



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

July 13, 2001

Pfc. Brian K. Mein  
Myrtle Beach Police Department  
1101 Oak Street  
Myrtle Beach, South Carolina 29577

Re: Your Letter of March 20, 2001

Dear Pfc. Mein:

In your above referenced letter, you indicate that the City of Myrtle Beach Police Department is in the process of forming a "Crisis Negotiation team" and that you are researching "the use of a device commonly known as a 'hostage rescue phone'." By way of background, you indicate that:

As a tool for law enforcement, [the hostage rescue phone] has proven to be extremely valuable in resolving hostage, barricaded subject, and suicide situations. It is not only a communication device between police and the often emotionally charged subject, but is important for audio and video intelligence as well through the use of tiny cameras and microphones built within the unit ... [t]his recording of events in the immediate area of the subject continues even while the phone is in the "hang up" mode and the subject is not in direct contact with police.

You request the opinion of this office regarding the use of the "hostage rescue phone" as it relates to the presentation in court of evidence recovered as a result of the use of the device. Specifically, you indicate that you are "... interested in any Title III issues that may arise in court since the phone is equipped with audio/visual recording devices."

"Title III" is part of the federal statute known as the "Omnibus Crime Control and Safe Streets Act" and is found in 18 U.S.C.A. §§2510 et seq. (Wire and Electronic Communications Interception and Interception of Oral Communications). In certain instances, these statutes prohibit the interception of "wire, oral or electronic communication." The interception of such communications in violation of these statutes could result in the exclusion of evidence contained therein from a subsequent trial or other judicial proceeding. See 18 U.S.C.A. 2515. For the following reasons, however, it is my opinion that the use of the device you describe in the situations

*Request Letter*

Pfc. Mein  
Page 2  
July 13, 2001

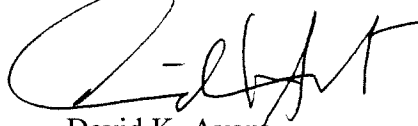
you describe would not constitute a violation of "Title III" and would not lead to the exclusion of any evidence gained.

1. Title III has no application to video surveillance. United States v. Torres, 751 F.2d 875, 880-82 (7th Cir.1984). See also United States v. Westberry, Op. No. 98-6458 (Ct.App. 6<sup>th</sup> Cir. June 13, 2000)(Unpublished).
2. Oral communication is excepted from Title III when one of the parties to the communication has given prior consent to the interception. §18 U.S.C.A. 2511(2)(c). United States v. Burford, 755 F. Supp. 607 (S.D. N.Y. 1991). This exception is applicable when the consenting party is an agent of the government. Id.
3. Exigent circumstances, such as a hostage situation, would justify the use of such tools and the use of any evidence gained as a result of the use of the tool. There is, in fact, an emergency exception to "Title III." See 18 U.S.C.A. 2518(7).
4. "Oral communication" as defined by 18 U.S.C.A. 2510(2) is subject to "an expectation that such communication is not subject to interception under circumstances justifying such expectation..."

The video recording of a subject during a hostage type situation with the "hostage rescue phone" would not appear to implicate the proscriptions of "Title III." The telephonic communications between the subject and a police officer would obviously involve at least one consenting party, the police officer. Therefore, recording the conversation would not be unlawful. Further, a subject who has taken hostages or is in a standoff with police and has had telephonic communication with police would have absolutely no reasonable expectation of privacy. The subject would have no reasonable expectation that his "communication is not subject to interception" even when he is recorded while the phone is "in the hang up mode."

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General