

1974 O. A. G.

OFFICIAL OPINION NO. 5

April 2, 1974

Honorable Clifford Arnold
Indiana State Representative
203 Finch Trail, T.C.
Michigan City, Indiana 46360

Dear Representative Arnold:

This is in response to your request for my official opinion regarding whether police monitoring equipment may be installed and maintained in wrecking service vehicles.

ANALYSIS

The answer to your inquiry is clearly controlled by the Indiana Code of 1971, Section 35-21-1-1, Burns' Ind. Stat. Ann. (1973 Supp.), Section 10-4915, which states:

"From and after the taking effect of this chapter, it shall be unlawful to operate or maintain in any vehicle, or to install in any vehicle, or equip any vehicle with, a radio receiving set that is capable of receiving signals transmitted on frequencies in those bands assigned by the federal communications commission of the United States of America for police emergency purposes. Any person found guilty of violating any of the provisions of this chapter [this section] shall, upon conviction thereof, be found guilty of a misdemeanor and shall be fined in any sum not exceeding one hundred dollars [\$100], to which may be added imprisonment in the county jail for not more than thirty [30] days: Provided, however, That nothing in the provisions of this chapter shall apply to any vehicle owned and operated by the United States of America, or by any state, or by any city, town, county or other political subdivision of any state, or to any emergency, service, maintenance or construction truck or other vehicle owned and operated by any public service or utility company, including power, light, water, gas, telephone or telegraph company *and/or to any such emer-*

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gency maintenance trucks or vehicles owned and operated by any common carrier of persons for hire. Provided, further, That this chapter shall not apply to regular or special peace or police officers who install, operate, maintain or equip such radio receiving sets in vehicles owned by them; nor shall this chapter apply to any person who first obtains written permission from the chief executive officer of the law enforcement agency whose police emergency frequency is capable of being monitored, to install, operate, maintain or equip a vehicle with such radio receiving equipment. The approval of such request shall be entirely within the discretion of the chief executive officer involved, and the same may be denied or withdrawn with or without cause. A copy of the written permission shall be carried in the vehicle so equipped at all times." (My emphasis.)

It is to be noted that there is no current case law or other statutory authority interpreting this statute. The statute itself, however, clearly states that maintaining, installing, or equipping a vehicle with a police monitoring system is unlawful except under certain very narrow circumstances. One such enumerated exception is emergency maintenance vehicles owned and operated by "any common carrier of persons for hire." The applicable statute was amended in 1972 and the prior provisions stated:

" . . . owned and operated by any common carrier of persons for hire by means of street cars and/or trackless trolley cars and/or motor buses in any city within this state [Acts of 1933, Ch. 66, § 1, p. 433; 1941, Ch. 87, § 1, p. 221.]"

It appears, therefore, that the statute, prior to the 1972 amendment, contemplated street cars, trolleys, and buses as defining "common carrier of persons for hire." Although these specific modes of transporting persons have not been retained in the present statutory language, the statute still contemplates a "common carrier" to be "of persons" and "for hire." A privately owned wrecker service does not generally fit into this category unless the service is owned by a "common car-

rier of persons for hire," and is engaged in such service. A privately owned wrecker service would thus not be a common carrier such as to bring it within the single narrow exception to the general rule forbidding police monitors in vehicles. However, the statute clearly allows any person to apply for permission to install and operate such police monitors. Whether to grant such permission is left solely to the discretion of the appropriate law enforcement agency.

CONCLUSION

It is, therefore, my Official Opinion that privately-owned wrecker services are not "common carriers of persons for hire" under Burns' Section 10-4915, *supra*, and, as such, do not fit the specific statutory exception to the general rule that police monitor systems may not be operated, maintained, installed, or equipped in any vehicle. The unauthorized operation of such monitoring systems in wrecker service vehicles may, in an appropriate case, constitute a criminal offense under Indiana law. *However, written permission to operate such monitors in privately-owned vehicles may be obtained at the discretion of the chief law enforcement officer of the law enforcement agency whose police emergency frequency is capable of being monitored. A copy of the written permission must be carried in such vehicles at all times.*