

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 26, 2008

Opinion No. 08-179

Issuance of traffic citations based on evidence obtained from a surveillance camera

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**QUESTIONS**

1. Does the issuance of citations for traffic violations based on photographic evidence from cameras violate any constitutional right of citizens of Tennessee, including the right to due process and equal protection and the right to privacy?
2. Do Tennessee's statutes, rules, or regulations prohibit private vendors from making the determination, based upon photographic evidence, that a traffic violation has occurred?

**OPINIONS**

1. No. The issuance of a citation for traffic violations based on photographic evidence from a camera does not violate any constitutional right of the citizens of Tennessee.
2. Yes. Tennessee law specifically requires law enforcement personnel to review photographic evidence to determine whether a traffic violation has occurred.

**ANALYSIS**

1. This opinion request asks whether the issuance of a citation for a traffic violation based on photographic evidence from a camera violates the constitutional rights to due process and equal protection and the right to privacy.

Tenn. Code Ann. §55-8-198 provides:

- (a) A traffic citation that is based solely upon evidence obtained from a surveillance camera that has been installed to enforce or monitor traffic violations shall be considered a nonmoving violation.
- (b) An employee of the applicable law enforcement office shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a notice of

violation or a citation shall be sent by first class mail to the registered owner of the vehicle that was captured by the traffic light signal monitoring system. A notice of violation or citation shall allow for payment of such traffic violation or citation within thirty (30) days of the mailing of such notice. No additional penalty or other costs shall be assessed for non-payment of a traffic violation or citation that is based solely on evidence obtained from a surveillance camera installed to enforce or monitor traffic violations, unless a second notice is sent by first class mail to the registered owner of the motor vehicle and such second notice provides for an additional thirty (30) days for payment of such violation or citation.

(d)(1) Except as otherwise provided in this subsection, the registered owner of the motor vehicle shall be responsible for payment of any notice of violation or citation issued as the result of a traffic monitoring system.

(2) An owner of a vehicle shall not be responsible for the violation if, on or before the designated court date, such owner furnishes the court an affidavit stating the name and address of the person or entity that leased, rented or otherwise had care, custody or control of the motor vehicle at the time of the violation.

(3) If a motor vehicle or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying such owner was an operator and provide a certified copy of the police report reflecting such theft.

(4) An affidavit alleging theft of a motor vehicle or its plates must be provided by the registered owner of a vehicle receiving a notice of violation within thirty (30) days of the mailing date of the notice of violation.

Tenn. Code Ann. §55-8-198 (2008).

It is an accepted principle that enactments of the General Assembly are presumed constitutional. *State v. Blanton*, 975 S.W. 2d 268, 285 (Tenn. 1998), citing *Vogel v. Wells Fargo Guard Services*, 937 S.W.2d 856, 858 (Tenn.1996); *Petition of Burson*, 909 S.W.2d 768, 775 (Tenn.1995). Whenever the constitutionality of a statute is attacked, courts are required to indulge every presumption in favor of its validity and resolve any doubt in favor of, rather than against, the constitutionality of the act. *Dorrier v. Dark*, 537 S.W.2d 888, 891 (Tenn.1976). It is well established that the legislature has the inherent power to establish, maintain, and control the roadways of the state. *Bell South Telecommunications, Inc. v. City of Memphis, Tennessee*, 160

S.W. 3d 901, 912 (Tenn. 2005); *Sumner County v. Interurban Transp. Co.*, 213 S.W. 412, 413 (Tenn. 1919). Therefore, there is no doubt that the State may protect the health, safety, and welfare of the general public by enacting legislation designed to increase highway safety.

Initially, the statute in question regulates motor vehicle traffic and specifically authorizes use of intersection cameras to detect red light violations. Thus, the legislation would therefore fall within the permissible scope and power of the legislation to control the roadways of the state.

Secondly, the statute must be rationally related to a legitimate State interest. Legislation designed to facilitate and make safe use of the State's highways and byways serves a legitimate State interest. The statute in question has a reasonable relationship to the legitimate State interest of addressing hazards presented by individuals who disregard red lights, thereby endangering the lives of the citizens of the State. Legislation imposing liability without fault is a proper exercise of police power. Thus, authorizing prosecutors to establish a prima facie case for imposing liability for red light violations against the "registered owner" would appear to be a proper exercise of the State's police power, and imposing "strict liability" in the exercise of police powers of a State does not contravene the due process clauses of the federal and state constitutions. *See Consolidated Waste Systems, LLC v. Metro Government of Nashville and Davidson County*, Tennessee, No. M2002-02582-COA-R3-CV, 2005 WL 1541860 at \*6 (Tenn. Ct. App. June 30, 2005)([w]here the question is whether the legislature had a rational basis for the statute, if any reasonable justification for the law may be conceived, it must be upheld by the courts). Absent implication of a fundamental right, a legislative act will withstand a substantive due process challenge if the government identifies a legitimate governmental interest that the legislative body could rationally conclude was served by the legislative act. *Parks Properties v. Maury County*, 70 S.W.3d 735, 744-45 (Tenn. Ct. App.2001) (copy attached).

You have also questioned whether the statute can withstand a constitutional challenge based on equal protection. No person shall be denied the equal protection of the laws. Article XI, §8 of the Tennessee Constitution provides, in pertinent part, as follows:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Acknowledging the similarity between Article XI, §8 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Tennessee courts have long applied a federal equal protection analysis to constitutional challenges brought pursuant to Article XI, § 8. *See Motlow v. State*, 125 Tenn. 547, 145 S. W. 177, 180 (Tenn.1912); *King Bradwall Partnership v. Johnson Controls, Inc.*, 865 S.W.2d 18, 21 (Tenn.Ct. App.1993). Absent an infringement of a fundamental right, or a classification involving a "suspect" or "protected" class -- neither of which is

present here -- the standard to be applied in analyzing equal protection claims is the familiar "rational basis" standard. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn.1994); *King Bradwall*, 865 S.W.2d at 21.

A statute is general and not special if it operates alike to all persons of a class or on persons who are brought within the relations and circumstances provided for. Driving is not a fundamental right and drivers are not a suspect class. Thus, the statute will withstand a constitutional challenge based on equal protection if it can be demonstrated that the statute is rationally related to a legitimate State interest. As we have already discussed, the statute is supported by such an interest.

You have further questioned whether the issuance of citations for traffic violations based on photographic evidence from cameras violate an individual's right to privacy. When a camera snaps an image of a red-light runner, it identifies the vehicle, not the driver. The citation is sent to the owner of the car, whether the owner was operating the vehicle at the time of the violation or not. If the owner was not the operator, the owner is then expected to identify the operator. This issue already arises with the issuance of parking tickets in this state. Under Tenn. Code Ann. § 55-10-186(a), the responsibility for illegally parking on any road, highway, or street would not apply to the registered owner of a rented or leased vehicle that is parked in violation of the law if the owner furnishes sworn evidence that, at the time of the parking violation, the vehicle was leased or rented to another person. Under Tenn. Code Ann. § 55-10-186(b), if the illegally parked vehicle was rented or leased, the owner of the vehicle has thirty (30) days after the notification of the parking violation to furnish to the appropriate court or law enforcement agency the name, address, and driver license number of the person or company who leased or rented the vehicle.

Because a traffic citation that is based solely upon evidence obtained from a surveillance camera is considered a non-moving violation, such citation is similar to the issuance of a parking ticket. Regarding any arguments about photo enforcement being an invasion of privacy, the United State Supreme Court has clearly ruled that there is a lesser expectation of privacy while operating a motor vehicle than in other venues. *New York v. Class*, 475 U.S. 106, 112-13 (1986); *see also California v. Carney*, 471 U.S. 386 (1985); and *Cardwell v. Lewis*, 417 U.S. 583 (1974)(A person has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where its occupants and its contents are in plain view.).

The Tennessee Court of Appeals most recently addressed the constitutionality of the red light camera enforcement program in *City of Knoxville v. Ronald G. Brown*, No. E2007-01906-COA-R3-CV, 2005 WL 2925730 (Tenn. Ct. App. July 30, 2008), *no app. filed* (copy attached), where the defendant challenged the validity of the Knoxville City Ordinance establishing the red light camera enforcement program in that jurisdiction. The defendant claimed that the ordinance violates due process and equal protection. The Court of Appeals found that the Knoxville City Code §17-210 is consistent with Tenn. Code Ann. §55-8-198. *Id.*

Further, the Court held that no constitutional rights of a citizen are violated by video enforcement. *Brown* specifically addressed these issues as follows:

We next address Defendant's argument that City Code §17-210 violates Defendant's due process rights. Defendant argues that City Code §17-210 essentially creates an impermissible rebuttable presumption of guilt against the owner of a vehicle, which can be rebutted by the owner setting forth who actually was in control of the vehicle at the time the vehicle was used to run a red light. We disagree with this characterization.

What Defendant fails to acknowledge is that City Code §17-210 makes the owner of the vehicle responsible for a red light violation, regardless of who was driving the vehicle. At all times the City has the burden of proving every element of its case. This is so regardless of who was driving the vehicle. The City Code merely permits the responsible vehicle owner to shift the responsibility for the violation to the actual driver of the vehicle in certain circumstances. This does not mean that the owner of the vehicle was not in violation of the City Code. Since the City at all times must establish the necessary elements of its case by the requisite burden of proof, we reject Defendant's argument that City Code §17-210 violates his due process rights.

Defendant likewise argues that City Code §17-210 violates his fifth amendment privilege against self-incrimination. According to Defendant, the City Code requires him to violate his fifth amendment privilege by forcing him to establish that someone else was driving his vehicle. Again, this misses the point. City Code §17-210 does not make the driver of the vehicle liable. Rather, it is the owner of the vehicle who is responsible for a red light violation, regardless of who was actually driving. The City must prove its case regardless of whether Defendant testifies or files an affidavit, etc. Simply because vehicle owners are permitted to shift liability by establishing someone else was in control of their vehicle at the time of the violation does not amount to a fifth amendment violation.

Defendant's final argument is his claim that City Code §17-210 violates equal protection because the City Code requires a citation be mailed to the vehicle owner instead of the "guilty party." Again, we emphasize that pursuant to the City Code, it is the vehicle owner who is responsible for the violation. Therefore, when a red light violation occurs, the "guilty party" is the vehicle owner, who may or may not be driving the vehicle at the time of the violation. We reject Defendant's claim that the mailing of a citation to the vehicle's registered owner violates equal protection.

*Brown*, at \*\*8-9.

It is this Office's opinion, based upon the sound analysis in *Brown*, that the issuance of a citation for a traffic violation, based on photographed evidence from a surveillance camera, does not violate these constitutional provisions.

2. You have also questioned whether any of the Tennessee statutes or rules and regulations prohibit private vendors from making the determination, based upon photographic evidence, that a traffic violation has occurred.

Tenn. Code Ann. §55-8-198(b) specifically requires that an employee of the applicable law enforcement office shall review video evidence to determine whether a violation has occurred. If the employee determines that a violation has occurred, then a notice of violation or a citation shall be sent by first class mail to the registered owner of the vehicle.

When interpreting a statute, the role of the Court is to “ascertain and give effect to the legislative intent.” *Sharp v. Richardson*, 937 S.W.2d 846, 850 (Tenn.1996). In the absence of ambiguity, legislative intent is derived from the face of a statute, and the Court may not depart from the “natural and ordinary” meaning of the statute's language. *Davis v. Reagan*, 951 S.W.2d 766, 768 (Tenn.1997); *Westland West Community Ass'n. v. Knox County*, 948 S.W.2d 281, 283 (Tenn.1997).

The statute makes no provision for a private company to monitor and control a traffic light or to issue a citation. Applicable law enforcement personnel are the only ones presently authorized to issue this type of citation.

Thus, based on the plain language of Tenn. Code Ann. §55-8-198(b), it is the opinion of this Office that the statute prohibits private vendors from making the determination, based upon photographic evidence, that a traffic violation has occurred, since the statute specifically requires the applicable law enforcement office to make such determination.

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