

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 10-76

Locksmith Licensing Act of 2006

QUESTIONS

1. Are state and local governmental employees performing locksmith services in the scope of their employment subject to the provisions of the Locksmith Licensing Act of 2006 (“the Act”), Tenn. Code Ann. §§ 62-11-101 *et seq.*?
2. Are a business and its employees, who only provide the service of gaining entry to locked vehicles for the owners of those vehicles, exempt from the requirements of the Act?
3. If an entity is exempt from the Act, may another entity sell or otherwise provide locksmith tools to the exempted entity for use in exempted locksmith activities?

OPINIONS

1. Yes. It is the opinion of this Office that the Act prohibits state and local governmental employees from engaging in, or holding themselves out as engaging in, locksmithing without first obtaining a license. Tenn. Code Ann. § 62-11-104(a).
2. Yes. The Act excludes from its requirements businesses that provide the service of allowing entry into a vehicle for the owner of the vehicle when the owner is locked out of the vehicle, provided that the business does not offer any other locksmithing services. Tenn. Code Ann. § 62-11-105(a)(9).
3. Yes. Since the Act does not require a license for businesses providing only the service of unlocking a vehicle for the owner of the vehicle, these businesses can purchase “car opening tools” without a license.

ANALYSIS

The Act requires individuals and businesses to obtain a license in order to provide locksmithing services. Tenn. Code Ann. § 62-11-104 provides:

- (a) No person, partnership, association, corporation or local or state governmental employee shall engage in, or hold themselves out as engaging in, the business of locksmithing in this state without first

registering or licensing any employees, agents or contractors operating as locksmith apprentices or locksmiths in accordance with this chapter.

(b) Persons who are not licensed under this chapter shall not provide any locksmithing services in violation of this chapter or any rule adopted pursuant to this chapter.

The stated purpose of the Act is:

to provide uniform procedures and qualifications throughout this state for licensing and regulation of locksmiths, to protect the public of this state by prohibiting the unauthorized use of lock picking, safe opening and car opening tools by making it illegal for persons convicted of certain crimes to obtain or possess such tools, and to protect the safety and security of persons and property by assuring that individuals or companies offering locksmithing services to the general public are competent in locksmithing services and are trained in applicable regulations and laws, such as the Americans With Disabilities Act, building codes and life safety codes.

Tenn. Code. Ann. § 62-11-102.

The Act defines “locksmithing services” as:

(A) Repairing, rebuilding, repinning, recombining, servicing, adjusting or installing any lock, safe or vault; or

(B) Operating a lock, safe or vault by means other than those intended by the manufacturer of the lock, safe or vault[.]

Tenn. Code Ann. § 62-11-103(10). The Act defines “locksmith” as “any natural person who provides locksmithing services for any type of compensation.” Tenn. Code Ann. § 62-11-103(9).

The Act prohibits persons who are not licensed locksmiths from using, selling, or offering to sell any code book, lock picking tool, manipulation key, try-out key, safe opening tool, or car opening tool. Tenn. Code Ann. § 62-11-104(g). The Act likewise prohibits the sale, offer to sell, or giving to any person not licensed as a locksmith of any code book, lock picking tool, manipulation key, try-out key, safe opening tool, or car opening tool. Tenn. Code Ann. § 62-11-104(h).

The penalties for engaging in or offering to engage in locksmithing services without a license include a civil penalty of no less than one thousand dollars nor more than five thousand dollars per occurrence and ineligibility to apply for a license until six months after the violation occurred. Tenn. Code. Ann. § 62-11-110(a) and (b). Additionally, a civil penalty of no more than five thousand dollars may be assessed against any person who violates any provision of the

Act or any rule of the Commissioner of Commerce and Insurance promulgated pursuant to the Act. Tenn. Code Ann. § 62-11-110(c).

1. First, we are asked whether state and local governmental employees performing locksmithing services in the scope of their employment are subject to the provisions of the Act. State and local governmental employees who perform locksmithing services for their governmental employer meet the Act's definition of locksmith because they are natural persons who perform locksmithing services for a type of compensation, i.e., their wages or salaries. Tenn. Code Ann. § 62-11-103(9). The Act specifically includes state and local governmental employees within the list of persons and entities who are prohibited from "engag[ing] in, or holding themselves out as engaging in, the business of locksmithing" without first obtaining a license. Tenn. Code Ann. § 62-11-104(a). The Act does not define "the business of locksmithing."

In ordinary usage, "business" has several different meanings; the following are relevant to the instant inquiry: "1. **a.** The occupation, work, or trade in which one is engaged. **b.** A specific pursuit or occupation. 2. Commercial, industrial, or professional dealings. 3. A commercial enterprise or establishment." *Webster's II New College Dictionary* 149 (Houghton Mifflin 2001). In the context of Tenn. Code Ann. § 62-11-104(a), "the business of locksmithing" appears to refer to the occupation of locksmithing, rather than locksmithing as a commercial enterprise. This must be the case because, under the Act, "[s]tate agencies, counties and municipalities are prohibited from offering locksmithing services to the general public, whether or not a fee is charged." Tenn. Code Ann. § 62-11-113(a). State and local governmental employees who perform locksmithing services solely for the governmental entity that employs them do not engage in locksmithing as a commercial enterprise because governmental agencies are prohibited from offering locksmithing services to the general public. It would thus be unnecessary to include state and local governmental employees within the prohibition of Tenn. Code Ann. § 62-11-104(a) if "the business of locksmithing" were intended to mean locksmithing as a commercial enterprise. For these reasons, it is the opinion of this Office that the General Assembly intended for state and local governmental employees to obtain a locksmithing license prior to performing locksmithing services for their governmental employers.

2. Next, we are asked whether a business and its employees that only provide the service of gaining entry to locked vehicles for the owners of those vehicles are exempt from the requirements of the Act. Tenn. Code Ann. § 62-11-105 provides:

(a) The following persons, firms, partnerships, associations or corporations not offering any other locksmithing services are specifically excluded from the requirements of this chapter:

...

(9) Emergency service vehicles, for the sole purpose of towing a motor vehicle or allowing the owner entry into a vehicle when the owner is locked out of the vehicle[.]

“Emergency service vehicle” is defined as “a vehicle used for police, fire, or emergency medical services or to assist a person from getting in and out of a vehicle[.]” Tenn. Code Ann. § 62-11-103(5).

Businesses that only provide the service of gaining entry to locked vehicles for the owners of those vehicles necessarily operate emergency service vehicles, since the definition of emergency service vehicle includes “a vehicle used . . . to assist a person from getting in and out of a vehicle[.]” Tenn. Code Ann. § 62-11-103(5). Emergency service vehicles are excluded from the requirements of the Act “for the sole purpose of towing a motor vehicle or allowing the owner entry into a vehicle when the owner is locked out of the vehicle[.]” Tenn. Code Ann. § 62-11-105(a)(9). Therefore, it is the opinion of this Office that a business that provides only the service of gaining entry to locked vehicles for the owners of those vehicles is within the exception stated in Tenn. Code Ann. § 62-11-105(a)(9) and these businesses and their employees are not subject to the requirements of the Act.

3. Finally, we are asked whether locksmith tools may be sold or otherwise provided to an entity that is exempt from the requirements of the Act for use in exempted locksmithing activities. The Act provides that “[n]o person who is not licensed under this chapter shall possess, use, sell or offer to sell any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool” Tenn. Code Ann. § 62-11-104(g). The Act likewise provides that “[n]o person shall sell, offer to sell or give to any person not licensed under this chapter any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool.” Tenn. Code Ann. § 62-11-104(h). “Car opening tool” is defined as “any tool that is designed by the manufacturer of the tool, or intended by the user, to be used to open any vehicle by means other than that intended by the manufacturer of the vehicle[.]” Tenn. Code Ann. § 62-11-103(1).

The requirements of the Act do not apply to businesses and individuals who provide the service of unlocking vehicles for the owner of the vehicle who has been locked out, provided that they do not offer any other locksmithing services. Tenn. Code Ann. § 62-11-105(a)(9). To provide this service, these businesses and individuals will obviously need to obtain “car opening tools.” The Act, however, prohibits selling car opening tools to persons who do not have a locksmith license. It would be inconsistent to allow businesses and individuals without a locksmith license to perform the service of unlocking vehicles for the owner of the vehicle, while prohibiting them from obtaining the “car opening tools” necessary to perform that service. Accordingly, it is the opinion of this Office that the Act does not prohibit the sale of “car opening tools” to businesses or individuals that are excluded from the requirements of the Act by Tenn. Code Ann. § 62-11-105(a)(9).

ROBERT E. COOPER, JR.
Attorney General and Reporter

GINA J. BARHAM
Deputy Attorney General

R. MITCHELL PORCELLO
Assistant Attorney General

Requested by:

The Honorable Leslie A. Newman
Commissioner, Tennessee Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243-0570