S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 13-52

Authority of Law Enforcement Officers and Funeral Escort Services

QUESTIONS

1. May full-time law enforcement officers, whether on or off duty, use flashing blue lights in or on a personal vehicle?

2. May an off-duty law enforcement officer, who is employed by a contract security company and working in the company's assigned law enforcement uniform, employ flashing blue lights in or on a personal vehicle or a vehicle owned by that private security company?

3. May a reserve law enforcement officer use blue lights in or on a personal vehicle while off duty or in an assigned private security vehicle while working as a private security officer in Tennessee?

4. May an off-duty law enforcement officer use flashing blue lights on a personal vehicle while escorting a funeral procession?

5. May a funeral escort service use flashing blue lights on an escort vehicle?

6. May a funeral escort service use flashing red lights on an escort vehicle?

7. May a funeral escort service use sirens and other noise making devices while escorting a funeral procession?

8. May flashing blue lights be used on any vehicle or in any other manner other than a state or local government owned and operated law enforcement vehicle?

9. If the answer to question 8 is yes, when may such blue lights be employed?

10. Does a reserve officer have law enforcement authority to direct traffic and enforce laws, including rules of the road, while off-duty and receiving compensation from a private security company in another county?

OPINIONS

1. Yes. Full-time, salaried, uniformed law enforcement officers may use blue flashing lights on personal vehicles so long as their official duties so require.

2. Off-duty, full-time, salaried, uniformed law enforcement officers receiving compensation from contract security companies may employ blue lights in a personal vehicle so long as their official law enforcement duties so require.

3. No. Tenn. Code Ann. §§ 55-9-414(c) and (e) permit reserve officers to exhibit blue flashing lights only while operating official departmental motor vehicles.

4. Law enforcement officers may only use blue lights while escorting a funeral procession when required to do so as part of their official duties.

5. No, unless the funeral procession is accompanied by a police escort and the law enforcement officers in the escort are acting within their official duties. Tenn. Code Ann. § 55-9-414 prohibits vehicles operated in Tennessee from being equipped with any flashing blue lights with few exceptions. A funeral escort service without an official police escort is not an exception to this prohibition.

6. No, unless the funeral procession is accompanied by an official police escort in which case the law enforcement vehicles could use red lights in combination with a flashing blue light. Tenn. Code Ann. § 55-9-402 prohibits vehicles operated in Tennessee from being equipped with any flashing red lights with few exceptions. A funeral escort service without an official police escort is not an exception to this prohibition.

7. Yes.

8. No, subject to the exceptions listed by Tenn. Code Ann. § 55-9-414.

9. This question is pretermitted by the response to question 8.

10. While receiving compensation as a security guard or for directing traffic, a "reserve police officer/deputy" has the authority of a licensed security officer, any authority conferred by the agency employing the officer for security or traffic duty, the authority vested in the officer by his respective government employer, and any rights of a private person.

ANALYSIS

1. The use of blue flashing emergency lights on motor vehicles is governed by Tenn. Code Ann. § 55-9-414. Subject to limited exceptions, it is unlawful for anyone to install, maintain, or exhibit blue flashing emergency lights either alone or in combination with red flashing 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." Tenn. Code Ann. § 55-9-414(a)(1). *See* Tenn. Code Ann. § 55-9-414(b)-(e)

(listing exceptions to this prohibition). *See also* Tenn. Att'y Gen. Op. 07-74 at 1-2 (May 17, 2007); Tenn. Att'y Gen. Op. 04-170 at 1-3 (Dec. 15, 2004) (both discussing use of blue lights on motor vehicles). The statute limits the use of blue flashing emergency lights to circumstances when the officer's official duties so require but does not otherwise impose time restrictions, such as when an officer is working an official duty shift. Tenn. Code Ann. § 55-9-414(a). Likewise, the provision does not limit the use of blue lights to an official motor vehicle. *Id.* In *White v. Revco Discount Drug Centers, Inc*., 33 S.W.3d 713, 718, 721 (Tenn. 2000), the Tennessee Supreme Court recognized that, while police officers do not continuously function in an official capacity, off-duty officers are not prevented from assuming a duty to remedy a breach of peace and remain capable of being summoned for official duty at any time. Thus, because Tenn. Code Ann. § 55-9-414(a) does not prohibit a law enforcement officer as defined by the statute from having blue flashing emergency lights on the officer's personal vehicle and such officers are capable of being summoned for official duty at any time, such law enforcement officers may use blue lights on personal vehicles, whether on or off duty, so long as the blue lights are used in connection with their official duties. *See In re Estate of Trigg*, 368 S.W.3d 483, 490 (Tenn. 2012) (stating that in construing a statute a court must "(1) give these [the statute's] words their natural and ordinary meeting, (2) consider them in the context of the entire statute, and (3) presume that the General Assembly intended to give each of these words its full effect"). Such blue lights could be portable or installed on the officer's personal vehicle.

2. As set forth above, Tenn. Code Ann. § 55-9-414(a) permits full-time, salaried, uniformed law enforcement officers to employ blue lights when their official duties so require. Full-time law enforcement officers may be required to discharge their official duties while performing off-duty work as security guards for private companies. As the Tennessee Supreme Court has recognized, "[t]he special status of peace officers in this state permits an off-duty officer to act within the scope of his or her public employment, even while otherwise performing duties for a private employer." *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d at 718. Thus, full-time, salaried, uniformed law enforcement officers may use blue flashing lights in their own private vehicles while working off-duty as security guards if necessary to perform their official duties as law enforcement officers.

A contract security company regulated under the Private Protective Services Licensing and Regulatory Act ("Act"), which is codified at Tenn. Code Ann. §§ 62-35-101 to -142, generally may not use blue lights on its company vehicles for work performed for the security company. Tenn. Code Ann. § 62-35-127(2)(B) prohibits persons performing any function of a security guard or patrol service from having or using any vehicle or equipment that "[h]as any sign, shield, accessory or insignia that may indicate that the vehicle belongs to a public law enforcement agency." However, the Act specifically exempts from its coverage a "government officer or employee performing official duties" as well as a "full-time sworn peace officer receiving compensation for services as a guard, patrol or watchperson under a contract with a private business that is properly licensed by the state." Tenn. Code Ann. §§ 62-35-103(a)(1) & (7). Thus, reading these provisions together with the previously referenced Tennessee law regulating the use of blue lights, full-time law enforcement officers performing off-duty work as security guards for private companies could use blue lights if they are required to discharge their official duties during the course of their off-duty work as security guards. *Compare* Tenn. Code Ann. § 55-9-414(a) *with* Tenn. Code Ann. §§ 62-35-103(a)(1) & (7). These provisions

collectively recognize that full-time law enforcement officers even while off-duty may be confronted with situations, such as a breach of the peace, requiring them to immediately reassume their official duties. *See White v. Revco Drug Centers, Inc.*, 33 S.W.3d at 718, 721.

3. Duly authorized and qualified reserve law enforcement officers listed under Tenn. Code Ann. §§ 55-9-414(c) & (e) are only allowed to exhibit blue flashing lights while operating official departmental motor vehicles. These exceptions at Tenn. Code Ann. §§ 55-9-414(c) & (e) to the general prohibition against having blue lights on a motor vehicle are limited to the specific circumstances described. These limited exceptions do not permit part-time or reserve officers to use blue lights while operating privately-owned vehicles, including any vehicle provided by a private security company. *Id. See Chapman v. Davita, Inc.*, 380 S.W.3d 710, 714 (Tenn. 2012) (stating rule of statutory construction that courts will derive legislative intent from the natural and ordinary meaning of the words in the statute without any forced or subtle construction that would extend the statute's meaning). Tenn. Code Ann. § 55-9-414(d) specifically excepts from the prohibition of blue lights on motor vehicles any "motor vehicles of specially commissioned police officers employed pursuant to [Tenn. Code Ann.] § 49-7-118(f) when operating either within five (5) miles of any property owned or operated by the colleges or universities referenced therein, or as may be directed by the chief law enforcement officer of the applicable county."

4 & 5. The conducting of funeral processions in Tennessee is governed by Tenn. Code Ann. § 55-8-183. This statute specifically provides the following requirements for a vehicle in a funeral procession:

> Funeral processions properly identified by a flashing amber light on the lead vehicle, or identified as a police escort, where the vehicle has visual signals and is equipped with or displays an amber light accompanied by a blue light visible from the front of the vehicle, or led by a properly identified escort, shall have the right-of-way on any street, highway, or road through which they may pass . . . .

Tenn. Code Ann. § 55-8-183(a). *See also* Tenn. Code Ann. § 55-8-183(b) (setting forth the requirements for motorcycle escorts of funeral processions). Thus, if there is no police escort of the funeral procession, the lead vehicle is authorized to use a flashing amber light, not flashing blue lights. If the procession has a police escort then flashing blue lights may be used in the procession so long as they are used as part of the official duties of the law enforcement personnel accompanying the procession. *See* Tenn. Code Ann. § 55-9-414(a)(1). *See also* Tenn. Att'y Gen. Op. 02-116 at 2 (Oct. 18, 2002) (opining that a constable performing off-duty work as a funeral escort could not use "red or blue flashing lights and/or a siren").

6. The use of red flashing emergency lights on motor vehicles, including vehicles in a funeral escort, is governed by Tenn. Code Ann. § 55-9-402, which provides in pertinent part:

> Except as provided in this section, …[n]o vehicle operated in this state shall be equipped with any flashing red or white light or any combination of red or white lights that displays to the front of the 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 that 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.

Tenn. Code Ann. § 55-9-402(d)(1) (emphasis added).

The statute provides no exception for the use of red flashing emergency lights for funeral escort service vehicles not accompanied by an official police escort. *See* Tenn. Code Ann. §§ 55-9-402(d)(2) & (3). Furthermore, as previously stated, Tennessee law provides that absent an official police escort the light authorized for the lead vehicle in a funeral procession is a flashing amber light, not flashing red lights. Tenn. Code Ann. § 55-8-108(a). *See also* Tenn. Att'y Gen. Op. 02-116 at 2. However, if the funeral procession is accompanied by a police escort and the law enforcement officers in the escort are acting within their official duties, then any "authorized law enforcement vehicle" in the escort could use flashing red lights "in combination with a flashing blue light." Tenn. Code Ann. § 55-9-402(d)(1).

7. A funeral escort service may use sirens or other noise making devices while escorting a funeral procession, to the extent such devices are considered "auditory signaling" devices authorized by Tenn. Code Ann. § 55-8-183(c)(3). *See also* Tenn. Code Ann. § 55-8-183(b)(2) (allowing a motorcycle in a funeral escort to "install a bell, siren, or exhaust whistle of a type approved by the sheriff of the county in which the motorcycle is to be operated; provided, that the system is deactivated at all times the motorcycle is not escorting a properly identified funeral procession"). The provisions of Tenn. Code Ann. § 55-8-183(c), to be effective in a county or municipality, must be adopted in the manner set forth by Tenn. Code Ann. § 55-8-183(c). If a county or municipality has not adopted Tenn. Code Ann. § 55-8-183(c), then no authority exists for a motor vehicle in a funeral escort to use auditory signaling devices. *See* Tenn. Code Ann. § 55-8-183.

8. Subject to the exceptions discussed above, flashing blue lights generally may not be used on any vehicle other than state or local government owned and operated law enforcement vehicles. Tenn. Code Ann. § 55-9-414. *See also* Tenn. Att'y Gen. Op. 04-170 at 1-3.

9. Question 9 is pretermitted by the response to question 8.

10. This Office has previously opined that a "reserve police officer/deputy," when receiving compensation as a security guard or for directing traffic, has the authority of a licensed security officer, any authority conferred by the agency employing the officer for security or traffic duty, the authority vested in the officer by his respective government employer, and any rights of a private person. Tenn. Att'y Gen. Op. 12-77 at 1-4 (July 25, 2012).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

TROY A. MCPEAK
Assistant Attorney General

Requested by:

The Honorable Mae Beavers
State Senator
7 Legislative Plaza
Nashville, TN 37243-0223