

STATE OF TENNESSEE

Office of the Attorney General



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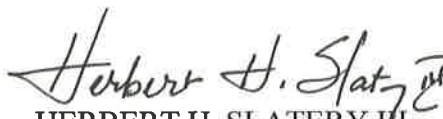
July 28, 2015

The Honorable Minnie A. Lane, Chair
Tennessee Private Investigation and Polygraph Commission
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243

Dear Ms. Lane:

Enclosed is the attached opinion per your request. Please let us know if you have any further questions. As always, we appreciate your assistance and cooperation.

Sincerely,


HERBERT H. SLATERY III
Attorney General and Reporter

Enclosure

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 28, 2015

Opinion No. 15-62

License for Providing Canine Detection Services to Public Schools and Private Entities

Question 1

Are private entities that provide canine detection services to county high school systems required to be licensed under Tenn. Code Ann. §§ 62-26-202, *et seq.*, also known as the “Private Investigators Licensing and Regulatory Act” (the “Act”)?

Opinion 1

Yes. A private entity that contracts to provide canine detection services is acting as an “investigations company” and a “private investigator” as defined in Tenn. Code Ann. § 62-26-202 and must be licensed unless otherwise exempt from the Act. None of the exemptions set forth in Tenn. Code Ann. § 62-26-223 is applicable to entities or their employees that provide these services to county high schools. Specifically, they are not exempt under Tenn. Code Ann. § 62-26-223(b)(1) as “a governmental officer or employee performing official duties” because they are independent contractors, not employees of the county high school systems.

Question 2

Are private entities that provide canine detection services to private entities required to be licensed under the Act?

Opinion 2

Yes. As stated above, a private entity that contracts to provide canine detection services is acting as an “investigations company” and a “private investigator,” and is not exempt from the Act under Tenn. Code Ann. § 62-26-223.

ANALYSIS

1. This request concerns private companies and other private legal entities that contract to provide canine detection services to county high school systems. The requestor has informed us that these services use dogs in their efforts to detect the presence of drugs, alcoholic beverages, abused medications, and weapons on high school campuses and grounds.

Pursuant to the Act, “it is unlawful for any person to act as an investigations company or private investigator without first obtaining a license from the commission.” Tenn. Code Ann. § 62-26-204(a). An “investigations company” is defined as

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[.]

Tenn. Code Ann. § 62-26-202(6).

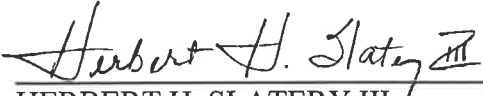
A “private investigator” is a “person who performs one (1) or more services described in subdivision (6).” Tenn. Code Ann. § 62-26-202(10). However, the Act enumerates several persons who are exempt and, thus, are not required to obtain a license from the Private Investigation and Polygraph Commission. For example, the Act does not apply to “a public accountant and a certified public accountant, or the agent of either, performing duties relating to public accountancy” or “a governmental officer or employee performing official duties.” Tenn. Code Ann. § 62-26-223(a) and (b)(1).

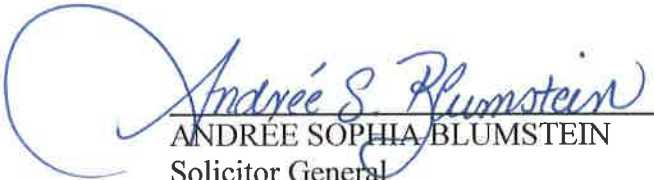
Private businesses and their employees providing canine detection services are acting as an “investigations company” and as a “private investigator” under the Act. They are in business to “obtain or furnish information” regarding crimes or wrongs against the State of Tennessee; the identity, conduct, activity, or acts of the students and school employees; and “[t]he securing of evidence to be used before any court, board, commission, officer or investigating committee.” Tenn. Code Ann. § 62-26-202(6)(A), (B), and (E). The detection services are used to search for contraband that is illegal in and of itself or because of its possession by minors or on a high school campus. The contraband could be used as evidence by the school system when disciplining the student or school employee, or in criminal proceedings.

Thus, the entities and individuals providing these services are required to obtain licenses under the Act unless they are otherwise exempt. They are not exempt under Tenn. Code Ann. § 62-26-223. Specifically, they are not “a governmental officer or employee performing official

duties.” Tenn. Code Ann. § 62-26-223(b)(1). Only governmental officers and employees, not private entities contracting with school systems to provide services as independent contractors, are exempt from licensure. Independent contractors are not employees of the governmental entity to which they provide services. *U.S. v. Boyd*, 211 Tenn. 139, 164, 166, 363 S.W.2d 193, 204-05 (1962), *aff’d* 378 U.S. 39 (1964). Accordingly, they are not exempt from the Act’s licensure requirement.

2. For the reasons explained above, entities and individuals providing the canine detection services are acting as an “investigations company” and a “private investigator” and, thus, are required to be licensed under the Act. None of the exemptions enumerated in Tenn. Code Ann. § 62-26-223 would apply to entities or individuals when providing these services to private entities. Accordingly, they are not exempt from the Act’s requirement of licensure.


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Requested by:

The Honorable Minnie A. Lane, Chair
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