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Robert R. Corbin

February 2, 1987

Col. Ralph T. Milstead, Director
Arizona Department of Public Safety
2310 North 20th Avenue
P.O. Box 6638
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Re: I87-020 (R86-158)

Dear Col. Milstead:

You have asked our opinion on two questions relating to the licensing of private investigators. You first inquire whether persons who trace missing heirs and/or owners of unclaimed property are required to be licensed as private investigators pursuant to A.R.S. §§ 32-2401 to -2428. We conclude that they are.

A private investigator is defined as follows:

"Private investigator" means a person other than an insurance adjuster or a peace officer as defined in § 1-215 who, for any consideration, engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining information with reference to:

(a) Crimes 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, affiliations, associations, transactions, acts, reputation, or character of any person.

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(c) The location, disposition, or recovery of lost or stolen property.

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

(e) Securing evidence to be used before any court, board, officer, or investigation committee.

A.R.S. § 32-2401(3).

Chapter 24 of Title 32, Arizona Revised Statutes, regulates the conduct of private investigation services. Persons acting as private investigators are required to be licensed by A.R.S. 32-2410 which provides:

No person shall engage in a business regulated by this chapter, act or assume to act as, or represent himself to be a licensee unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee.

A.R.S. § 32-2410 (emphasis added).

The goal of statutory construction is to ascertain and to give effect to the intent of the legislature as expressed by the statute. In order to determine legislative intent, consideration must be given to the words, context, subject matter, effects and consequences, reason and spirit of the law. In addition, the statutory provisions must be construed in the context of related provisions and in light of their place in the statutory scheme. City of Phoenix v. Superior Court, Maricopa County, 144 Ariz. 172, 175-176, 696 P.2d 724, 777-778 (App. 1985).

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 Board of Technical Registration v. McDaniel, 84 Ariz. 223, 228, 326 P.2d 348, 351 (1958).

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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, 221-222, 326 P.2d 344, 347 (1958). The Legislature must have considered the regulation of private investigation to be necessary to protect the public, because it provided that any person who violates the provisions of Chapter 24 is guilty of a Class 1 Misdemeanor. A.R.S. § 32-2428.

Another general rule of statutory construction is that a statute whose purpose is the protection of the public health and welfare is entitled to a liberal construction for the accomplishment of its beneficent objectives. State v. Sanner Contracting Co., 109 Ariz. 522, 524, 514 P.2d 443, 445 (1973).

In applying the rules of statutory construction cited above to A.R.S. § 32-2401 to -2428, it is clear that these statutes were passed for the protection of the public from unqualified private investigators.

The statute defines private investigator as:

[A] person . . . who, for any consideration, engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining information with reference to:

. . . .

(b) The identity . . . of any person.

A.R.S. § 32-2401 (emphasis added).

Applying liberal construction to this specific provision in the context of Chapter 24 we conclude that the conduct of tracing missing heirs and owners of unclaimed property, for a fee, is conduct which requires that the person so acting be licensed as a private investigator. This activity constitutes an investigation for the purpose of obtaining information with reference to the identity of a person; that is, the "identity" of the missing heir or owner of unclaimed property.

We are informed that your specific concerns deal with individuals who investigate the identity of owners of property

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deemed abandoned pursuant to the Uniform Unclaimed Property Act, (A.R.S. §§ 44-301 to -340), and missing heirs with claims for property which has escheated to the state pursuant to A.R.S. §§ 12-881 to -889. The Act provides that the Department of Revenue must record the name and last known address of persons who appear to be entitled to the property, and further provides that these records are available for public inspection. The escheat statutes provide that a summons and complaint which includes the name of the last known owner is published in a newspaper.

"Identity" has been defined as:

Any knowledge or information which enables the recipient to distinguish the person referred to affords a means of identification.

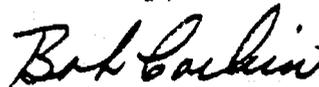
State v. Evjue, 253 Wis. 146, 33 N.W.2d 305, 309 (1948).

Therefore, the conduct in tracing potential claimants and missing heirs is an investigation for the purpose of determining the identity of person. Anyone engaging in such conduct, for any consideration, must be licensed as a private investigator.

In your second inquiry you have requested our opinion concerning the legal effect of a "caveat." In the example of a "caveat" that you have provided, authors purport to warn a government agency from taking action which would interfere with the authors' "activities."

In our opinion, the publishing of such a "caveat" does not affect the powers and duties of a state agency, because "the powers and duties of an administrative agency are to be measured by the statute creating it." Fund Manager, Public Safety Personnel Retirement System v. Tucson Police Public Safety Personnel Retirement System Board, 137 Ariz. 536, 540, 672 P.2d 201, 205 (App. 1983).

Sincerely,



BOB CORBIN
Attorney General

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