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August 13, 2003

Opinion No. 03-097

Applicability of Private Investigators' Licensure Requirements to Attorneys Licensed in Other States

QUESTION

Are attorneys who maintain an active license to practice law in a state other than Tennessee exempted from the licensure requirements imposed on private investigators and investigation companies?

OPINION

Yes. The plain language of Tenn. Code Ann. §62-26-223(b)(3)(A)(i) indicates that the provisions regulating private investigators and investigation companies do not apply to an "attorney-at-law."

ANALYSIS

It is unlawful in the State of Tennessee for any person to act as an "investigations company" or "private investigator" without first obtaining a license from the Tennessee Private Investigations Commission. Tenn. Code Ann. § 62-26-204(a). Tenn. Code Ann. § 62-26-202(6) defines an "investigations company" as:

> any person who engages in the business or accepts employment to obtain or furnish information with reference to:
>
> (A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;
>
> (B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputations or character of any person;
>
> (C) The location, disposition or recovery of lost or stolen property;
>
> (D) The cause or responsibility for fires, libels, losses,

> accidents, damages or injuries to persons or to property; or
> (E) The securing of evidence to be used before any court, board, commission, officer or investigating committee;

Tenn. Code Ann. § 62-26-202(10) describes a "private investigator" as "any person who performs one (1) or more services as described in [the definition of investigations company]."

There are, however, certain persons who are exempt from these licensure requirements. Tenn. Code Ann. § 62-26-223(b) provides in pertinent part, "The provisions of this part do not apply to:... (3)(A)(i) An attorney-at-law." While the statute is silent as to whether an "attorney-at-law" must be licensed as an attorney in Tennessee in order to utilize this exemption, in absence of language to the contrary, we believe that attorneys from other states may utilize this exemption as well.

The term "attorney-at-law" is not defined in the Tennessee Code. The plain meaning of the term "attorney-at-law" merely refers to an attorney with an active license to practice law. Further, the statute appears to contain no explicit or implied limitation regarding the state in which an attorney must be licensed.

Nor, in this setting, does the context demand that the statute be read as referring only to attorneys licensed to practice in Tennessee. Tenn. Code Ann. §62-26-223(b) identifies many categories of persons exempted from the private investigators' licensure provisions, many of whom would often be working for an out-of-state enterprise requiring no licensure by the State of Tennessee. Moreover, Tenn. Code Ann. §62-26-223(b)(8) provides an exemption for "[a]ny person duly licensed by the State of Tennessee in another profession while such person is engaged in activities within the scope of that profession." This is the only provision of Tenn. Code Ann. §62-26-233 that makes reference to licensure in the State of Tennessee. The phrase "another profession" operates to draw a distinction between the professions specifically addressed (such as attorneys) and all the other professions that could fall under the act. An "attorney-at-law" is not in "another profession" which would require licensure in the State of Tennessee.

Based upon the plain language of the term "attorney-at-law" and the absence of statutory language to the contrary, an "attorney-at-law" is exempt from the private investigators licensure requirement even if that attorney maintains an active license to practice in a state other than Tennessee.

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