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OFFICE OF THE ATTORNEY GENERAL

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GREGORY D. STUMBO
ATTORNEY GENERAL

February 19, 2007

Claude Wagner
Director
Division of Occupations and Professions
911 Leawood Drive
Frankfort KY 40601

RE: Interpretation of licensure requirements

Dear Mr. Wagner:

Recently, the members of the Kentucky Board of Licensure for Private Investigators requested an opinion of the Attorney General regarding a potential statutory conflict. Specifically, the board is questioning whether or not a sole proprietorship is required to also maintain a company license.

The Kentucky Board of Licensure for Private Investigators has been in existence for approximately three years. Heretofore, the Board looked to KRS 329A.010 for guidance regarding company licensure. That statute defines a company as, "a firm, association, *sole proprietorship*, partnership, corporation, nonprofit organization, institution or similar enterprise." KRS 329A.010(2) (emphasis ours). Utilizing this definition the Board consistently required sole proprietorships to also obtain a company license over the course of the past two years.

Recently, it was brought to the Board's attention that KRS 329A.040 appeared to exempt sole proprietorships from the company licensure requirement. Recognizing a potential conflict of laws, the Board sought the legal opinion of the Office of the Attorney General. KRS 329A.040(4) states:

For purposes of this section and KRS 329A.035, any company whose workforce is comprised of no more than one (1) private investigator shall only be required to have an individual private investigator's license. If at any time the workforce of such a company increases, the company shall notify

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the board of the workforce increase and shall seek a company license in addition to the individual private investigator's license.

KRS 329A.035 governs the requirements for application of licensure. KRS 329A.040 sets forth the Board's duties upon receipt of an application for licensure.

As stated above, it was previously the Board's practice to require applicant's for individual private investigator's licenses who indicated that they were a sole proprietorship, to apply for a company license as well. To this end the Board instructed its Board Administrator to provide such applicant's with a copy of the company licensure application packet.

A plain reading of the statutes and application of the principles of statutory construction indicate that the Board should not *require* sole proprietorships to obtain a private investigator company license. Rather it should be discretionary with the owner of the company whether or not they wish to hold such a license.

The Kentucky Supreme Court on numerous occasions has stated that the entire statutory enactment shall be considered to ascertain the meaning of a specific statute. *Budget Marketing, Inc., v. Commonwealth ex rel. Stephens*, Ky., 587 S.W.2d 245, 247 (1979); *Commonwealth v. Trousdale*, 297 Ky. 724, 181 S.W.2d 254, 255 (1944); *Seaboard Oil Company v. Commonwealth*, 193 Ky. 629, 237 S.W. 48, 49 (1922); *Commonwealth v. Trent*, 117 Ky. 34, 77 S.W. 390, 393 (1903). *See also*, OAG 93-034. Thus, to understand the meaning of KRS 329A.010(2) we must consider the references to company licensure found throughout KRS Chapter 329A. Simply defining a company in the statutory definition found in KRS 329A.010 does not necessarily mean that all companies, no matter what their legal form, are required to obtain a private investigator company license.

Furthermore, before we complete our analysis, it is also important to acknowledge another longstanding rule of statutory construction. This principle states the enumeration of particular items excludes other items that are not specifically mentioned. *See, Commonwealth of Kentucky Board of Claims v. Harris*, 59 S.W.3d 896 (Ky. 2001); OAG 05-009. "Logic and experience developed the maxim *expressio unius est exclusio alterius*,--'The enumeration of particular things excludes the idea of something else not mentioned.' This is a primary rule of statutory con-

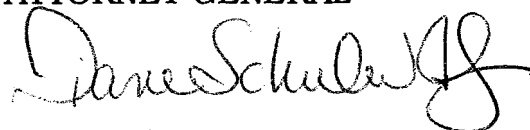
struction.” *Bloemer v. Turner*, 137 S.W.2d 387, 390 (Ky. 1939) quoting *Hughes v. Wallace*, 118 S.W. 324 (Ky. 1909). By specifically enumerating that companies comprised of no more than one private investigator are exempt from the private investigator company licensure requirement the General Assembly has effectively prohibited the Board from applying the broad definition of company to the licensure requirement.

The Kentucky courts have long held that they will strictly construe the authority granted to administrative agencies by their enabling statutes. “Administrative agencies are creatures of statute, and as such the statute must warrant any exercise of authority which they claim.” *Curtis v. Belden Electronic Wire & Cable*, 760 S.W.2d 97, 99 (Ky. App. 1988). See also, OAG 05-009.

Therefore, the statutory language in KRS 329A.040(4) prohibits the Board from *requiring* that a sole proprietorship obtain a private investigator company license. The Board may issue such a license if the company requests licensure, but the Board does not have the authority to mandate it.

Sincerely,

GREGORY D. STUMBO
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Diane Schuler Fleming".

Diane Schuler Fleming
Assistant Attorney General
Board Counsel