



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>January 14, 2010</p>	<p>No. I10-001 (R09-027)</p> <p>Re: Whether Private Investigator Licensing Requirements Apply to Photo-Enforcement System Vendors</p>
---	---

To: The Honorable Sam Crump
Arizona House of Representatives

Question Presented

You have asked for an opinion on the following two questions:

1. Must a vendor contracting with the Department of Transportation¹ to provide a state photo-enforcement system pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1722 meet the private investigator licensing requirements of Title 32, Chapter 24?
2. Is a contract to provide a state photo-enforcement system pursuant to A.R.S. § 41-1722 invalid if a vendor fails to meet the licensing requirements of Title 32, Chapter 24?

¹Section 41-1722 provides for the Arizona Department of Public Safety, not the Department of Transportation, to enter into a contract with a vendor to establish a state photo-enforcement system. This discrepancy, however, does not alter the analysis or opinion rendered.

Summary Answer

A vendor contracting with the Department of Public Safety (“DPS”) to provide a state photo-enforcement system is not required to meet the private investigator licensing requirements of Title 32, Chapter 24. Because a vendor need not be a licensed private investigator, the second question is moot.

Analysis

In 2008, the Legislature established a state photo-enforcement system. 2008 Ariz. Sess. Laws ch. 286, § 23 (codified as A.R.S. § 41-1722). Section 41-1722(A) provides as follows:

Notwithstanding any other law, the department [of public safety] shall enter into a contract or contracts with a private vendor or vendors . . . to establish a state photo enforcement system consisting of cameras placed throughout the state . . . to enforce the provisions of title 28, chapter 3, articles 3 and 6 relating to vehicle traffic and speed.

Section 41-1722(C) establishes the photo-enforcement fund, and the Legislature appropriated over \$20 million from the fund “to the department of public safety for contract payments to private vendors for the operation of photo enforcement cameras and the processing of citations.” 2008 Ariz. Sess. Laws ch. 286, § 35. In the same bill, the Legislature amended A.R.S. § 28-1593(B) to allow persons, in addition to peace officers or duly authorized agents, to be paid to act on a traffic enforcement agency’s behalf to issue traffic complaints. 2008 Ariz. Sess. Laws ch. 286, § 16.

Chapter 24 of Arizona Revised Statutes, Title 32, regulates the conduct of private investigators. A private investigator is defined in A.R.S. § 32-2401(16), which provides as follows:

“Private Investigator” means a person . . . who, for any consideration, engages in business or accepts employment to:

- (a) Furnish, agree to make or make any investigation for the purpose of obtaining information with reference to:
 - (i) Crime or wrongs done or threatened against the United States or any state or territory of the United States.

- (ii) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person or group of persons.
 - (iii) The credibility of witnesses or other persons.
 - (iv) The whereabouts of missing persons, owners of abandoned property or escheated property or heirs to estates.
 - (v) The location or recovery of lost or stolen property.
 - (vi) The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage or an injury to real or personal property.
- (b) Secure evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.
- (c) Investigate threats of violence and provide the service of protection of individuals from serious bodily harm or death.

Private investigators are required to be licensed by DPS. *See* A.R.S. §§ 32-2402, -2411.

The power to enact licensing laws is based upon the legislature's police power, which is the power "to enact any law deemed necessary for the protection of the property, peace, life, health and safety of the inhabitants of the state." *State Bd. of Technical Registration v. McDaniel*, 84 Ariz. 223, 228, 326 P.2d 348, 351 (1958). The purpose of an act which is promulgated under the state's police power is to protect the public health, safety or welfare. *State v. Beadle*, 84 Ariz. 217, 221, 326 P.2d 344, 347 (1958).

The purpose of licensing and regulating private investigators is to protect the public from "unscrupulous and unqualified investigators." *Landi v. Arkules*, 172 Ariz. 126, 135, 835 P.2d 458, 467 (App. 1992). The court reasoned as follows:

The public policy behind licensing and regulating private investigators is apparent from the Legislature's enactments. Qualifications for licensing are set forth by statute and include the applicant's good moral character and prior investigative experience. The statute imposes specific duties on licensees with respect to the confidentiality and accuracy of information and the disclosure of investigative reports to the clients. A license may be suspended or revoked for a wide range of misconduct, including acts of dishonesty or

fraud, aiding the violation of a court order, or soliciting business for an attorney.

Id. (citations omitted).

In *Landi*, the defendant entered into a private contract with the plaintiff to locate potential heirs to an estate. The court found that persons who provide heir locating services must be licensed as private investigators because the “genealogical research” contracted for in the case squarely fell within the definition of private investigator. *Id.* at 134, 835 P.2d at 466. Since the defendant acted as a private investigator without a license, the court found the contract unenforceable as contrary to public policy. *Id.* at 135, 835 P.2d at 467.

The public policy concerns behind the private investigator statutes do not, however, apply to a vendor operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722(A). Unlike in *Landi*, which involved a private service which any member of the public may hire, a photo-enforcement system vendor does not provide a private service and is not available to the public to hire. Issuing traffic citations is a state function, and the Legislature enacted A.R.S. § 41-1722 allowing the vendor to issue citations on behalf of the state. Under the statutes governing photo enforcement, the regulation and oversight through the contracting process with DPS protects the public, separate and apart from the private investigator licensing statutes.

A previous Arizona Attorney General Opinion addressed a similar question with respect to whether engineers who investigate the origin of fires involving electrical apparatuses and then testify at trial as expert witnesses must have a private investigator’s license. Ariz. Att’y Gen. Op. No. I91-011. The opinion concluded that interpreting the private investigator licensing statute to include engineers would frustrate the intent of the Legislature, which was to protect the public from unscrupulous private investigators and detectives operating privately. *Id.*; see also *Kennard v.*

Rosenberg, 127 Cal. App. 2d 340, 345-46, 273 P.2d 839, 842 (1954) (holding that California's private investigator licensing requirement could not be applied to engineers, because the intent of the law was not to encompass persons employed to gather data in cases requiring the use of technical knowledge). In so concluding, the opinion noted that a literal interpretation of the private investigator licensing statute would produce an absurdity. *Id.* (citing *City of Phoenix v. Superior Court*, 101 Ariz. 265, 267, 419 P.2d 49, 51 (1966) (holding that if literal interpretation produces absurd result, legislation must be construed so that it is a reasonable and workable law)).

That rationale applies here. The Legislature established a photo-enforcement system that does not contemplate requiring vendors to be private investigators. Extending the definition of private investigator pursuant to A.R.S. § 32-2401(16)(b) to apply to a photo-enforcement system vendor under A.R.S. § 41-1722 imposes additional requirements unintended by the Legislature. "If reasonably practical, a statute should be explained in conjunction with other statutes to the end that they may be harmonious and consistent." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970).

Thus, vendors operating photo-enforcement cameras and processing citations pursuant to A.R.S. § 41-1722 need not be licensed as private investigators.

Conclusion

A vendor who contracts to provide a state photo-enforcement system, pursuant to A.R.S. § 41-1722, is not required to be licensed as a private investigator.

Terry Goddard
Attorney General