaho Code § 49-3406 sets out the penalties for violating an infraction statute. Subparagraph (1) says: "It is an infraction for <u>any person</u> to violate any of the provisions of Chapters 5, 6, 7, or 8, Title 49, Idaho Code," and then provides the punishment. Subparagraph (2) says: "It is an infraction for <u>any person</u> to violate any county, city, or other local ordinance" and then provides the punishment.

Subparagraph (2) of Idaho Code § 49-3402, however, contains the answer to the question which you pose. It provides that:

> A peace officer may issue an Idaho Uniform Citation for any infraction specified in the provisions of Chapters 5, 6, 7, and 8, Title 49, Idaho Code, in which he shall certify that he <u>has reasonable grounds to believe and does believe, that the person cited committed the infraction</u> contrary to law. (emphasis supplied)

For the issuance of a citation the code requires only that the police officer have "reasonable grounds" to believe that the person cited committed the parking violation. It is reasonable to believe that the registered owner of the car is the person who illegally parked it and, thus, a citation may properly be issued to the owner of the car. This procedure not only accords with the statute, but complies with Idaho Infraction Rule 5(a).

Idaho Infraction Rule 5(c) permits service by allowing the defendant to sign the citation promising to appear or by "personal delivery" to him where he fails or refuses to sign the citation. Recently, the Colorado Supreme Court has upheld service by attachment of the citation to a parked vehicle where that state's rule spoke of "personal service" but did not

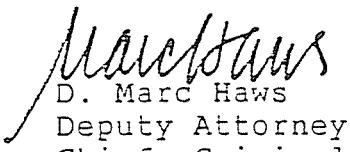
specifically address leaving of the citation on the car. "Although the method of service as seen here is not specifically sanctioned [by the rule], we hold that it is sufficient for the limited purpose of notifying the owner of an unattended motor vehicle of a parking citation." Patterson v. Cronin, 650 P.2d 531, 534 (Colo., 1982).

While Idaho's infraction laws operate in personam against the offending person who parked the car and not against the res, the parked car, it does not violate constitutional principles of due process to affix the summons to the vehicle rather than making personal service upon the owner or operator. Considering this issue, one court has said:

> We find no merit in defendant's contention that his constitutional rights were invaded because the parking tickets were not handed to him or to the driver of the car, but were placed on the automobile. This argument has been rejected by every court that has considered the question....The existence and validity of the ordinances allowing placement of the citation upon the automobile is dictated by the practical and modern necessity of maintaining orderly traffic enforcement. City of Seattle v. Stone, 410 P.2d 583, 586 (Wash., 1966).

I hope this analysis will assist you in implementing the infraction laws which have been recently enacted in our state.

Sincerely,



D. Marc Haws
Deputy Attorney General
Chief, Criminal Justice Division

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