

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY

DECLARATORY RULING ON THE PETITION REGARDING THE
APPLICATION OF PRIVATE DETECTIVE LICENSING REQUIREMENTS

I. INTRODUCTION

On September 7, 2007, the Department of Public Safety ("the Agency") initiated a petition requesting a declaratory ruling. Pursuant to section 4-176 of the Connecticut General Statutes, the Agency intended to seek a ruling on whether private detective licensing is required for persons offering the following services: computer forensic examinations, pre-employment screening, mystery shopper services, forensic accounting or similar services, within the meaning of section 29-152u(4) of the Connecticut General Statutes. For the reasons stated below, the Agency has determined that the issue is best addressed by the General Assembly.

II. FACTS PRESENTED

The Department of Public Safety does not now require these industries to obtain private detective or private detective agency licenses, nor does it take a position on whether it should. Earlier in 2007, the Agency received inquiries from three businesses or lawyers representing clients asking if these specific industries were required by law to be licensed as private detectives or private detective agencies. Following consultation with legal staff, Agency managers authorized this declaratory ruling proceeding as a method by which information could be obtained so that the Agency could interpret the statute as presently written.

On September 25, 2007, the Agency caused a notice to be published in the *Connecticut Law Journal*. On October 31, 2007, the Agency conducted a public hearing during which it took testimony (both written and oral). The Agency also took written testimony and argument in the weeks leading up to the hearing and, for good cause shown, it accepted additional written comments after the public hearing had concluded.

Persons speaking in favor of extending private detective licensing to the aforementioned industries, including representatives of a private investigator trade group, spoke of their concern for public safety by allowing unregulated persons to handle sensitive information that may be used in legal proceedings, as well as their opinion that the strict language of the statute covers these activities.

The Agency also received many comments from the industries that were the subject of this proceeding. Many of those who commented were opposed to private detective licensing due to existing regulatory oversight of their industries or other special considerations. Participants in the proceeding also complained that persons in these industries now would not have the law enforcement or investigatory background that the statute requires for private detective licensing and, thus, would be prevented from working in their fields.

Evidence submitted during this proceeding demonstrates that accountants are heavily regulated already. See Chapter 389 of the Connecticut General Statutes. Credentialing organizations also have strict requirements. According to information provided by the Connecticut Society of Certified Public Accountants, the Connecticut State Board of Accountancy and other participants, requiring private detective licensing of persons performing forensic accounting or fraud examination would prevent qualified persons, i.e. certified public accountants, from performing this work. Most accountants do not have law enforcement or investigatory experience, they say, which is required for private detective licensing.

Opponents of licensing persons performing computer forensic work stated that this work requires very specific technical skills; a licensed private detective would not necessarily be qualified to engage in this discipline. An academic from Florida who testifies frequently as an expert witness in the field opined that a computer forensic expert will be qualified by the courts, not a licensing scheme. Other participants observed that this discipline involves the examination of evidence, not its gathering.

Pre-employment screeners, like accountants, are already regulated. They are considered to be Consumer Reporting Agencies and, as such, are subject to the Fair Credit Reporting Act, which is administered by the Federal Trade Commission, according to a number of participants.

Persons speaking in support of not licensing mystery shoppers claimed that the purpose of this activity is improving customer service.

III. PARTIES

The parties to the declaratory ruling proceeding are:

Department of Public Safety
1111 Country Club Road
Middletown, CT 06457-2329

Connecticut Society of Certified Public Accountants
c/o Attorneys Bruce A. Chudwick and Erik J. Ness

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103

The following organization was granted intervenor status:

High Technology Crime Investigation Association, Connecticut Chapter

IV. ANALYSIS OF THE ISSUES PRESENTED BY THE DEPARTMENT OF PUBLIC SAFETY'S PETITION FOR DECLARATORY RULING

Section 29-152u(4) of the Connecticut General Statutes defines "private detective" as "any person engaged in the business of (A) investigating crimes or civil wrongs, (B) investigating the location, disposition or recovery of property, (C) investigating the cause of accidents, fire damage or injuries to persons or property, except persons performing bona fide engineering services, (D) providing the personal protection of individuals, (E) conducting surveillance activity, (F) conducting background investigations, or (G) securing evidence to be used before a court, board, officer or investigation committee."

This language was added to Chapter 534 by Public Act 04-192, which reorganized and expanded the licensing provisions for private detectives/private detective agencies and security services. The language of the subdivision is broad and arguably could cover all the activities that are the subject of this proceeding. However, we have been unable to find clear evidence of legislative intent, other than the statement of State Rep. Jason Perillo, R-113, filed in this proceeding. He opined that the legislature did not intend private detective licensing to extend to forensic accountants.¹

In its hearing notice, the Agency noted that it was particularly interested in ascertaining whether persons operating these businesses have been advised by any federal, state or local agency that they are subject to licensing or other regulatory oversight.

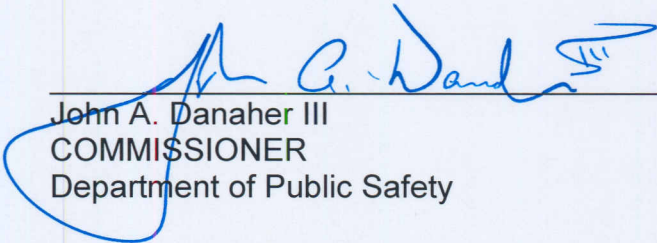
Testimony during the hearing revealed governmental oversight at some level in two of the four industries. Another aspect revealed during these proceedings was a complexity in the issues raised that may not have been previously apparent.

V. CONCLUSION

The Agency cannot be certain to what extent the General Assembly intended Chapter 534 to apply outside the traditional private investigator model. Some of

¹ Representatives of the Connecticut Association of Licensed Private Investigators (CALPI), which was influential in the passage of PA 04-192, are of the opinion that a broader application was intended.

the industries that are the subject of this proceeding already have some level of oversight by other governmental agencies. All claim that the work they do is different from the work engaged in by private detectives. The comment was made that a participant was not opposed to licensing, just licensing as a private detective. The Agency is not in the best position to weigh the policy considerations necessary to a determination that application of the law be extended beyond the way it is currently being administered, particularly since a decision in the affirmative on the questions raised in this proceeding will prevent many incumbents from continuing to work in these industries. Therefore, the Agency declines to rule on the questions posed, leaving the determination to be made by the legislature.



John A. Danaher III
COMMISSIONER
Department of Public Safety

8/4/08
Date