STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by THOMAS C. HORNE ATTORNEY GENERAL December 12, 2011	No. I11-008 (R11-016) Re: Service of Citations Photo Enforcement Systems

To: The Honorable Frank Antenori
Arizona State Senate

Question Presented

What are the requirements for service of citations and notices of violations stemming from traffic violations detected by photo enforcement systems under Arizona Revised Statutes (A.R.S.) §§ 28-1593 and 28-1602?

Summary Answer

Section 28-1593(A) requires that a uniform traffic ticket and complaint be personally served by being delivered to the person against whom the complaint is brought or by any means that the Arizona Rules of Civil Procedure authorize and permits service by certified mail, return receipt requested, under certain circumstances. Where a law enforcement agency or its agents

seek to achieve service of a traffic ticket and complaint that a photo enforcement system has generated through a means other than those authorized by § 28-1593(A), the agency must inform the person against whom the complaint is brought that he or she is not obligated to identify the driver or to respond to the citation, but that failure to respond will probably result in the person being formally served and being required to pay service costs. Similarly, where a municipality or a company contracted to supply photo enforcement services provides a notice of violation, the notice must give the recipient the same information and must also state that the notice is not a court-issued document. A.R.S. § 28-1602. These statutory requirements apply to municipalities.

Background

Some Arizona cities enforce traffic laws through photo enforcement. *See, e.g.,* City of Mesa, Photo Safety Enforcement FAQs, http://www.mesaaz.gov/police/PhotoEnforcement/Default.aspx ("The Mesa Police Department uses an automated traffic enforcement program to supplement traffic enforcement by Mesa police officers."); *see also* A.R.S. § 28-601 (defining photo enforcement system).

Analysis

The language of a statute is the best and most reliable index of a statute's meaning. *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993). Section 28-1593 sets forth the requirements for service of a traffic complaint, as well as the substantive requirements of notice

that must be included with such a document if it is not served in accordance with the statute and arises from photo enforcement.

Section 28-1593(A) provides that

> [a] traffic complaint may be served by delivering a copy of the uniform traffic ticket and complaint to the person charged with the violation or by any means authorized by the rules of civil procedure. At the discretion of the issuing authority, a complaint for a violation issued after an investigation in conjunction with a traffic accident may be sent by certified mail, return receipt requested and delivered to addressee only, to the address provided by the person charged with the violation.

However, "[i]f a law enforcement agency issues a citation as a result of a photo enforcement system" and serves that complaint in a manner "other than" the ones that § 28-1593(A) prescribes, "the agency shall inform the person that there is no obligation to identify the driver or respond to the citation." A.R.S. § 28-1593(C).[1] It must also inform the recipient that "[f]ailure to respond to the citation will result in the probability that the person will be formally served pursuant to state law and the Arizona rules of civil procedure which will likely result in the person being required to pay the costs of the service." *Id.*[2]

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[1] Providing the uniform traffic citation and complaint generated from photo enforcement by means other than those permitted under § 25-1593(A) does not satisfy the statute's service requirements. *See* A.R.S. § 28-1593(C) (noting that where service is attempted by other means, recipient need not respond and may be "formally served.").

[2] In contrast, standing and parking complaints, "may be sent by regular mail to the address provided to the department by the individual made responsible for the alleged violation by the applicable statute or ordinance" and "[s]ervice of the summons and complaint is complete on mailing." A.R.S. § 28-1591(C).

A related statute, A.R.S. § 28-1602, provides for notices of violation "obtained using a photo enforcement system." A "notice of violation is "a notice issued by a photo enforcement company or municipality that is not a uniform traffic ticket or complaint." A.R.S. § 28-1602(C). Such notices "must state" that "[t]he notice is not a court issued document and the recipient is under no obligation to identify the person or respond to the notice" and that "[f]ailure to respond to the notice may result in official service that may result in an additional fee being levied." A.R.S. § 28-1602(B).

Conclusion

Law enforcement agencies and those with whom they contract for services who do not serve photo-enforcement-generated traffic complaints pursuant to § 28-1593(A) must provide the information that § 25-1593(C) requires with the traffic complaint if the traffic complaint is served by some other means. Notices of violation issued in conjunction with photo enforcement systems by municipalities or photo enforcement companies must include the statements required by A.R.S. § 28-1602(B).

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