

EL DORADO COUNTY GRAND JURY 2013-2014

SHERIFF'S VEHICLE ABATEMENT PROGRAM IS NECESSARY, BUT NEEDS NEW RULES

Case Number GJ-13-13

Reason for Report

The Grand Jury investigated the Vehicle Abatement Program because of allegations that the Sheriff's office conspired to take specific vehicles for reasons of profit and personal collection. The Vehicle Abatement Officer may have used the Vehicle Abatement Procedures to obtain vehicles for friends or clients. The Grand Jury found that allegation to be unsubstantiated.

However, during the investigation, the Grand Jury found concerns regarding implementation of the program. Those concerns are addressed in this report.

BACKGROUND

El Dorado County has administered a Vehicle Abatement Program through the Sheriff's Department for approximately 15 years. It is authorized by California Vehicle Code §§ 22660-22717, and El Dorado County Ordinance Code, Chapter 10.16, Abandoned Vehicles. It is implemented by El Dorado County Sheriff's Office Vehicle Abatement Program Standard Operating Procedures (SOP).

In adopting the Vehicle Abatement Program the Board of Supervisors found that the accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property not including highways is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. (§ 10.16.010)

The Board then continued

Therefore the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof on private or public property...is declared to constitute a public nuisance which may be abated...

The procedure for abating a nuisance under the Vehicle Abatement Program is briefly summarized as:

1. Identification of a vehicle as a public nuisance. A vehicle may be identified as a public nuisance because it is wrecked, dismantled, inoperative or abandoned on public or private property. Identification may result either from a complaint received from the public or from an officer's observation. Both the Vehicle Code and the County Ordinance authorize the Officer to enter onto private property to examine the vehicle. The Officer is permitted, but not required, to obtain a search warrant.
2. Notice to the last registered owner of the vehicle and the owner of the property on which the vehicle is found. The notice shall be sent 10 days prior to any action to remove the vehicle, shall be sent by registered or certified mail and shall notify the owners of their hearing rights.
3. If no hearing is requested or the hearing officer rules against the owner of the vehicle or property, the vehicle is removed, title is transferred, and administrative costs assessed against the owner.
4. The California Department of Motor Vehicles is notified by the Sheriff's Office of the vehicle's non-operation.

The same Sheriff's Department Vehicle Abatement Officer has been the primary administrator and enforcement officer for ten years.

County ordinance § 10.16.050 provides that the amount to be assessed as administrative hearing costs shall be the amount established in Title 9 of the Ordinance Code or by action of the Board of Supervisors. The cost of removal shall be established by resolution of the Board of Supervisors. Instead, the Sheriff's Office has determined that the costs of the hearing shall be \$100.

During two years ending June 30, 2013, 580 vehicles were given notice as public nuisances. Of these, 529 vehicles were disposed of under the Vehicle Abatement Program.

Actions

- The Grand Jury interviewed the Sheriff personnel assigned to the Vehicle Abatement Program and reviewed statistics prepared by the Sheriff about the program.
- The Grand Jury reviewed several warrants used by the Vehicle Abatement Officer to enter private property to serve notice or remove vehicles. Sheriff personnel told the Grand Jury that warrants are rarely used. The Grand Jury noted there was little or no showing of probable cause within the officer's affidavit, and each document was vague in the description of the property to be searched and a description of the extent of that search.

- The Grand Jury interviewed 3 citizens who had vehicles towed under this program between 2005 and 2011.
- The Grand Jury reviewed the applicable California state Vehicle Code sections, El Dorado County ordinance chapters, and legal documents.

Findings

The Grand Jury supports the declared purpose of the Vehicle Abatement Program and finds:

1. None of the allegations identified in the initial reason for this report were proven to the Grand Jury.

Response: The Sheriff agrees with the finding.

2. Most of the vehicles given notice as public nuisances are voluntarily removed by the property and/or vehicle owners.

Response: The Sheriff agrees with the finding.

3. Although search warrants are not often used by the Vehicle Abatement Officer, the warrants issued were deficient in many ways. There was little or no showing of probable cause within the officer's affidavit, and each document was vague in the all-important description of the property to be searched and the extent of that search.

Response: The Sheriff disagrees wholly with the finding. The description in a warrant of the property to be searched and the extent of the search need not be a model of specificity. When the description of the premises to be searched is particular enough to allow the officers to locate it, a warrant will be upheld by the courts. Every affidavit to support the issuance of a warrant is submitted to a judge of the Superior Court who independently determines whether the affidavit states sufficient facts to establish cause to justify the search. All vehicle abatement warrants served were reviewed and granted by a sitting judge in the county of El Dorado.

4. Law enforcement and county personnel often came on private property without either a warrant or the consent of the owner to view, give notice or supervise towing of the vehicles.

Response: The Sheriff agrees with the finding. The California Vehicle Code Section 22663 and El Dorado County Ordinance authorize entrance upon private property for

the purpose of examination; obtain information as to the identity if a vehicle and/or remove or cause removal of vehicle.

5. Property owners felt law enforcement and county personnel treated them unfairly by giving notice that their vehicles were public nuisances.

Response: The Sheriff disagrees wholly with the finding. As the Grand Jury noted in their report, they interviewed three citizens who had their vehicles towed under this program between 2005 and 2011. During a two year period ending June 30, 2013, the Sheriff's Office issued 580 vehicle abatement public nuisance notices. I do not dismiss the beliefs of the three citizens interviewed, but even accepting the belief of these three individuals, the statistical sampling is far too small to justify a conclusion that "property owners," which implies all or a large percentage of property owners, felt they were treated unfairly. Additionally, the individuals interviewed were involved in specific instances which occurred more than three years ago. Finally, there are no facts stated from which one could determine the basis of or merit of the complaints made by three individuals.

6. Those individuals who did not voluntarily take care of their vehicles by moving or removing them generally did not request a hearing within the 10 day time period allowed and no hearing was held.

Response: The Sheriff agrees with the finding.

7. Ten days to request a hearing is insufficient in a rural county where many people receive their mail at a Post Office Box.

Response: The Sheriff agrees with the finding. The ten (10) day response period is a standard period set forth in the County Ordinance for code enforcement administrative hearings: El Dorado County Ordinance 9.02.380 and 10.16.060. This time limit is consistent with the California Vehicle Code section 22661(e).

8. The \$100 hearing fee charged by the Sheriff's Office is not authorized by law and may be so large as to inhibit the property owner's ability or desire to request a hearing.

Response: The Sheriff disagrees partially with the finding. The El Dorado County Ordinance 10.16.040 B states the amount to be assessed as administrative hearing costs shall be the amount established in Title 9 or by action of the Board of Supervisors.

El Dorado County Ordinance 9.02.380 states in part, "No hearing to contest an administrative citation shall be held unless and until a request for hearing form provided by the county has been completed and submitted with a hearing fee and the

administrative fine. The refundable hearing fee shall be two hundred dollars (\$200.00) payable to El Dorado County to defray the cost of the hearing and may be changed by resolution of the board of supervisors...”

The Sheriff's Office is adhering to the procedures set forth in Title 9 and Title 10 of the County Ordinance.

9. Having one individual act as the Vehicle Abatement Officer for ten years has contributed to suspicions surrounding the program. Changing Vehicle Abatement personnel more frequently would improve warrant preparation and relations with property owners.

Response: The Sheriff partially agrees with the finding. The finding assumes there are “suspicions surrounding the program.” As the Grand Jury found there was no merit to the allegations that the vehicle abatement program was used to take specific vehicles for reasons of profit and personal collection. Other than speaking to three individuals, the Grand Jury did not identify any widespread suspicions surrounding the program. This finding also assumes that the warrant preparation was inadequate, and earlier finding with which the Sheriff disagrees. However, the Sheriff does not take issue with the suggestion that more frequent rotation of the Vehicle Abatement Officer may be advisable.

Recommendations

We recommend the Sheriff:

1. Discontinue the \$100 fee charged to vehicle and/or property owners who wish to have a public hearing to contest the nuisance finding.

Response: The administrative hearing cost of \$200 is established by the Board of Supervisors by ordinance. The Sheriff does not have the independent authority to waive or modify the fee set by the Board of Supervisors.

2. Change El Dorado County Sheriff (SOP) procedures to comply with Title 10.16.040 A, where “...regularly salaried full-time employees of the county sheriff's office...” have the ability to administer and enforce the program.

Response: The Vehicle Abatement program is administered by regular salaried full-time employees.

The Grand Jury acknowledges that during discussion of the concerns arising from this investigation, the Sheriff immediately agreed to make the changes recommended in numbers 1 and 2 above.

3. Assure warrants for the Vehicle Abatement program are raised to the standard of search warrants generally employed by law enforcement.

Response: The Sheriff's Office will continue to ensure that the affidavits and warrants issued pursuant to the affidavits meet the legal standards required by the courts.

We recommend the Board of Supervisors:

4. Amend ordinance 10.16.070 pertaining to Vehicle Abatement to provide increased time for the property owner to request a hearing by allowing 20, not 10, days from the time of actually mailing a notice.

Response: The recommendation will not be implemented because it is not warranted. However, the County is currently performing a comprehensive update to the current Ordinance Code. Staff anticipates this update will take several years and require significant support from the Clerk of the Board, Chief Administrative Office and County Counsel with input and assistance from county departments. During this period, individual Ordinance Code updates will be provided to the Board for consideration and adoption.

5. The Sheriff is the moving party of the action to take the vehicle. The ordinance should mandate that the hearing officer be independent from the Sheriff's Department so that the hearing will be seen as a fair proceeding.

Response: The recommendation will not be implemented because it is not warranted. However, the County is currently performing a comprehensive update to the current Ordinance Code. Staff anticipates this update will take several years and require significant support from the Clerk of the Board, Chief Administrative Office and County Counsel with input and assistance from county departments. During this period, individual Ordinance Code updates will be provided to the Board for consideration and adoption.