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

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Opinion No. 11-3

Inapplicability of Private Investigators Licensing Act to Photographic Traffic Monitoring Systems

QUESTIONS

1. Under Tenn. Code Ann. § 62-26-202(6), which describes activities for which a private investigation license is required, and Tenn. Code Ann. § 62-26-204(a), which makes it unlawful to engage in private investigation activities without a license, are the manufacturers of photographic traffic monitoring systems required first to obtain a private investigation license before providing these systems to local jurisdictions for the purpose of gathering information on possible traffic violations?

2. Are the personnel responsible for reviewing the information gathered by such systems, if not police officers employed by a local jurisdiction and thus exempt from licensure under Tenn. Code Ann. § 62-26-223(b)(1), required first to obtain a private investigation license before performing these duties?

3. If privately employed personnel described in question two above are required to be licensed by the Commission, what duties that they perform require such a license?

OPINIONS

1. No. Manufacturers of photographic traffic monitoring systems provided to local jurisdictions for the purpose of gathering information on possible traffic violations are not required to obtain a private investigation license.

2. No. It is our understanding that privately employed persons review the photographic images only for quality assurance. Only law enforcement personnel are authorized to review the information gathered by photographic traffic monitoring systems to determine whether a traffic violation has occurred. These law enforcement personnel are not required to obtain a private investigation license because they are exempt under Tenn. Code Ann. § 62-26-223(b)(1).

3. Because Question 2 is answered in the negative, Question 3 is pretermitted.

ANALYSIS

1. We are informed by the requestor that "technology has made it possible for local jurisdictions to affordably purchase and utilize unmanned methods of gathering information on motor vehicles running stop lights or violating stop signs by not coming to a complete stop." The requestor asks whether the companies that manufacture the unmanned traffic surveillance cameras purchased and utilized by local jurisdictions are required to be licensed under the Private Investigators Licensing and Regulatory Act, Tenn. Code Ann. §§ 62-26-201 *et seq.*

Enforcement and monitoring of traffic violations by surveillance cameras are authorized by Tenn. Code Ann. § 55-8-198. Tenn. Code Ann. § 55-8-198(a) provides that "[a] traffic citation that is based solely upon evidence obtained from a surveillance camera that has been installed to enforce or monitor traffic violations shall be considered a nonmoving traffic violation." Tenn. Code Ann. § 55-8-198(b) provides that "[a]n employee of the applicable law enforcement office shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred." "If a determination is made that a violation has occurred, a notice of violation or a citation shall be sent by first class mail to the registered owner of the vehicle that was captured by the traffic light signal monitoring system." *Id.*

Private investigators and investigations companies in Tennessee are governed by the Private Investigators Licensing and Regulatory Act, Tenn. Code Ann. §§ 62-26-201 *et seq.*, which provides that "it is unlawful for any person to act as an investigations company or private investigator without first obtaining a license from the [private investigation and polygraph] commission." Tenn. Code Ann. § 62-26-204(a). Tenn. Code Ann. § 62-26-202(6) defines "investigations company" as follows:

> 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[.]

"Private investigator" is defined as "any person who performs one (1) or more services described in [Tenn. Code Ann. § 62-26-202(6).]" Tenn. Code Ann. § 62-26-202(10). "Person" is defined as "any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity[.]" Tenn. Code Ann. § 62-26-202(8). The licensing requirements and prohibitions of the Act do not apply to "[a] governmental officer or employee performing official duties[.]" Tenn. Code Ann. § 62-26-223(b)(1).

We do not believe that the manufacturers of unmanned traffic surveillance cameras purchased and utilized by local jurisdictions to obtain evidence of traffic violations are required to be licensed as investigations companies. Certainly a manufacturer that merely sells such photographic equipment to a local jurisdiction does not "obtain or furnish information" within the meaning of Tenn. Code Ann. § 62-26-202(6). Tenn. Code Ann. § 55-8-198 authorizes law enforcement offices to utilize surveillance cameras to obtain evidence of traffic violations. The manufacturers of the unmanned traffic surveillance cameras provide law enforcement offices with the technology to obtain evidence of traffic violations; however, law enforcement personnel are responsible for reviewing the evidence to determine whether a traffic violation has occurred and a citation should be issued.

2. *Only* law enforcement personnel are authorized to review the information gathered by unmanned traffic surveillance cameras to determine whether a traffic violation has occurred. It is our understanding that even when employees of the manufacturer review the photographic data, they do so only to ensure its quality and do not engage in any substantive analysis. Again, Tenn. Code Ann. § 55-8-198(b) provides that "[a]n employee of the applicable law enforcement office shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred." In Op. Tenn. Att'y Gen. No. 08-179 (Nov. 26, 2008), this Office opined that "[t]he statute makes no provision for a private company to monitor and control a traffic light or to issue a citation. Applicable law enforcement personnel are the only ones presently authorized to issue this type of citation." Based on the plain language of Tenn. Code Ann. § 55-8-198(b), we thus concluded that "the statute prohibits private vendors from making the determination, based upon photographic evidence, that a traffic violation has occurred, since the statute specifically requires the applicable law enforcement office to make such determination."

In *City of Knoxville v. Kimsey*, 2009 WL 1325719 (Tenn. Ct. App., May 13, 2009) (unpublished), the Tennessee Court of Appeals held that the City of Knoxville did not improperly delegate its police power to a non-governmental third party when the City contracted with Redflex Traffic Systems, Inc. ("Redflex") to provide unmanned traffic surveillance cameras. In that case, the defendant argued that the City of Knoxville "did not have the authority to delegate police power to a non-governmental third party, by sharing city revenue with Redflex, delegating core government functions regarding issuance of citations, etc." *Kimsey*, 2009 WL 1325719, at *2. The Court rejected the defendant's argument after determining that "[a] review of the contract between the City and Redflex, however, demonstrates that Redflex merely gathers the photos and data and then a police officer reviews the same to determine whether a citation should be issued." *Id.* The Court explained that "[t]he City has plenary power to decide who to cite and whether those actions take place." *Id.* The Court concluded that "Redflex's only duty is to

gather the photos and data via the cameras, and this does not constitute any exercise of police powers." *Id.*

Because only law enforcement personnel are authorized to review the information gathered by unmanned traffic surveillance cameras to determine whether a traffic violation has occurred, no private investigation license is required. Law enforcement personnel reviewing traffic surveillance photos to determine whether a traffic violation has occurred are "governmental officer[s] or employee[s] performing official duties" and are thus clearly exempt from the private investigation licensing requirements by Tenn. Code Ann. § 62-26-223(b)(1).

ROBERT E. COOPER, JR.
Attorney General and Reporter

JOSEPH F. WHALEN
Associate Solicitor General

R. MITCHELL PORCELLO
Assistant Attorney General

Requested by:

The Honorable Minnie Lane
Chair, Tennessee Private Investigation and Polygraph Commission
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243-1167