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October 1, 2009

VIA EMAIL (rkachinski@chicopeehousing.org)

Mr. Robert Kachinski
Modernization Coordinator
Chicopee Housing Authority

Dear Mr. Kachinski,

Please accept this letter in response to your request for an opinion relative to the legality of certain activity under the S-license law (G.L. c.147, §57). Though I am happy to offer an opinion, you may wish to consult with the city solicitor for advice relative to this matter as my opinion is being offered to you solely for guidance and is in no way binding on any person or entity that may review this matter in the future. As I understand your inquiry, based on the documentation submitted, your question is whether an unlicensed company (Control Network Communications, Inc.) may contract to perform security systems work for the Chicopee Housing Authority by subcontracting the work to the holder of an S-license (LPM Security Systems-license #SS CO 433). In my opinion, such an arrangement would be in violation of the statute.

Resolution of the inquiry necessitates an interpretation of the language of G.L. c.147, §57. The statute provides, in pertinent part, "[n]o person, firm or corporation shall engage in, advertise, or hold himself or itself out as being engaged in the business of installing, repairing, or offering maintenance for security systems, notwithstanding the name or title used in describing such business, unless licensed for such purpose" Accordingly, when distilled to its essence, the issue is whether, under the aforementioned arrangement, Control Network Communications, Inc. would be 'engaging' in the business of installing security systems. Where there is no court generated precedent to turn to in this arena, I look to the common usage of the term 'engage' as provided in the Merriam-Webster Dictionary.

The relevant definitions of the term 'engage' include: "to begin and carry on an enterprise or activity" and "to take part." There can be no dispute that one who physically performs the actual installation or maintenance of security systems is engaging in the business under the definition. However, the definition goes beyond that to include someone who is involved, or taking part, in the activity. Part of the business of installing the system at issue necessarily includes the contracting and subcontracting for the work. In this case, the work would not occur but for Control Network Communications, Inc. taking part in the process. Accordingly, they would be engaged in the business and would need an S-license.

This interpretation is consistent with my understanding of the purpose of the governing statutes (G.L. c. 147, §§57-60), that is, to ensure that all who have access to sensitive information as it pertains to security systems are of good moral character and have undergone a criminal record check performed by the state. To allow a contractor who has not undergone the Massachusetts licensing process to use a licensed subcontractor in this situation, then, would be to subvert the intent of the statute. Accordingly, it would be impermissible.

I hope this is helpful. Thank you for your inquiry.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Todd M. Grossman', with a long horizontal flourish extending to the right.

Todd M. Grossman
Acting General Counsel