



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TO: The Honorable Doug Ducey, Governor
The Honorable Michele Reagan, Secretary of State
The Honorable Andy Biggs, President of the Senate
The Honorable David Gowan, Speaker of the House of Representatives

FROM: Mark Brnovich, Attorney General

DATE: March 16, 2016

RE: Attorney General Opinion I16-002

Attached is a copy of Attorney General Opinion I16-002, which concludes third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in A.R.S. §§ 32-2401 to -2462. This conclusion is compelled by the plain language of A.R.S. § 32-2401(16)(b). For this reason, this Opinion overrules Arizona Attorney General Opinion No. I10-001, which was not based on and is contrary to the text of Arizona's licensing statutes.

Attachment

cc: The Honorable Katie Hobbs, Minority Leader, State Senate
The Honorable Steve Farley, Assistant Minority Leader, State Senate
The Honorable Eric Meyer, Minority Leader, House of Representatives
The Honorable Bruce Wheeler, Assistant Minority Leader, House of Representatives
Susan Aceves, Senate Secretary
Jim Drake, House Chief Clerk
Tim Fleming, Rules Office, House of Representatives
Norman Moore, Rules Office, House of Representatives
Jennifer Perkins



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<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>March 16, 2016</p>	<p>No. I16-002 (R16-003)</p> <p>Re: Are third party contractors who operate photo enforcement systems required to be licensed as private investigators under A.R.S. § 32-2401(16)</p>
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To: Sonny Borrelli
Arizona State Representative

Questions Presented

“Are third-party contractors who operate photo enforcement systems required to be licensed as private investigators under Arizona Revised Statute § 32-2401(16), either under subsection (a)(i) 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?”

Summary Answer

Third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in Arizona Revised Statute (“A.R.S.”) §§ 32-2401 to -2462. In so concluding, this Opinion overrules Arizona Attorney General Opinion No. I10-001, which is to the contrary.

Background

Arizona's statutes permitting municipalities to use photo enforcement systems are set forth in A.R.S. §§ 28-1201 to -1206. Under these statutes, a "photo enforcement system" is defined 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.

A.R.S. §§ 28-601(14), -1201. As recounted in the request for this Opinion, a photo enforcement system "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. In turn, the municipality uses the information as the evidentiary foundation for traffic citations."

Arizona's statutes governing the licensing of private investigators are set forth in A.R.S. §§ 32-2401 to -2462. Under these statutes, it is a class 1 misdemeanor for a person knowingly to act as a private investigator unless the person is registered as a private investigator and is acting within the scope of the person's employment for an agency that is licensed to conduct the business of private investigations in the State. A.R.S. § 32-2411. A "private investigator" is defined in A.R.S. § 32-2401(16), which provides in part:

"Private investigator" means a person other than an insurance adjuster or an on-duty peace officer as defined in § 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.

The private investigator licensing statutes specifically exempt eleven categories of persons from its licensing requirements. *See* A.R.S. § 32-2409(1)–(11). For example, government employees, consumer reporting agencies, practicing attorneys, collection agencies, insurance adjusters, news media, and private process servers, among others, may not be required to register as a private investigator. *Id.* Photo enforcement system contractors, however, are not

identified in the list of persons exempted from the private investigator licensing requirements. *See id.*

Analysis

Principles of statutory interpretation guide our analysis into whether third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in A.R.S. §§ 32-2401 to -2462. “Our task in interpreting the meaning of a statute is to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100 (1993). “In determining the legislature’s intent, we initially look to the language of the statute itself.” *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003). “If the language is clear, [we] must apply it without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results.” *Id.* (internal quotations and citation omitted).

A. The Plain Language of the Statute

A third party which contracts to operate a photo enforcement system in the State clearly falls within the definition of “private investigator” under A.R.S. § 32-2401(16)(b). By definition, persons who contract to operate a photo enforcement system engage in a business to “[s]ecure evidence to be used . . . in the trial of civil or criminal cases and the preparation therefor.” *Id.* Again, a “photo enforcement system” is a device which captures certain information, expressly “for the purpose of identifying violators of articles 3 and 6 of this chapter.” A.R.S. §§ 28-601(14), -1201. Articles 3 and 6 of the relevant chapter concern various traffic violations, including violations for running a red light and exceeding the posted speed limit, which may give rise to civil or criminal penalties. *See* A.R.S. §§ 28-641 to -28-654 (Article 3 concerning various traffic violations); A.R.S. §§ 28-701 to -710 (Article 6 concerning speed restrictions).

Under any fair reading of the statute, collecting information “for the purpose of identifying violators of” traffic laws constitutes securing “evidence to be used . . . in the trial of civil or criminal cases and the preparation therefor.” Because persons who contract to operate a photo enforcement system in the State clearly fall within the plain meaning of A.R.S. § 32-2401(16)(b), this Opinion does not address whether such contractors separately qualify as private investigators under A.R.S. § 32-2401(16)(a)(i).

B. The *Expressio Unius Est Exclusio Alterius* Canon of Statutory Construction

This interpretation—that photo enforcement system contractors must comply with private investigator licensing laws—is also reinforced by the fact that photo enforcement system contractors are not exempted from Arizona’s private investigator licensing requirements. *See* A.R.S. § 32-2409. “A well established rule of statutory construction provides that the expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.” *Pima County v. Heinfeld*, 134 Ariz. 133, 134 (1982). Applying this rule

here, the expression of eleven separate categories of exemptions from the private investigator licensing requirements implies an intent not to exempt other persons, including photo enforcement system contractors. *See id.* (“[T]he expression of specific exceptions to the confidentiality requirement of § 38–431.03(B) for some persons implies an intent not to except other persons, including the Auditor General.”).

C. Arizona Attorney General Opinion No. I10-001

Despite the plain language of the licensing statute, Arizona Attorney General Opinion No. I10-001 concluded that “[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.” In reaching this conclusion, Opinion No. I10-001 did not engage in any analysis of the language of the statute itself.

Instead, Opinion No. I10-001 simply jumped to the “purpose” of regulating private investigators, as articulated in *Landi v. Arkules*, 172 Ariz. 126, 135 (App. 1992). In *Landi*, the Arizona court of appeals held that the defendants, who contracted to provide heir locating services, were required to be licensed as private investigators. *Id.* at 134. Because they were not properly licensed, the court also refused to enforce the defendants’ contract to perform heir locating services. *Id.* at 135. The court reasoned that doing so would violate the public policy behind Arizona’s private investigator licensing requirements, which policy was to protect “the public from unscrupulous and unqualified investigators.” *Id.* at 135. From this public policy, Opinion No. I10-001 reasoned:

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.

This analysis is flawed. The plain language of a statute may not be disregarded “unless application of the plain meaning would lead to impossible or absurd results.” *Bilke*, 206 Ariz. at 464 ¶ 11. Applying the plain language of A.R.S. § 32-2401(16) to require photo enforcement system contractors to comply with private investigator licensing requirements hardly leads to “impossible or absurd results.” Arizona’s basic private investigator licensing laws certainly would not make it “impossible” for photo enforcement system contractors to qualify for a private investigator agency license or for employees of such contractors who are engaged in private investigator activities to register as a private investigator employee. *See, e.g.*, A.R.S. §§ 32-2422 (applicant for an agency license must, among other things, be at least 21 years of age, must be a citizen or legal resident of the United States authorized to seek employment in the United States,

must not have been convicted of or indicted for certain criminal conduct, and have at least three years of investigative experience), -2423 (agency license application, fee, surety bond, and worker's compensation proof), -2441 (applicant for employee registration must, among other things, be at least 18 years of age, must be a citizen or legal resident of the United States authorized to seek employment in the United States, and must not have been convicted of or indicted for certain criminal conduct), -2442 (employee registration application and fee), -2460 (registration not required for employees who do not engage in private investigator services).

There is also nothing inherently “absurd” about requiring licensing compliance from private investigators that perform public functions that are subject to a government contracting process. To be sure, public protection was a purpose of the Arizona legislature in enacting licensing requirements for private investigators. But the statute itself reflects a judgment by the legislature, not only about the desirability of protecting the public, but also about how best to protect the public when persons engage in private investigator activities. *Cf. Crawford v. Washington*, 541 U.S. 36, 61 (2004) (“The [Confrontation] Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.”) (Scalia, J.). The method for assessing whether the public is protected set forth in Opinion No. I10-001—namely, whether the government is involved in the contracting process—may not replace the method for protecting the public from unscrupulous and unqualified private investigators prescribed by the legislature.

Conclusion

Third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in A.R.S. §§ 32-2401 to -2462. This conclusion is compelled by the plain language of A.R.S. § 32-2401(16)(b). For this reason, this Opinion overrules Arizona Attorney General Opinion No. I10-001, which was not based on and is contrary to the text of Arizona's licensing statutes.

Mark Brnovich
Attorney General