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May 24, 2005

American Traffic Solutions, Inc.
Attention: Mr. James D. Tuton
President
American Traffic Solutions, Inc.
14861 N. Scottsdale Rd. Suite 109
Scottsdale, AZ 85254

Re: Municipal Authority to Adopt Automated Traffic Enforcement
Measures in Missouri

To Whom It May Concern:

You have asked us to render an opinion in connection with matters related to municipal enforcement of traffic violations using an automated red light camera in the state of Missouri. The request consists of three distinct issues: First, whether local government entities in Missouri are authorized to adopt ordinances that permit these entities to use automated red light cameras to enforce existing regulations requiring motor vehicles to stop at traffic control signals displaying a steady red indication. Second, whether these ordinances also could allow the local government entity to circumvent the Missouri Director of Revenue's point system for the suspension and revocation of motor vehicle licenses, as provided in Chapter 302, RSMo. Third, whether a municipality has an option on what image the photograph will capture; specifically, whether it is necessary to capture the driver's face to obtain a conviction for a red light violation under an ordinance adopted by a Missouri local government entity. This opinion is provided in connection with the analysis and determination of these issues under Missouri law.

A. Limitations and Scope of Review

Our opinion is based on our assumption that the representations contained below under the caption "Factual Basis for Opinion" are correct.

In rendering the opinion, we have examined the following:

1. The Missouri Constitution and Revised Statutes of Missouri with regard to sources of municipal authority, municipal traffic enforcement and presumptions.

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2. Missouri case law and case law from other jurisdictions addressing sources of municipal authority, municipal traffic enforcement and presumptions.

We have not been requested to opine, and we do not opine, as to any matters other than those expressly set forth in this letter. This letter constitutes a reasoned opinion based upon our review of the authorities described herein and is not a guarantee or warranty as to any legal or factual matter or as to the nature of the determination that would be made by a court should this matter be litigated in the future.

B. Factual Basis for Opinion

American Traffic Solutions, Inc. offers traffic safety products and services designed to provide for the outsourcing of a city's business processes, and utilizing detection and imaging technologies to reduce traffic violations and to improve road safety. Most relevant for the purposes of this opinion, American Traffic Solutions, Inc., offers a Red Light Violation System designed to aid in the enforcement of traffic control signal violations by capturing still and video digital photos of violations as they are committed. We have been advised that American Traffic Solutions, Inc. is interested in making its products and services available to local government entities throughout Missouri. American Traffic Solutions, Inc. has expressed a preference not to capture photographs of the face of individual drivers in the provision of its services.

C. Opinion

Solely on the basis of the foregoing examination and assumptions and upon consideration of applicable law herein described, and subject to the qualifications set forth herein, we believe that the municipalities¹ of Missouri currently possess the authority to adopt, by ordinance, a program permitting the automated enforcement of traffic violations. We do not believe, however, that municipalities possess the authority to adopt an ordinance that would permit the municipality to circumvent the Missouri Director of Revenue's point system for the suspension and revocation of motor vehicle licenses. Finally, we believe that municipalities may operate an automated red light camera system in which either: (1) the photographs are taken as the vehicle approaches, capturing the driver's face; or (2) municipalities may only photograph the rear of the vehicle allowing for identification of the vehicle used in the commission of the violation, but not the driver. To facilitate effective enforcement, however, cities choosing the latter option must include, as a component of the ordinance creating the program, a rebuttable presumption that the owner of a vehicle is the individual who committed the violation.²

¹ Defined as constitutional charter cities, third and fourth class cities, and towns and villages for the purposes of this opinion.

² This conclusion is specifically premised on the fact that a Missouri court would follow the reasoning of *State v. Dahl*, 87 P.3d 650 (Or. banc 2004), as explained in Section C3, on pages 7-8 of this letter.

You are advised that the opinions set forth herein are reasoned opinions based upon our interpretation of Missouri law regarding sources of general municipal authority to adopt traffic regulations, case law in Missouri interpreting sections of the Missouri Constitution and state statutes granting municipal powers, case law in Missouri addressing municipal authority to create presumptions, and case law of other jurisdictions discussing the validity of automated traffic regulation enforcement programs. You are advised also that we are not aware of any statute or any case law in Missouri that expressly permits or prohibits a Missouri municipality from adopting ordinances to create automated red light enforcement programs.

~~Furthermore, although automated traffic law enforcement programs are in use~~ in more than fifteen states, this issue, if it were to be litigated, would be an issue of first impression in Missouri.³ The existence of these programs in other jurisdictions does not guarantee that Missouri's courts would uphold the validity of red light camera enforcement programs.

1. Municipal Authority to Enforce Traffic Regulations Via Detection and Imaging Technology

All sources of local government authority in Missouri ultimately flow from the people, who delegate this power to the representative instruments which they create. *State ex rel. Childress v. Anderson*, 865 S.W.2d 384, 387 (Mo.App. S.D. 1993). In the most basic sense, the people's power is delegated to local governments by either the Missouri Constitution or state statutes. *See Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208 (Mo. 1986). Constitutional charter cities "have all powers which the general assembly of the State of Missouri has authority to confer upon a city" and "in addition to its home rule powers, have all powers conferred by law." Mo. Const. Art. VI, §19(a). Put another way, charter cities have all powers that are not limited or denied by the Constitution, by statute or by the city's charter itself. *Cape Motor Lodge*, 706 S.W.2d at 210. Thus, so long as there is no conflict, constitutional charter cities, by virtue of their home rule powers, are authorized to adopt ordinances providing for the enforcement of traffic violations using a red light camera. *Cf. id.* A municipal ordinance conflicts with a state statute when it "'permits what the statute prohibits' or 'prohibits what the statute permits.'" *Id.* at 211 (quoting *Page Western, Inc. v. Community Fire Protection Dist.*, 636 S.W.2d 65, 67 (Mo. banc 1982)). No constitutional provision or state statute was identified that either prohibits this enforcement method or limits methods of enforcement in such a way as to place an ordinance granting this authority in conflict with state law.

Cities acting without a constitutional charter, on the other hand, are creatures of statute, having only those powers "expressly granted or those necessarily or fairly

This issue would be one of first impression in Missouri, and there is no guarantee that Missouri's courts would follow this reasoning.

³ We have not conducted a survey of the statutes, ordinances or case law of jurisdictions where automatic traffic law enforcement programs are in use.

implied in or incidental to express grants, or those essential to the declared objects of the municipality." *Anderson v. City of Olivette*, 518 S.W.2d 34, 39 (Mo. 1975). Missouri's courts do follow a strict rule of construction when determining municipal authority. *State ex rel. Mitchell v. City of Sikeston*, 555 S.W.2d 281, 288 (Mo. banc 1977)).

Nevertheless, ordinances based on an exercise of the police power enjoy a presumption that they are valid, and the burden of showing unreasonableness is on an individual challenging the ordinance. *Lewis v. City of University City*, 145 S.W.3d 25, 32 (Mo.App. E.D. 2004). "A municipal ordinance will be deemed a legitimate exercise of police power if the expressed requirements of the ordinance bear a substantial and rational relationship to the health, safety, peace, comfort, and general welfare of the citizenry." *Id.* (citing *Miller v. City of Town & Country*, 62 S.W.3d 431, 437 (Mo.App. E.D. 2001)). Missouri's courts also have held that a city's reasonable regulation of traffic is a valid exercise of its police power. *City of St. Louis v. Cook*, 221 S.W.2d 468, 469 (Mo. 1949). Courts will not substitute their discretion for that of the city's governing body if the ordinance appears to be within the scope of the city's police power. *Id.*

State ex rel. Birk v. City of Jackson, 907 S.W.2d 181 (Mo.App. E.D. 1995), illustrates how a court will read a fair implication of municipal authority into a delegation of police power from the legislature. In *Birk*, the issue was whether a fourth class city was authorized to own and operate a landfill beyond its corporate limits. *Id.* at 184. Section 71.860, RSMo, provides authority for cities to gather, handle and dispose of garbage and other municipal waste accumulating in the city. *Id.* at 185. That section also specifically authorizes a city to "acquire ... within or without the corporate limits of [the city], incinerators for the destruction of garbage" *Id.* (emphasis added). Reading these statutes together, the court upheld the city's ordinance creating authority for the operation of the landfill despite a lack of express statutory authority to do so." See *id.* at 186.

At present, no express statutory provision permitting or denying a city the specific authority to operate detection and imaging technology to enforce traffic signal regulations ("Red light cameras") exists. However, we believe it is reasonable to take the position that a municipality possesses general authority to utilize red light cameras to enforce traffic signal regulations. Section 304.120.2(1) RSMo provides: "Municipalities⁴, by ordinance, may ... [m]ake additional rules of the road or traffic regulations to meet their needs and traffic conditions." This section also provides municipalities the authority to "[r]equire vehicles to stop before crossing certain designated streets and boulevards." Section 304.120.2(3) RSMo.

Additional authority for Missouri cities to regulate traffic by traffic control devices may be found in the Model Traffic Ordinance, Chapter 300, RSMo. Under the Model Traffic Ordinance, cities are authorized to "place and maintain traffic

⁴ Defined as "any city, town or village, whether incorporated or not." §301.010(39) RSMo Cum.Supp. 2004.

control signs, signals, and devices when as required under the traffic ordinance of the city to make effective the provisions of said ordinances, and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under the traffic ordinances of the city or under state law or to guide or warn traffic.” Section 300.130 RSMo. Specific authority to regulate stop lights is addressed in RSMo §300.155. The Model Traffic Ordinance provisions are not mandatory, however, but rather apply to only those cities adopting all or parts of the Model Traffic Ordinance. *City of Kansas City v. Graham*, 939 S.W.2d 443, 445 (Mo.App. W.D. 1997). Thus, the authority to regulate stop lights provided under Chapter 300 may only form the basis of an argument that the authority to permit red light camera enforcement of traffic ordinances is fairly implied, where a city has adopted the traffic control devices portion of the Model Traffic Ordinance.

Where the legislature has authorized a local government entity to exercise a power and has prescribed the manner of its exercise, the right to exercise the power granted in any other manner is necessarily denied. *Pearson v. City of Washington*, 439 S.W.2d 756 (Mo. 1969). Logic would then dictate that where the legislature has authorized a local government entity to exercise a power, but has not in all respects prescribed the manner of its exercise, the city has some legislative discretion in how to exercise that power.

Detailed statutory guidelines for the enforcement of traffic violations have not been prescribed. Thus, applying an analysis similar to that found in *Birk*, a court should consider that a statutory local government entity’s specific authority to require vehicles to stop (§304.120.2(3) RSMo) or to regulate stop lights (§300.155 RSMo), together with the general authority to make additional traffic regulations to meet their needs and conditions (§304.120.2(1) RSMo) or to place devices to make effective the provisions of the city’s traffic ordinances (§300.130 RSMo) and from these considerations determine that a statutory city has implied authority to operate an automated red light camera to enforce its stop light ordinances. Accordingly, we believe it is reasonable to conclude that a court would find that third and fourth class cities, towns and villages are also authorized to adopt ordinances providing for the enforcement of traffic violations using a red light camera.

2. Ability of a Local Government Entity to Adopt an Ordinance Violation to Which Points Would Not Apply

Under current Missouri law, every court with jurisdiction over any state laws or county or municipal ordinances regulating the operation of vehicles on highways must report, to the Missouri Highway Patrol, a record of any plea or finding of guilty of any person convicted of any moving violation under the state, county or municipal regulations within ten days after the record is made.⁵ § 302.225 RSMo Cum. Supp.

⁵ By adopting an ordinance permitting red light cameras to aid in the enforcement of traffic violations, a municipality has not changed the underlying ordinance violation. Rather, the municipality is expanding its ability to enforce the red light ordinance by creating a framework to provide for an additional type of evidence to be used in the prosecution of these violations.

2004. A moving violation is a violation, that is of the character, where, at the time the violation is committed, the motor vehicle involved is in motion. § 302.010 (12) RSMo Cum. Supp. 2004.⁶ Thus, by failing to stop at a red light, a driver has clearly committed a moving violation of state law, and presumably, of a municipal ordinance.

The Missouri Highway Patrol must forward records of guilty pleas or convictions to the Director of Revenue within fifteen days after receipt. § 302.225 RSMo Cum. Supp. 2004. The Director of Revenue is required to assess points in a system designed to allow the State to suspend or revoke driver's licenses once a conviction has been made. ~~The Director has no discretion in applying the points required upon receipt of the record of guilty plea or conviction.~~ See *Knierim v. James*, 677 S.W.2d 322 (Mo. banc 1984) (citing *Rudd v. David*, 444 S.W.2d 457, 459 (Mo. 1969)).

An amendment to § 302.225, which becomes effective September 30, 2005, will broaden this reporting requirement. See L. 2004, S.B. 1233, S.B. 840 and S.B. 1043, West's No. 181. After the effective date, courts having jurisdiction over any state law or county or municipal ordinance regulating the operation of vehicles on highways or any other offense in which the commission of such offense involves the use of a motor vehicle, must report a guilty plea or conviction for any moving traffic violation directly to the Director of Revenue within seven days after the record is made. Thus, within the next few months it will be mandatory that a court with jurisdiction to hear municipal ordinance violations, the commission of which involve the use of a motor vehicle, report guilty pleas or convictions.

Considering the discussion above on sources of municipal authority, we do not believe a constitutional charter city or statutory city, town or village could adopt an ordinance which circumvents the Director of Revenue's point system for the suspension and revocation of motor vehicle licenses without legislative authorization to do so. The mandatory language used in the text of the statute supports a conclusion that an ordinance of this nature would conflict with state law. Cf. *Cape Motor Lodge*, 706 S.W.2d at 211. This conclusion is augmented also by the clear legislative intent to broaden this reporting requirement to any court with jurisdiction over any offense committed involving a vehicle, as seen in the General Assembly's recent amendment of § 302.225.

3. Options for Images Captured by Red Light Cameras

Because the identification of the violator is critical to the success of the prosecution of the violation, the nature of the information collected by the red light camera is key. Red light cameras can be trained on the front of the vehicle to capture the vehicle, its license plate and the face of the driver. Alternately, the cameras can

⁶ Two express exceptions apply: violations of the prohibition of driving without a valid license, and violations of Sections 304.170 to 304.240, dealing with vehicle size and weight. § 302.010 (12) RSMo Cum. Supp. 2004.

be focused on the back of the vehicle to capture an image of the vehicle and its license plate. Accordingly, proposed ordinances providing for camera enforcement of traffic control signal regulations, where the camera is focused on the front of the car, at times have meet opposition from special interest groups raising perceived privacy concerns.

However, courts have found that privacy concerns related to government surveillance of individuals on public streets do not give rise to a violation of Fourth Amendment rights against unreasonable searches and seizures, because there is no reasonable expectation of privacy in traveling from one place to another on public roads. *United States v. Knotts*, 460 U.S. 276, 281-82 (1983) (stating: "A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [an individual has] traveled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property").

However, to diminish perceived privacy concerns, municipalities may desire the latter option of identifying only the vehicle involved in the violation, and not the driver, by capturing an image of its license plate. Without a photograph identifying the specific driver of the vehicle, though, it is necessary to create another means by which the municipal prosecutor can establish that the vehicle's owner is the individual who was driving at the time of the violation. This could be accomplished by including in the ordinance a rebuttable presumption that a vehicle's registered owner is responsible for the violation.

The City of Kansas City, Missouri's attempt to authorize photo radar enforcement of the City's speed limits was abandoned in 1992 because Jackson County Circuit Court judges took the unusual action of speaking out against the proposed ordinance before its consideration by the City Council. James C. Fitzpatrick, *Judges' Objections Doom Ordinance for Photo Radar "No-Points" Clause Was Found to Violate Missouri Traffic Law*, KANSAS CITY STAR, October 24, 1992, at A1. Although, the judges' main objection was the ordinance's circumvention of the point system, the judges indicated that "photo radar improperly would put the legal burden on a vehicle owner to prove that he or she had not been behind the wheel, if someone else was driving the vehicle." *Id.* No case law could be located to support this conclusion.

Though not ignoring this local judicial reaction in our analysis, the Missouri Supreme Court has held that "[s]tatutes or ordinances providing a rule of evidence, in effect, that a shown fact may support an inference of the ultimate or main fact to be proved are well within the settled power of the legislative body; and such legislative provisions do not violate provisions of the federal or state constitutions." *City of St. Louis v. Cook*, 221 S.W.2d at 469 (upholding a St. Louis ordinance establishing a presumption that the presence of a vehicle parked in violation of city ordinance is prima facie evidence that the owner of the vehicle committed or authorized the

violation); *See also Kansas City v. Hertz Corp.*, 499 S.W.2d 449 (Mo. 1973) (upholding a Kansas City ordinance creating a rebuttable presumption that the owner of a vehicle was liable for a parking violation⁷); but see *O'Donnell v. Wells*, 323 Mo. 1170, 1178-79 (Mo. 1929) (striking down ordinance establishing that traveling at speed greater than speed limit was impermissible because it was conclusive of negligence: "The Legislature may establish rules of evidence and may provide that proof of a certain character shall be prima facie evidence of a fact sought to be established but it is clearly beyond the power of a Legislature to prescribe what shall be conclusive evidence of any fact"). Presumptions have been described as "aids to reasoning and argumentation, which assume the truth of certain matters for the purpose of some given inquiry." ~~*Detrich v. Mercantile Trust Co.*, 292 S.W.2d 300, 304 (Mo. 1956).~~ Presumptions may be based on "general experience, or probability of any kind; or merely on policy and convenience." *Id.*

Presumptions operate to shift the burden of production of evidence to meet or rebut the presumption to the person against whom the presumption applies. *See State ex rel. State Dept. of Public Health and Welfare v. Ruble*, 461 S.W.2d 909, 912-13 (Mo.App. 1970). To rebut the presumption the owner would be required to present evidence that he or she was not in control of the vehicle at the time of the violation.⁸

Courts in other jurisdictions have considered whether the government may rely on a presumption to prove a traffic violation. *See State v. Dahl*, 87 P.3d 650 (Or. banc 2004). In *Dahl*, the Oregon Supreme Court held that because a traffic violation was civil in nature, "the Due Process Clause poses no impediment to shifting the burden of persuasion to the defendant on one element of a traffic violation." *Id.* At 655. Applying a less stringent standard for due process violations in civil cases, the court noted that "it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the informer of one fact from the proof of another shall not be so unreasonable as to be a purely arbitrary mandate." *Id.* (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976)). According to the court, [t]he legislature's determination that the registered owner was driving his or her car is not 'so unreasonable as to be a purely arbitrary mandate' ... [r]ather, it was rational for the legislature to assume that registered owners commonly drive their own cars." *Id.* (quoting *Usery*, 428 U.S. at 28). Thus, the Oregon Supreme Court upheld the state's presumption that the registered owner of a vehicle photographed violating the speed limit was driving the car. *Id.*

In Missouri, the "prosecution for the violation of a municipal ordinance is 'a civil action ... resembling a criminal action in its effects and consequences.'" *City of Webster Groves v. Erickson*, 789 S.W.2d 824, 826 (Mo.App. E.D. 1990). It is not unreasonable to presume that most cars are driven by their owners. *See Kansas City*

⁷ Section 304.120 was subsequently amended to address owner-lessors of vehicles by the addition of subsection 4 in 1975. L. 1975, H.B. No. 83, p. 314, § 1.

⁸ For example, under Oregon law, the person issued a citation for running a red light as detected by photo red light equipment may respond to the citation by submitting a certificate of innocence or a certificate of nonliability. Oregon Revised Statutes § 810.436.

v. Hertz Corp., 499 S.W.2d at 453. Further, it is practically impossible for a police department to keep watch over all stoplights to verify that motorists abide them. *Cf. City of St. Louis v. Cook*, 221 S.W.2d at 470. Thus, applying the less stringent rational connection standard for due process protection in civil cases, it appears that a municipality that is facing opposition to a proposed red light camera enforcement program could elect not to photograph drivers' faces, by creating a rebuttable presumption that the registered owner of the vehicle identified in the photograph of a violation committed the violation.

D. Conclusion

Our opinion extends only to questions relating to ability of Missouri municipalities to operate an automated red light camera program as described above. No opinion is expressed as to any Federal law or the laws of any state other than Missouri or the effect thereof. This opinion is rendered only to its addressee in connection with the matter referred to herein and is solely for the information of its addressee. This opinion is issued only with respect to the present status of the law in the State of Missouri and we undertake no obligation or responsibility to update or supplement this opinion in response to subsequent changes in the law or future events affecting the use of red light cameras herein described. This opinion has been rendered to our client, American Traffic Solutions, Inc., with whom we have an attorney-client relationship. The use of this opinion by any other person is not intended to create, nor does it create, an attorney-client relationship with any other party. This opinion may not be quoted in whole or in part or otherwise referred to, without our prior consent.

Very truly yours,

STINSON MORRISON HECKER LLP



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