



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-20

The Honorable John Pfeiffer
State Representative, District 38
2300 N. Lincoln Blvd., Room 302B
Oklahoma City, Oklahoma 73105

December 27, 2017

Dear Representative Pfeiffer:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. Is a “ham radio” an “electronic communication device” as that term is defined in 47 O.S.Supp.2017, § 11-901d(F)(3)?
2. Is the use of a “ham radio” while operating a motor vehicle prohibited by 47 O.S.Supp.2017, § 11-901d?

I.
BACKGROUND

A. The Trooper Nicholas Dees and Trooper Keith Burch Act of 2015.

These questions are premised on the Trooper Nicholas Dees and Trooper Keith Burch Act of 2015 (the “Act”), described in the title as “[a]n Act relating to texting while driving.” 2015 Okla. Sess. Laws ch. 248. Trooper Dees was killed and Trooper Burch seriously injured when they were struck by a motorist who was allegedly distracted while updating social media on his phone. *See* Rick M. Green, *Oklahoma Bans Texting While Driving*, THE OKLAHOMAN, May 6, 2015. The Act prohibits drivers from using a “hand-held electronic communication device to manually compose, send, or read an electronic text message while the motor vehicle is in motion.” 47 O.S.Supp.2017, § 11-901d. You ask whether the Act prohibits the use of a “ham radio” while operating a motor vehicle.

B. Amateur or “Ham” Radio.

Amateur radio (also known as “ham” radio) refers to the portion of the radio frequency spectrum reserved and maintained for the non-commercial exchange of messages.¹ The term “amateur”

¹ *See What is Ham Radio?* THE AMERICAN LEGION (available at <https://www.legion.org/hamradio/definition>) (last visited Dec. 4, 2017). The term “ham” radio apparently stems from a time when amateur and commercial radio

alludes to this purpose—licensed amateur radio operators are prohibited by law from accepting financial or any other form of compensation for the services they perform. *See* 47 C.F.R. § 97.113. This differentiates amateur radio from other radio services—*e.g.*, commercial broadcasting or professional two-way services (such as taxis and aviation).

Like other forms of radio, amateur radio communications are conveyed between transceivers (devices that function as both a transmitter and receiver). Often, an amateur operator must also obtain an amplifier, among other equipment, to complete the radio setup. This equipment varies greatly in terms of size, function, and capability. For example, depending on the model and type of transceiver, it may be able to transmit and receive information verbally, textually, graphically, or even through Morse code.² And while some amateur radio equipment may take up an entire wall within a room,³ certain transmitters are small enough to fit on a keychain.⁴ Some transceivers are designed to be hand-held and permit the operator to communicate verbally with other amateur radio operators, similar to what are commonly known as walkie-talkies. Due to technological advances, some of these devices can also send and receive text messages.⁵ Indeed, some amateur radio transceivers have a keypad that allows an operator to send and receive text-based messages—similar (but not identical) to the function of a rudimentary cell phone.⁶

II. DISCUSSION

Turning to your questions, we begin with the recognition that “the fundamental rule of statutory construction” is to determine the intent of the legislature, which must be ascertained from the text of the statute. *State v. Tate*, 2012 OK 31, ¶ 7, 276 P.3d 1017, 1020; *Stemmons Inc. v. Universal C.I.T. Credit Corp.*, 1956 OK 221, ¶ 19, 301 P.2d 212, 216. “If a statute is plain and unambiguous, it...will receive the effect its language dictates. Only when the intent cannot be ascertained from

operators shared the whole radio frequency spectrum and competed for time and signal supremacy. “Frustrated commercial operators would refer to the ham radio interference by calling them ‘hams.’ Amateurs, possibly unfamiliar with the real meaning of the term, picked it up and applied it to themselves. As the years advanced, the original meaning has completely disappeared.” THE NATIONAL ASSOCIATION FOR AMATEUR RADIO, *Ham Radio History* (available at <http://www.arri.org/ham-radio-history>) (last visited Dec. 18, 2017).

² THE NATIONAL ASSOCIATION FOR AMATEUR RADIO, *Modes and Systems Overview* (available at <http://www.arri.org/modes-systems>) (last visited Dec. 4, 2017).

³ For example, the Greengate Farm in Wisconsin is known for its world-class amateur radio station that takes up multiple walls. *See* Mark and Paula Persons, *Gilbert Lodge Blog* (Sept. 26, 2012) (available at <http://gilbertlodge.com/2012/09-04-12-washington-island.html>) (last visited Dec. 21, 2017).

⁴ Keychain QRP, the world’s smallest Amateur Radio transmitter, is the size of a key fob. *See The World’s Smallest Transmitter—Made in U.S.A.*, QRZ NOW (Jan. 22, 2017) (available at <http://qrznow.com/the-worlds-smallest-hf-transmitter-made-in-u-s-a>) (last visited Dec. 21, 2017).

⁵ However, most amateur radios require additional software to be capable of sending and receiving text-based messages. *See* Bob Bruninga, *Amateur Radio Universal Messaging/Contact Initiative*, ADVANCED PROJECT DEVELOPMENT COMMITTEE (available at <http://www.aprs.org/aprs-messaging.html>) (last visited Dec. 4, 2017).

⁶ For example, the Baofeng DM-5R has a nine-digit keypad and allows the user to both send and read text-based messages—albeit in a limited capacity. *See* Ham Radio Reviews, *Baofeng DM-5R Messages and Contacts* (Oct. 27, 2016) (available at <https://www.youtube.com/watch?v=w-1Aig5F2fs>) (last visited Dec. 21, 2017).

a statute's text, as when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be invoked for use." *Jobe v. State ex rel. Dep't of Pub. Safety*, 2010 OK 50, ¶ 13, 243 P.3d 1171, 1175. *See also Dean v. Multiple Injury Tr. Fund*, 2006 OK 78, ¶ 9, 145 P.3d 1097, 1101 ("If the [statutory] language is plain and clearly expresses legislative will, further inquiry is unnecessary.").

Thus, to determine whether the Act applies to the operation of amateur radios, we begin with the text of the statute, which provides:

It shall be unlawful for any person to operate a motor vehicle on any street or highway within this state while using a *hand-held electronic communication device* to manually compose, send, or read *an electronic text message* while the motor vehicle is in motion.

47 O.S.Supp.2017, § 11-901d(A) (emphasis added). Violations are punishable by a fine of up to \$100. *Id.* § 11-901d(B). However, the Act excepts emergency situations in which a driver is communicating with: (1) an emergency response operator; (2) a hospital, physician's office, or health clinic; (3) a provider of ambulance services; (4) a provider of firefighting services; or (5) a law enforcement agency. *Id.* § 11-901d(D).

The Act defines "electronic communication device" as an "electronic device that permits the user to manually transmit a communication of written text by means other than through an oral or wire communication." 47 O.S.Supp.2017, § 11-901d(F)(3). The definition specifically excludes the following: (a) "a device that is *physically or electronically integrated into* the vehicle"; (b) "a voice operated global positioning or navigation system that is *affixed* to a motor vehicle"; (c) "a *hands-free* device that allows the user to write, send, or read a text message without the use of either hand except to activate, deactivate, or initiate a feature or function"; and (d) "an *ignition interlock* device that has been installed on a motor vehicle." *Id.* (emphasis added).

The definition of "electronic communication device"—when considered in conjunction with the specific exclusions—demonstrates that the Act is targeting the manual use of *hand-held* electronic devices. 47 O.S.Supp.2017, § 11-901d(F)(3). This is consistent with the Act's title, which labeled it as "[a]n Act relating to texting while driving." 2015 Okla. Sess. Laws ch. 248; *see also Fent v. Fallin*, 2014 OK 105, ¶ 8, 345 P.3d 1113, 1116 ("The title of an act is used to determine legislative intent.").⁷ Moreover, prior to the Act's passage, there was an existing prohibition on distracted driving more generally.⁸ Accordingly, to determine whether the Act applies to the use of an amateur radio depends on whether they are hand-held and capable of manually sending and receiving text messages.

⁷ Likewise, it is notable that the Act was named in honor of two state troopers struck by a motorist who was allegedly distracted while updating social media on his phone.

⁸ Oklahoma's distracted driving statute requires drivers to "devote their full time and attention to . . . driving," but an officer may issue a citation only if he or she observes "that the operator of the vehicle is involved in an accident or observes the vehicle driving in such a manner that poses an articulable danger to other persons on the roadway[.]" 47 O.S.2011, § 11-901b. By contrast, drivers may be cited for violating the Act regardless of whether the violation caused a traffic accident or posed some other articulable danger to other drivers. *See* 47 O.S.Supp.2017, § 11-901d.

Due to the wide variety of amateur radio sizes and capabilities, there is no single answer to this question. For instance, many amateur radios are too large to fit in a motor vehicle, or are incapable of text messaging. We also understand that many amateur radios are installed into the vehicle dashboard, comparable to most standard and after-market vehicular radios. Even if it were possible to send a text message on these radios, these would fall under the Act's exclusion for "a device that is physically or electronically integrated into the vehicle." 47 O.S.Supp.2017, § 11-901d(F)(3)(a). But, as outlined above, some amateur radios are hand-held and are capable of sending and receiving text-based messages. A driver using such a radio "to manually compose, send, or read an electronic text message while the motor vehicle is in motion" is in violation of the Act, assuming none of the exceptions for emergency situations apply. *Id.* § 11-901d(A).⁹

It is, therefore, the official Opinion of the Attorney General that:

- 1. Under 47 O.S.Supp.2017, § 11-901d, only amateur radios that are hand-held and capable of manually transmitting text-based messages qualify as "electronic communication devices."**
- 2. Under 47 O.S.Supp.2017, § 11-901d, the only use of an amateur radio that is prohibited is manually composing, sending, or reading a text-based message while operating a moving motor vehicle.**



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



STAN WEST
ASSISTANT ATTORNEY GENERAL



⁹ We also note that the Legislature could have excluded all amateur radio use from the Act. For example, Oregon's analogous statute provides an affirmative defense for licensed amateur radio operators using these radios while driving. 2017 Or. Sess. Laws ch. 629. Similarly, in the Washington distracted driving statute, amateur radio equipment is excluded from the definition of "personal electronic device." 2017 Wash. Sess. Laws ch. 334. The Oklahoma Legislature had the opportunity to include a similar exception, but chose not to do so. We are not permitted to "read exceptions into a statute . . . not mandated by the Legislature." *Cox v. State ex rel. Okla. Dep't of Human Servs.*, 2004 OK 17, ¶ 26, 87 P.3d 607, 617.