



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 9, 2008

The Honorable Kim Brimer
Chair, Committee on Administration
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. GA-0644

Re: Whether, under section 70.001 of the Texas Property Code, an auto repair shop may assert a mechanic's lien for administrative and overhead charges when the shop does not repair the vehicle (RQ-0667-GA)

Dear Senator Brimer:

You ask whether, under section 70.001 of the Texas Property Code, an auto repair shop may assert a mechanic's lien for administrative and overhead charges "when a vehicle is determined to be a total loss and thus" the repair shop does not repair it.¹ See TEX. PROP. CODE ANN. § 70.001 (Vernon 2007) ("Worker's Lien"). Because you tell us that the vehicle is not repaired, we assume that the auto repair shop performed no repair work on the vehicle.² See Request Letter, *supra* note 1, at 1.

Property Code section 70.001(a) authorizes a worker who repairs an article to retain possession of the article until the worker is compensated:

A worker in this state *who by labor repairs an article*, including a vehicle, motorboat, vessel, or outboard motor, may retain possession of the article until:

- (1) the amount due under the contract for the repairs is paid; or
- (2) if no amount is specified by contract, the reasonable and usual compensation is paid.

¹Letter from Honorable Kim Brimer, Chair, Committee on Administration, Texas State Senate, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Jan. 10, 2008) (on file with the Opinion Committee, *also available at* <http://www.texasattorneygeneral.gov>) [hereinafter Request Letter].

²Thus we do not understand you to ask about an auto repair shop that begins repairs on a vehicle in good faith but does not complete the repairs by mutual consent with the owner or due to actions on the part of the owner.

TEX. PROP. CODE ANN. § 70.001(a) (Vernon 2007) (emphasis added); *see also id.* § 70.001(c) (authorizing a worker to take possession only if the obligee signed a notice stating that the article may be subject to repossession under section 70.001).

Section 70.001's plain language compels the conclusion that an auto repair shop that performs no repairs on a vehicle cannot assert a lien on the vehicle. Lien statutes in Texas are to be liberally construed to protect laborers and materialmen, yet a court "cannot be blind to the plain language" of such a statute. *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985); *accord Page v. Structural Wood Components, Inc.*, 102 S.W.3d 720, 723 (Tex. 2003) (quoting *First Nat'l Bank v. Whirlpool Corp.*, 517 S.W.2d 262, 269 (Tex. 1974)); *Pavecon, Inc. v. R-Com, Inc.*, 159 S.W.3d 219, 224 (Tex. App.—Fort Worth 2005, no pet.) (quoting *RepublicBank Dallas, N.A.*, 691 S.W.2d at 607). And section 70.001(a)'s plain language limits the remedy to a worker "who by labor repairs" an article. TEX. PROP. CODE ANN. § 70.001(a) (Vernon 2007).

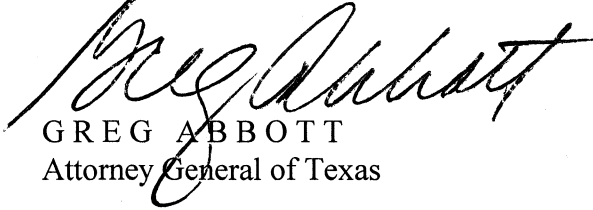
Section 70.001 does not define the word "repair." *See id.* § 70.001. "In common usage, 'repair' means 'to restore by replacing a part or putting together what is torn or broken' or, stated slightly differently, '[t]o bring back to good or usable condition.'" *Carlton v. Trinity Universal Ins. Co.*, 32 S.W.3d 454, 464 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1923 (1993); RIVERSIDE WEBSTER'S II DICTIONARY 580 (rev. ed. 1996)); *accord Am. Mfrs. Mut. Ins. Co. v. Shaefer*, 124 S.W.3d 154, 158–59 (Tex. 2003) ("The concept of 'repair' with regard to a vehicle connotes something tangible, like removing dents or fixing parts." (citing, among other things, *Carlton*, 32 S.W.3d at 464)).

We understand you to premise your question on a vehicle that is not repaired. Because the vehicle is not repaired, the auto repair shop may not assert a lien for any charges under section 70.001(a).

S U M M A R Y

Section 70.001(a) of the Texas Property Code authorizes only a worker “who by labor repairs” a vehicle to possess the vehicle until the worker is compensated for the repairs. TEX. PROP. CODE ANN. § 70.001(a) (Vernon 2007). If an auto repair shop does not perform any repairs on a vehicle, it may not assert a lien under section 70.001(a).

Very truly yours,



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