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Opinion No. 07-74

Blue Lights on Local Civil Defense Vehicles

## QUESTION

Are the director and deputy director of a local emergency management agency created under Tenn. Code Ann § 58-2-110 authorized to use blue flashing emergency lights on their vehicles?

## OPINION

No.

## ANALYSIS

This opinion concerns the authority of the director and deputy director of a local emergency management agency to use blue flashing emergency lights on their vehicles. The request refers to Op. Tenn. Att'y Gen. 99-062 (March 12, 1999), which opined that such officials were authorized to use blue flashing emergency lights on their vehicles in the performance of activities set forth in Tenn. Code Ann. §§ 58-2-101, *et seq.* After that opinion was issued, the statutes governing emergency management were completely rewritten. 2000 Tenn. Pub. Acts Ch. 946. To the extent it was based on statutes that are no longer in effect, therefore, that opinion is no longer valid.

Tenn. Code Ann. § 55-9-414(a)(1) provides:

> It is unlawful for anyone to install, maintain or exhibit blue flashing emergency lights or blue flashing emergency lights in combination with red flashing emergency lights, except full-time, salaried, uniformed law enforcement officers of the state, county, or city and municipal governments of the state, and commissioned members of the Tennessee bureau of investigation when their official duties so require as defined by §§ 38-8-106 and 38-8-107.

The statute includes other exceptions to this prohibition, none of which is applicable to local emergency management agencies. The term "law enforcement officer" has been defined as one whose duty it is to preserve the peace. *Frazier v. Elmore,* 180 Tenn. 232, 238, 173 S.W.2d 563, 565 (1943). Tenn. Code Ann. § 39-11-106(a)(21), which is part of the criminal code, defines a "law enforcement officer" as follows:

> "Law enforcement officer" means an officer, employee or agent of the government who has a duty imposed by law to:
>
> (A) Maintain public order; or
>
> (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
>
> (C) Investigate the commission or suspected commission of offenses.

Tenn. Code Ann. § 39-11-106(a)(21). Thus, only law enforcement vehicles may display flashing blue lights. Properly marked civil defense vehicles, on the other hand, may display the lights described in Tenn. Code Ann. § 55-9-402(d), which provides:

> (d)(1) No vehicle operated in this state shall be equipped with any flashing red or white light or any combination of red or white lights which displays to the front of such vehicle except school buses, a passenger motor vehicle operated by a rural mail carrier of the United States postal service while performing the duties of a rural mail carrier, authorized law enforcement vehicles only when used in combination with a flashing blue light, and emergency vehicles used in firefighting, including ambulances, emergency vehicles used in firefighting which are owned or operated by the division of forestry, firefighting vehicles, rescue vehicles, privately owned vehicles of regular or volunteer firefighters certified in § 55-9-201(c), or other emergency vehicles used in firefighting owned, operated, or subsidized by the governing body of any county or municipality.
>
> (2) Any emergency rescue vehicle owned, titled and operated by a state chartered rescue squad, a member of the Tennessee Association of Rescue Squads, privately owned vehicles of regular or volunteer firefighters certified in § 55-9-201(c), and marked with lettering at least three inches (3") in size and displayed on the left and right sides of the vehicle designating it an "Emergency Rescue Vehicle," ***any authorized civil defense emergency vehicle displaying the appropriate civil defense agency markings of at least three inches (3"),*** and any ambulance or vehicle equipped to provide emergency medical services properly licensed as required in the state of Tennessee and displaying the proper markings, shall also be authorized to be lighted in one (1) or more of the following manners:
>
> (A) A red or red/white visibar type with public address system;
>
> (B) A red or red/white oscillating type light; and
>
> (C) Blinking red or red/white lights, front and rear.

(Emphasis added).

Until the statutes were rewritten in 2000, Tenn. Code Ann. § 58-2-101 included "police services" within the range of civil defense functions that local civil defense organizations were authorized to provide. For this reason, earlier opinions conclude that the director and deputy director of a local emergency management agency were authorized to display flashing blue lights. Op. Tenn. Atty Gen. 99-062 (March 12, 1999); Op. Tenn. Att'y Gen. 87-191 (December 16, 1987). This language no longer appears in statutes governing emergency management and civil defense agencies within the State. Tenn. Code Ann. §§ 58-2-101, *et seq.* Instead, the statutory scheme authorizes the establishment of county emergency management agencies. Tenn. Code Ann. § 58-2-110. These agencies are authorized to perform "emergency management functions." That term is defined in Tenn. Code Ann. § 58-2-101(7) as follows:

> (7) "Emergency management" means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:
>
> (A) Reduction of vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural, technological, or manmade emergencies or hostile military or paramilitary action;
>
> (B) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies;
>
> (C) Response to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by the emergency;
>
> (D) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies;
>
> (E) Provision of an emergency management system embodying all aspects of pre-emergency preparedness and post emergency response, recovery, and mitigation; and
>
> (F) Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

While these functions arguably include maintaining public order, we do not think the General Assembly intended employees or officers of local emergency management agencies to fall within the term "full-time, salaried uniformed law enforcement officers of the state, county, or city and municipal governments of the state, and commissioned members of the Tennessee bureau of investigation" authorized to display flashing blue lights under Tenn. Code Ann. § 55-9-414(a)(1). For this reason, the director and deputy director of a local emergency management agency created under Tenn. Code Ann. § 58-2-110 may not display flashing blue lights on their vehicles.

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