S T A T E O F T E N N E S S E E
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Opinion No. 06-150

City's Authority to Contract for Enforcement of Traffic Signals and Speed Limits

QUESTION

Does a city have the authority to enter into an agreement with a private company for the installation and operation of cameras designed to enforce compliance with traffic signals and speed limits whereby the company, and not the city, would have the initial responsibility for collecting fines from persons accused of such traffic infractions?

OPINION

No. The contract described appears to constitute an unauthorized delegation of the city's sovereign powers of law enforcement to the extent that the company, not the City, would have the initial responsibility for issuing citations to, and collecting fines from, persons accused of traffic infractions.

ANALYSIS

You have asked whether our analysis in recent Attorney General Opinion No. 06-039, issued February 23, 2006, would preclude a city from entering into an agreement with a private company for the installation and operation of cameras designed to enforce compliance with traffic signals and speed limits whereby the company, and not the city, would have the initial responsibility for collecting fines from persons accused of such traffic infractions. Under the agreement described, the private company would be responsible for installing and operating the cameras at designated locations, for photographing persons who fail to comply with traffic signals and applicable speed limits, and for issuing citations to and collecting fines from such persons.

In Opinion No. 06-039, this Office opined that a local governmental entity's authority to contract with third parties for the provision of services "is not an unlimited one." Op. Tenn. Att'y Gen. No. 06-039 (Feb. 23, 2006). In discussing the limits on this authority, we recognized the principle that "[n]o governmental entity can by contract deprive itself of inherent powers necessary to the performance of its functions or of power or duty imposed upon it by prior express statutory or constitutional provision." Op. Tenn. Att'y Gen. No. 06-039 (Feb. 23, 2006) (quoting *Batson v.*

Pleasant View Util. Dist., 592 S.W.2d 578, 581 (Tenn. Ct. App. 1979)). Quoting a prior Attorney General Opinion, we explained:

> Nowhere in the Tennessee Constitution is there found any authority for a department to vest sovereign powers in non-governmental entities. Long ago, the Tennessee Supreme Court noted, "The delegation of sovereign power is, in itself, an act of sovereignty, and can only be made by the constituent body in whom the original power resides, or by its express authority." *State v. Armstrong*, 35 Tenn. [634, 655 (1856)]. In the case of the three departments of government, the constituent body in whom the original power resides is the people. *Id*. The sovereign powers delegated by the people are trusts which must be exercised by governmental officials personally. *Id*. These trusts "in their very nature and intention, must be exercised in person, the idea of a transfer or delegation thereof being in direct opposition to the design and ends of their creation." *Id*. at 656. Consequently, a department may not transfer its sovereign powers to another entity, governmental or non-governmental, absent constitutional authorization.

Op. Tenn. Attorney Gen. No. 06-039 (Feb. 23, 2006) (quoting Op. Tenn. Att'y Gen. No. 85-286 (Nov. 27, 1985)). Based upon these and other authorities, we concluded that "[t]he State's authority to levy and collect taxes constitutes a sovereign power that may not be delegated to another entity." Op. Tenn. Att'y Gen. No. 06-039 (Feb. 23, 2006).

Like the authority to levy and collect taxes, the authority and duty to provide law enforcement services is a sovereign power that cannot be delegated to a third party. *See Broyles v. State*, 207 Tenn. 571, 576, 341 S.W.2d 724, 726 (1960). The contract described in your request appears to violate this principle because it impermissibly delegates the city's law enforcement powers to a third party, namely the issuance of citations to such violators and the collection of fines from them.

On the other hand, we know of no principle that would preclude the city from entering into a contract with a private company to install and operate such cameras if the purpose of such contract were merely to provide information which the city's law enforcement department could then use to decide whether and whom to cite for these traffic violations. The problem with the contract described in your request is not that the private company is providing technical assistance to the city's law enforcement department, but that the city is effectively delegating to the private company both the manner of enforcement and the enforcement itself of the city's traffic ordinances. In our view, this arrangement exceeds the city's powers of delegation.

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