Opinion No. 2013-126

January 13, 2014

The Honorable Van Stone
Prosecuting Attorney
Nineteenth Judicial District West
Benton County Courthouse
100 NE "A" Street
Bentonville, Arkansas 72712

Dear Mr. Stone:

This is my opinion on your questions about Act 1183 of 2013, which added a new section to the Arkansas Code:

> 12-6-402. Civilian passengers.
>
> Each law enforcement agency of the state shall establish a policy prohibiting civilian passengers in patrol vehicles unless specific written approval is given for each civilian passenger by the chief law enforcement officer or his or her designee.

Your questions are:

1. Do you interpret Act 1183 as pertaining solely to "ride-alongs," that is, as requiring law enforcement agencies to have a policy that prohibits civilians from going on "ride-alongs" with officers, unless specific written approval for that civilian is obtained from the chief law enforcement officer or his or her designee?

2. Or do you interpret Act 1183 as requiring a policy that prohibits something more than "ride-alongs," such as the transport of witnesses to court or the transport of abuse victims to shelters or victim advocacy centers, without

specific written approval for that particular witness or that particular victim?

3. Could an agency reasonably interpret the phrase "patrol vehicle" in Act 1183 as limiting the Act's purview only to those situations where a police unit is being used by an officer who is actively "on patrol," that is, who is prepared to make traffic stops, answer calls, and so forth, in a given area at a given time, as opposed to situations where a police unit is being used by an officer to do something other than patrol work at that particular time, such as helping a witness get to court or taking a victim to a shelter or a victim advocacy center?

4. Finally, in your opinion, if a civilian passenger in a patrol vehicle is injured or otherwise harmed, does the failure to comply with any part of Act 1183 of 2013 create new causes of action against, or liabilities on the part of, a law enforcement agency or officer; that is, causes of action or liabilities that otherwise would not have existed before enactment of Act 1183 of 2013?

RESPONSE

The answer to your first two questions is "no." In my opinion, the answer to your other questions is also "no."

Question 1 - Do you interpret Act 1183 as pertaining solely to "ride-alongs," that is, as requiring law enforcement agencies to have a policy that prohibits civilians from going on "ride-alongs" with officers, unless specific written approval for that civilian is obtained from the chief law enforcement officer or his or her designee?

Question 2 – Or do you interpret Act 1183 as requiring a policy that prohibits something more than "ride-alongs," such as the transport of witnesses to court or the transport of abuse victims to shelters or victim advocacy centers, without specific written approval for that particular witness or that particular victim?

Absent context, one might be inclined to read the statutory term "civilian passengers" broadly, to include every person – other than a law enforcement

officer – who rides in a patrol vehicle for any reason at any time. Every civilian passenger might be characterized as occupying some place on a spectrum of police (and public) purpose and propriety. On one extreme lies an arrestee being transported to jail or to appear before a magistrate. Having such a "civilian passenger" in a patrol car is clearly proper and is a fundamental part of law enforcement. The other extreme might be illustrated by the case of an officer's friend, say, being transported to a grocery store, say, purely for the friend's personal reasons and convenience. Having such a "civilian passenger" in a patrol car is clearly improper.[1] It seems unlikely at best that the General Assembly intended the term "civilian passenger" to reach either of these extremes, the former because arrestee transport is such an integral part of law enforcement and is in some cases expressly required by law,[2] and the latter because police transportation of civilians for purely private purposes is improper regardless of the driver's superior's approval. Interpreting Act 1183 to reach these extremes would violate rules of statutory construction mandating the avoidance of absurd results[3] and the harmonious interpretation of statutes relating to the same subject matter.[4]

The foregoing demonstrates that the General Assembly surely did not intend the statute to apply to every person – other than a law enforcement officer – who rides in a patrol vehicle for any reason at any time. But I see no way to discern clearly what scope the General Assembly may have intended.

I note in particular in this respect that Act 1183 does not directly prohibit civilian passengers in patrol vehicles. While the General Assembly could easily have enacted such a prohibition, which would have been uniform in scope and application across all law enforcement agencies, it chose not to do so. Instead, Act 1183 requires each law enforcement agency to establish its own policy. It is difficult to perceive any reason for the General Assembly to have formulated Act

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[1] *See, e.g., Pogue v. Cooper*, 284 Ark. 105, 679 S.W.2d 207 (1984) (private use of public equipment, even with consideration, was illegal exaction under Ark. Const. art. 16, § 13).

[2] *See, e.g.*, A.C.A. § 16-81-104(b) (Repl. 2005) (arrest warrant must command an officer to arrest person named and "bring him or her before some judge. . . .").

[3] *See, e.g., State v. Owens*, 370 Ark. 421, 260 S.W.3d 288 (2007).

[4] *See, e.g., Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007).

1183 in this manner other than to accommodate appropriate local differences. I accordingly conclude that the General Assembly intended to give each law enforcement agency some discretion to determine the scope and application of its own policy, essentially by defining the term "civilian passengers."

I read Act 1183 to require each agency's policy to reach at least some people who would ordinarily be regarded as civilian passengers but whose presence in a patrol vehicle is not at one of the extremes discussed above. Surely these include at least those – like "ride-alongs" – who ride in patrol vehicles for purposes that may be legitimate but whose transportation is not an integral and inescapable part of law enforcement. How much further an agency's policy will reach appears to be left to the agency.

I therefore do not interpret Act 1183 to necessarily apply solely to "ride-alongs." Rather, as stated above, I interpret it to give each law enforcement agency some discretion to determine the scope and application of its own policy, essentially by defining the term "civilian passengers." But, in my opinion, an agency's policy that reached only "ride-alongs" would not clearly contravene Act 1183.

Question 3 – Could an agency reasonably interpret the phrase "patrol vehicle" in Act 1183 as limiting the Act's purview only to those situations where a police unit is being used by an officer who is actively "on patrol," that is, who is prepared to make traffic stops, answer calls, and so forth, in a given area at a given time, as opposed to situations where a police unit is being used by an officer to do something other than patrol work at that particular time, such as helping a witness get to court or taking a victim to a shelter or a victim advocacy center?

In my opinion, such an interpretation would not be reasonable or correct. The word "patrol," as used in Act 1183, modifies the word "vehicles." The term "patrol vehicles" describes vehicles that are used for patrol. Given the plain meaning of the words used, it is my view that Act 1183 cannot reasonably be interpreted to apply only at certain times to vehicles that are used for patrol.

Additionally, Act 1183 expressly added a new section to an existing subchapter of the Arkansas Code. That subchapter is entitled "Patrol Vehicles."[5] The subchapter's only other section allows sheriffs and municipal police departments to designate some of their "patrol vehicles" as non-smoking and prohibits them from allowing smoking in those vehicles.[6] In my view, that statute envisions that smoking will be flatly prohibited in certain vehicles that are used for patrol regardless of whether they are being used for patrol at the time in question. Statutes relating to the same subject matter should be interpreted to be consistent with one another if possible.[7] I conclude that the General Assembly, by enacting the provision at issue as an additional section of the same subchapter, and by using the same operative term ("patrol vehicles") used in the only other section of that subchapter, meant the term to have the same meaning in both provisions.

Question 4 – Finally, in your opinion, if a civilian passenger in a patrol vehicle is injured or otherwise harmed, does the failure to comply with any part of Act 1183 of 2013 create new causes of action against, or liabilities on the part of, a law enforcement agency or officer; that is, causes of action or liabilities that otherwise would not have existed before enactment of Act 1183 of 2013?

Act 1183 clearly does not expressly provide for its enforcement by way of a private cause of action. Neither, in my opinion, would Act 1183 be held to create such a cause of action by implication. You cite no law suggesting otherwise and my research has uncovered no such law. To the contrary, the Arkansas Supreme Court held in a somewhat analogous case that even a statute that expressly provided for a private cause of action for damages did not create by implication a private cause of action for injunction.[8] Legislative intent to do so is the primary factor in determining whether a statute creates a private cause of action by

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[5] A.C.A. title 12, chapter 6, subchapter 4 (Repl. 2009).

[6] A.C.A. § 12-6-401 (Repl. 2009).

[7] *See, e.g., Weiss v. Maples, supra* note 4.

[8] *Baptist Health v. Murphy*, 2010 Ark. 358, 373 S.W.3d 269.

implication.[9] Act 1183 does not, in my opinion, evidence any such legislative intent.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

[9] *See, e.g., Georgetown Cnty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 713 S.E.2d 287 (2011).