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DISTRICT 5

Arizona House of Representatives
 Phoenix, Arizona 85007

February 25, 2016

Honorable Mark Brnovich, Arizona Attorney General
 1275 W. Washington Street
 Phoenix, AZ 85007

Re: Request for Attorney General Opinion Interpreting
 A.R.S. §§ 32.2401(16) and 32.2411

Dear General Brnovich,

I write to request an Attorney General Opinion pursuant to A.R.S. § 41-193(A)(7).

Statutes at Issue

A.R.S. Section 32.2401(16) states:

“Private Investigator” means a person other than an insurance adjuster or an on-duty peace officer as defined in section 1-215 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.

* * *

(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.

A.R.S. Section 32.2411 states:

A. A person shall not act or attempt to act as a private investigator or represent that the person is a private investigator unless the person is registered as a private investigator pursuant to this chapter and is acting within the scope of the person's employment for an agency that is licensed pursuant to article 2 of this chapter.

B. A person who knowingly violates this section is guilty of a class 1 misdemeanor.

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Background

Some Arizona municipalities use photo enforcement systems to detect traffic violations. See A.R.S. §§ 28-601(14)^[1]; 28-1201 through 28-1206^[2]. However, the equipment is not necessarily operated by law enforcement officers. In at least some instances it is operated by third party contractors who furnish the digitally recorded information to the municipality.^[3] In turn, the municipality uses the information as the evidentiary foundation for traffic citations.^[4] The citations result in fines based on violations of Title 28 such as running a red light under A.R.S. § 28-645(A)(3)(a).^[5]

Question Presented

Are third party private contractors who operate photo enforcement systems required to be licensed as private investigators under A.R.S. § 32.2401(16), either under subsection (a)(1) because they engage in the business of making an investigation for the purpose of obtaining information with reference to a crime or wrong done against the state, or under subsection (b) because they secure evidence to be used in the trial of civil or criminal cases and the preparation therefor?

Thank you for your attention to this matter. Please contact me if you have questions about this request or if you need further information.

Very truly yours,



Sonny Borrelli
 Arizona State Representative
 District 5

^[1] Defining "photo enforcement system" as "a device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle's license plate for the purpose of identifying violators of articles 3 and 6 of this chapter."

^[2] Regulating photo enforcement systems.

^[3] See, e.g., http://tucson.com/news/local/is-it-lights-out-for-photo-radar-traffic-enforcement/article_31ef5c04-6a36-5cc3-890b-ceed088f986c.html (reporting that "Phoenix-based American Traffic Solutions (ATS) holds the contract with the city [of Tucson] for photo-radar enforcement"); <http://www.atsol.com/our-work/our-customers/> (ATS website listing cities of Mesa, Scottsdale and Tucson as red light safety camera system customers).

^[4] ATS makes the following statement about its proprietary Red-Light Safety Camera System: "ATS delivers the most successful Red-Light Safety Camera programs because our systems identify more red-light violations, *capture the strongest possible evidence*, and deliver processing excellence, local and remote servicing, as well as overall program support." (Emphasis supplied). <http://www.atsol.com/solutions/red-light-safety/>

^[5] See, e.g., <http://www.scottsdaleaz.gov/police/photo-enforcement> (discussing photo enforcement program and stating that "[t]he typical citation for running a red light is \$258").