

October 28, 2011

The Honorable Tom Corbett  
Office of the Governor  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Re: Philadelphia Parking Authority

Dear Governor Corbett:

Please be advised that I am the Director of Philadelphia Independent Towing and Salvors Association (“PITSA”), a trade organization of private towing and salvage companies in Philadelphia. PITSA members own small businesses that operate one or two tow trucks and small storage and salvage facilities in Philadelphia. They provide an important service to the community by removing disabled, abandoned, and stolen vehicles from the streets and taking them to secure facilities where their owners may recover them. They also dispose of unclaimed vehicles or vehicles that cannot be repaired.

The private towing industry in Philadelphia is highly regulated for the protection of the public, something that PITSA supports. Towing companies must meet stringent vehicle and equipment standards and conduct their businesses according to a strict code of conduct established by local ordinance. All fees and charges are also fixed by local ordinance. Most towing jobs in Philadelphia are assigned through law enforcement agencies under contracts with the City or through a rotational system established under the local ordinance. Stolen and abandoned vehicles are towed and stored by private towing companies pursuant to contracts with the City of Philadelphia and assigned on a rotational basis by the Philadelphia Police Department. The towing of wrecks is also assigned pursuant to a rotational system established by local ordinance and administered by the Philadelphia Police Department. Private towing and salvage companies earn income from each stage of the process: towing, storage, and salvage. Due to the highly competitive nature of the business and the high cost of complying with the

high standards imposed by statute, it is essential for the private towing industry to maintain and protect these sources of revenue.

The purpose of this letter is to raise some concerns that PITSA members have about the Philadelphia Parking Authority's encroachment, legal and illegal, into the private towing industry in Philadelphia, specifically with regard to, but not limited to, the Authority's illegal Memorandum of Understanding with the Pennsylvania State Police to provide towing services on the interstate highways that run through the City of Philadelphia. PITSA intends to institute suit to have this Memorandum of Understanding declared illegal; however, the association would like to attempt to resolve this issue without litigation. What follows is an explanation as to the basis of PITSA's claims and what PITSA would like you to do, as Governor, to address its concerns.

I am writing to you, as Governor of the Commonwealth of Pennsylvania, because you are the government official ultimately responsible for the actions of the Philadelphia Parking Authority as a consequence of your power to appoint the members of the Authority's governing board. See 53 Pa.C.S. §5508.1(e).

The Philadelphia Parking Authority was established in 1950 by the City of Philadelphia to manage off-street parking facilities. 53 P.S. § 344 (now repealed) In 1983, the City delegated responsibility for on-street parking to the Authority. At that time, and until 2001, parking authorities throughout the Commonwealth had similar organizational structures, powers, and duties, as outlined in the original Parking Authorities Law. 53 P.S. §§ 344-356 (now repealed) The law drew no distinctions between parking authorities in cities of the first class (Philadelphia) and those in other municipalities. *Id.* For example, each parking authority throughout the state was managed by its own Governing Board whose five members were appointed by the local mayor. 53 P.S. § 348 (now repealed). Parking authorities regulated only on and off-street parking. 53 P.S. § 345 (now repealed). They maintained independent budgets and issued bonds to raise capital. 53 P.S. § 345 (now repealed).

In 2001, the General Assembly re-codified and significantly amended the Parking Authorities Law. The new law established different powers and organizational standards for the PPA as compared to parking authorities of other municipalities. For example, the Philadelphia Parking Authority has a six-member Governing Board appointed by the Governor of Pennsylvania. 53 Pa.C.S. §5508.1(c). In addition, the PPA assumed control of taxicab and limousine operations in and around Philadelphia. 53 Pa.C.S. §5505(d)(23), (24). Previously, regulation of taxicabs and limousines in Philadelphia was a function of the Public Utilities Commission (PUC). The General Assembly supervises and controls in part the distribution of funds from the PPA's budget. 53 Pa.C.S. §5707. Although the PPA underwent fundamental changes with the 2001 amendments, the parking authorities in other municipalities retained the same pre-amendment administrative structures and powers.

Thus, oversight and control of the Philadelphia Parking Authority is clearly no longer a matter of local concern, but rather is a matter within the jurisdiction of the Commonwealth government and specifically your office as a consequence of the fundamental changes enacted by the 2001 legislation. With that in mind, PITSA urges you to consider the scope of the towing,

storage and salvage functions performed by the Philadelphia Parking Authority, the legal basis for its activities in this regard and the impact that its activities have on the private towing industry in Philadelphia.

Parking authorities are statutory creatures and do not have any inherent powers. They may boot, tow or impound vehicles only when specifically authorized by statute. The General Assembly has authorized the PPA and all other parking authorities in the Commonwealth to boot or tow vehicles that are illegally parked or which are delinquent in the payment of previously issued parking tickets, but only when specifically authorized by local ordinance. 53 Pa.C.S. §5505(d)(21)(iv).

In addition, the General Assembly has authorized the Philadelphia Parking Authority to serve as the exclusive impoundment official, exclusive impounding agent or exclusive towing agent for the enforcement of impoundment orders pursuant to 75 Pa.C.S. Ch. 63 (relating to enforcement) and to authorize towing and storage of vehicles and combinations by private towing agents for such purpose as necessary. 53 Pa.C.S. §5505(d)(22). The Philadelphia Parking Authority's power to boot, tow, and store vehicles pursuant to this authorization is set forth under three statutory provisions: Sections 6309, 6309.1, and 6309.2. These statutes are collectively known as the "Live Stop Program" and provide for the issuance and enforcement of impoundment orders issued by the Philadelphia Traffic Court for non-payment of fines for certain violations of the Vehicle Code. The Live Stop Program also provides for the towing and storage of vehicles that a police officer determines is being operated without proper registration or by a person without a proper driver's license. In these instances, the Philadelphia Parking Authority has statutory authority to tow and store vehicles.

It should be noted that the Philadelphia Parking Authority's enabling act permits it to authorize towing and storage of vehicles and combinations by private towing agents for such purpose as necessary; however, in practice it performs all or nearly all of the towing and storage of vehicles under the Live Stop Program. It should also be noted that before the General Assembly gave the Philadelphia Parking Authority its powers under the Live Stop Program, the private towing industry performed the towing and storage functions of the Live Stop Program pursuant to a contract with the Philadelphia Traffic Court. Thus, in this instance, the Philadelphia Parking Authority's encroachment on the business of the private towing industry is legally sanctioned, although it has had a financial impact on private towers and salvors by eliminating a source of revenue for the industry that it once enjoyed.

Another example of the Philadelphia Parking Authority's encroachment on the business of the private towing industry in Philadelphia, and the main reason why I am writing to you, concerns the towing and storage of vehicles from the interstate highways that run through Philadelphia. Prior to January of 2007, the Philadelphia Police Department's Highway Patrol was responsible for patrolling the interstate highways that run through Philadelphia. As noted above, towing jobs involving stolen and abandoned vehicles that arose during the course of the Highway Patrol's duties were assigned on a rotational basis to private towing companies pursuant to contracts with the City of Philadelphia and towing jobs involving wrecks were assigned on a rotational basis pursuant to local ordinance. In other words, the highways were no different than the rest of the City when it came to towing.

In January of 2007, the Pennsylvania State Police commenced patrol of certain highways in the City of Philadelphia that were formerly performed by the Philadelphia Police Highway Patrol. Rather than continue to assign towing jobs according to the protocols employed by the Philadelphia Police Department, the Pennsylvania State Police decided to enter into a Memorandum of Understanding with the Philadelphia Parking Authority to perform all towing and storage jobs that arise in connection with the duties of the State Police in patrolling the interstate highways that run through Philadelphia. On March 30, 2007, the Philadelphia Parking Authority and the Commonwealth of Pennsylvania, through the Pennsylvania State Police entered into a Memorandum of Understanding, a copy of which is attached hereto for your easy reference.

The Memorandum of Understanding covers not only the towing and storage functions that arise under the Live Stop Program, which the Philadelphia Parking Authority is legally authorized to perform under its enabling act, but also towing and storage functions generally, which the Philadelphia Parking Authority has no legal authority to perform. As noted the Philadelphia Parking Authority has no inherent powers and cannot engage in towing any vehicle unless it has explicit statutory authority to do so. By performing towing and storage functions under its Memorandum of Understanding with the Pennsylvania State Police without express statutory authorization, the Philadelphia Parking Authority is illegally engaged in a private towing business and is unlawfully competing with the members of PITSA.

PITSA intends to initiate a suit to enjoin the Philadelphia Parking Authority from performing towing and storage functions under the Memorandum of Understanding with the Pennsylvania State Police that are not authorized by statute; however, we would like to explore other ways of resolving this issue short of litigation. I would appreciate it if you would forward this to the appropriate parties for further handling so that we may discuss a possible resolution. I thank you for your attention and consideration of this matter and look forward to hearing from you or your representative in the near future.

On a separate, but related matter, I would also like to voice our opposition to a bill currently awaiting action in the General Assembly, House Bill 1762, which provides for the establishment of standards for emergency towing and for towing rotation lists. A true and correct copy of the bill is attached for your easy reference.

If House Bill 1762 becomes law, it will trigger the operation of Section 9-605(18) of the Philadelphia Code (“Towing Ordinance”), which empowers the Mayor of Philadelphia to enter into a Memorandum of Understanding with the Philadelphia Parking Authority delegating responsibility for the administration and enforcement of the local towing ordinance to the Authority. The Philadelphia towing ordinance was recently amended by Bill No. 100536, which establishes a comprehensive system of regulation for private towing companies. A true and correct copy of the bill is attached for your easy reference.

The amended towing ordinance will significantly increase the cost of doing business in Philadelphia for private towing companies. It delegates power to the Authority to promulgate regulations establishing standards in addition to those established in the towing ordinance. It

also delegates power to the Authority to initiate, prosecute, and adjudicate enforcement actions against private towing companies. In essence, the City's towing ordinance establishes the Philadelphia Parking Authority as an independent agency for the purpose of regulating towing services in Philadelphia, much like the Pennsylvania Public Utility Commission or the Authority itself with regard to the regulation of taxicab and limousine service in Philadelphia.

Under current law, the City may not enter into a Memorandum of Understanding with the Authority that delegates functions relating to the regulation of private towing companies because the Authority is not authorized by its enabling act or by any other provision of law to perform that function. As noted above, the Authority has no inherent powers and may only exercise and perform only those powers and functions expressly given to it by the General Assembly. Under Section 5505(a) of the Parking Authorities Law, 53 P.C.S. §5505(a), a parking authority is a body corporate and politic, exercising public powers of the Commonwealth as an agency of the Commonwealth. It may not be deemed to be an instrumentality of the municipality and it may not engage in the performance of a municipal function except a function delegated to it by municipal ordinance or resolution passed by the municipal government. In other words, the City of Philadelphia cannot delegate a function to the Philadelphia Parking Authority that is not otherwise authorized by the General Assembly.

Acting as an independent administrative commission for the purposes of regulating the private towing industry in Philadelphia is not a function or power authorized under the Authority's enabling act. But House Bill 1762 may be interpreted as giving the City the power to make such a delegation, even though the bill does not amend the Authority's enabling act. House Bill 1762 establishes new powers that may be exercised by the Philadelphia Parking Authority in connection with the private towing industry in Philadelphia, which the City may rely on in order to enter into a Memorandum of Understanding with the Authority pursuant to the recently amended Towing Ordinance.

The profound changes that will be affected by the enactment of this legislation are not apparent from the face of the bill. The bill does not explicitly empower to the Authority to enter into a Memorandum of Understanding with the City to perform the functions assigned to it under the local towing ordinance and it is not clear that such an agreement between the parties would be inconsistent with the House Bill. Consequently, we are concerned that, if House Bill 1762 becomes law, our industry will have to deal with an agency with new and largely unaccountable agency that will have enormous power over our businesses. Unlike taxicab and limousine carriers, towing companies are not public utilities. We do not employ our property in order to perform a public function, although our services are valuable to the public. We are certain that the General Assembly is not aware that House Bill 1762 will enable the City to delegate such extensive and intrusive powers to the Philadelphia Parking Authority and we respectfully request that you review House Bill 1762 and the recently amended local towing ordinance in the hope that you will realize that its passage is not in the best interests of the private towing industry in Philadelphia and ultimately the public at large.

One of our chief concerns with the passage of House Bill 1762 and the implementation of the recently amended local towing ordinance is the fact that we consider the Philadelphia Parking Authority to be a strong competitor against us for towing, storage, and salvage jobs. As noted

above, the Authority has already encroached on our business by taking over the Live Stop Program in Philadelphia, which, although legally sanctioned, impacts our ability to make a living by reducing the pool of potential work available for the private towing industry to perform. In addition, the Authority's illegal encroachment on our business through the Memorandum of Understanding with the Pennsylvania State Police further erodes the market for towing, storage and salvage work in Philadelphia making it that much harder for our members to survive in these tough economic times.

There are other examples of the Philadelphia Parking Authority's encroachment on the business of the private towing industry and I will briefly touch on them here. But we would be more than happy to supply you with more detailed information at a later date if you wish to investigate these issues more fully.

One example of the Authority's encroachment on our business is the Authority's interference with our contracts with private property owners. Our members have contracts with private towing and storage companies to remove vehicles that violate the terms of their right to use the private lot. In the past, the owner of private property could call the private towing company to have a vehicle removed to a private storage facility. Recent amendments to the Philadelphia towing ordinance require a vehicle to be ticketed before it can be removed from private property. In practice, the owner must first call the police department which assigns the task of ticketing to the Authority which in many cases ends up towing and storing the vehicle. Under these circumstances, the private towing company with whom the private property owner has a contract loses the job to the Authority.

The Authority also illegally encroaches on the business of the private towing industry by becoming involved in the towing of abandoned and stolen vehicles. As noted, these vehicles are towed by private towing companies pursuant to contracts with the City of Philadelphia; however, the Authority often tows and stores these vehicles under the pretext of performing its on-street parking duties, its Live Stop duties and its highway patrol duties. The line between legitimate and illegitimate towing and storage functions becomes blurred the more the Authority and the General Assembly expands its towing and storage functions. To put the Authority in charge of the regulation of the private towing industry under these circumstances will inevitably lead to the destruction of the private towing industry and an eventual monopoly for the Authority in the towing, storage and salvage market in Philadelphia, possibly in violation of federal anti-trust laws.

The purpose of government in these hard economic times should be encourage the growth of the market for services performed by private industry and to relieve private businesses of the burden of complying with onerous and unnecessary regulation. I would suggest to you that the trend in Philadelphia, with respect to the growth of power and functions of the Philadelphia Parking Authority is just the opposite and we respectfully ask to initiate an investigation and review of the Philadelphia Parking Authority regarding its towing, storage, and salvage functions in Philadelphia and how this impacts the private towing industry.

Thank you for your time and consideration concerning these matters.

Respectfully,

Joseph Parente  
Director of PITSA

Submitted on behalf of  
the Board and Officers of PITSA

Jose Giral, President  
Charles Norton, Vice President  
Anthony Boyle, Secretary  
Treasurer, Joseph Steffa