

MEMORANDUM

To: The Executive Board of the Pennsylvania State Mayors' Association
From: Richard Koch
Date: August 7, 2012
Re: The Use of RADAR by Pennsylvania Municipal Police Officers

Introduction and Project Scope

Over the past 20 years, the Pennsylvania State Mayors' Association ("PSMA") has continuously adopted a resolution calling on the Pennsylvania State Legislature to permit municipal police officers in the Commonwealth of Pennsylvania to use RADAR to detect speeding motorists. Unfortunately, Pennsylvania remains the only state in the United States that specifically prohibits its municipal police from using RADAR as a speed-detecting device. In 2012, the PSMA has made persuading the Pennsylvania State Legislature to pass a bill allowing municipal police to use RADAR a high priority. The PSMA believes that presenting the statutes or regulations from the other 49 states that allow municipal police to use RADAR to the Pennsylvania State Legislature would make an impactful statement. In an effort to meet this goal, the PSMA has obtained the assistance of Rick Koch, a third-year law student at the Duquesne University School of Law. Mr. Koch was given the task of researching the law in all 50 states relating to the use of RADAR by municipal police to detect speeding motorists. The following is the results of that research.

Overview of Results

Although the PSMA desired to obtain the statutes or regulations from the 49 states that permit municipal police to use RADAR to detect speeding motorists, such statutes and regulations do not exist in every state. While at first glance this might seem like a bad thing, it actually turned to be one of the most advantageous and rewarding aspects of the research. Although not every state has a statute that governs the use of RADAR by municipal police, all of

the 49 states besides Pennsylvania unequivocally allow their municipal police to use RADAR to detect speeding motorists. Pennsylvania's statute governing the use of RADAR by police officers in the Commonwealth is truly unique.

Due to the varying types of statutes that the other 49 states have for governing the use of RADAR by municipal police, the states have been grouped into four categories. First, there are states that have statutes that specifically permit municipal police to use RADAR to detect speeding motorists. Second, there are states that allow any police officer to use RADAR to detect speeding motorists. Third, there are states that grant all police and municipalities the power to enforce the state's motor vehicle laws by whatever means they deem appropriate. Finally, there are states that are statutorily silent on the use of RADAR by municipal police. The remainder of this memorandum examines the Pennsylvania Statute and each of the above categories in further depth.

The Pennsylvania RADAR Statute

Pennsylvania is the only state in the United States that prohibits municipal police officers from using RADAR to detect speeding motorists. Specifically, the Pennsylvania statute states, “[e]xcept as otherwise provided in paragraph (3), electronic devices such as radio-microwave devices (commonly referred to as electronic speed meters or radar) ***may be used only by members of the Pennsylvania State Police.***”¹ Notably, Pennsylvania's statute only specifically allows the Pennsylvania State Police to use RADAR. In doing so, the statute prevents all municipal police from using RADAR. Again, no other state in the United States has a statute that only permits that state's State Police to use RADAR to detect speeding motorists. The Pennsylvania Legislature has uniquely chosen to distinguish the State Police from municipal

1. 75 PA. CONS. STAT. ANN. § 3368(c)(2) (West 2009).

police in the use of RADAR. The law in the remaining 49 states demonstrates that Pennsylvania's statute is out of touch.

State Statutes Granting Municipal Police the Use of RADAR

In the United States, six states specifically allow municipal police officers to use RADAR to detect speeding motorists. An example of one such statute is from West Virginia, which provides that

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, *when such evidence is obtained by members of the State Police, by police officers of incorporated municipalities* in classes one, two and three, as defined in chapter eight-a of this code, by police officers of incorporated class four municipalities except upon controlled access or partially controlled access highways, and by the sheriff and his or her deputies.²

This statute specifically states that in addition to the State Police, municipal police may also use RADAR to prove the speed of motor vehicles. West Virginia's statute is the type of statute that directly supports the PSMA's mission and beliefs. The downside to this statute is that only five other states have a similar statute. States with statutes similar to West Virginia include the following: Delaware³, Georgia⁴, Mississippi⁵, North Dakota⁶, and Virginia⁷.

State Statutes Granting Any Police the Use of RADAR

The next category of states is those states with statutes that allow any police officer to use RADAR. This is the largest category of states as there are 21 states with this type of statute. An example of such a statute is from Nebraska, which states that “[d]eterminations made regarding

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2. W. VA. CODE ANN. § 17C-6-7 (West 2012).
 3. DEL. CODE ANN. tit. 21, § 701(a)(2) (2012).
 4. GA. CODE ANN. § 40-14-2(a) (2011).
 5. MISS. CODE ANN. § 63-3-519 (2011).
 6. N.D. CENT. CODE § 39-03-15 (2012).
 7. VA. CODE ANN. § 46.2-882 (2012).

the speed of any motor vehicle based upon the visual observation of *any peace officer*, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device.”⁸ While this type of statute does not specifically state that municipal police may use RADAR to detect speeding motorists, it does state that any police or peace officer may use radar to determine the speed of motor vehicles. This type of statute may also state, in general, that RADAR can be a tool for determining the speed of motor vehicles. Therefore, these states do not prohibit municipal police from using RADAR to enforce the speed limit. The states, in addition to Nebraska, that fall into this category include the following: Alabama⁹, Arkansas¹⁰, California¹¹, Connecticut¹², Florida¹³, Iowa¹⁴, Maine¹⁵, Maryland¹⁶, Minnesota¹⁷, Montana¹⁸, Nevada¹⁹, North Carolina²⁰,

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8. NEB. REV. STAT. ANN. § 60-6,192(1) (West 2011).
 9. ALA. CODE § 32-5A-177(d) (2012).
 10. ARK. CODE ANN. § 12-9-403(a), (e), (g) (2012).
 11. CAL. VEH. CODE § 40802(c)(1)(A), (B) (West 2011).
 12. CONN. GEN. STAT. ANN. § 14-219c (West 2012).
 13. FLA. STAT. ANN. § 316.1905(1) (West 2012).
 14. IOWA CODE ANN. § 321.232(2) (West 2012); IOWA CODE ANN. § 80B.11D (West 2012).
 15. ME. REV. STAT. ANN. tit. 29-A, § 2075(4) (2011).
 16. MD. CODE ANN., CTS. & JUD. PROC. § 10-301 (West 2012).
 17. MINN. STAT. ANN. § 169.14(Subd. 10)(a)(1) (West 2012).
 18. MONT. CODE ANN. § 61-8-703 (West 2011).
 19. NEV. REV. STAT. ANN. § 459.920(3) (West 2007).
 20. N.C. GEN. STAT. § 8-50.2(b)(1), (2) (2012).

Ohio²¹, Oklahoma²², Oregon²³, South Carolina²⁴, Tennessee²⁵, Texas²⁶, Utah²⁷, and Washington²⁸.

State Statutes Granting Police or Municipalities the Ability to Enforce Speed Limits

Another category of states is states with statutes that allow police or municipalities to enforce the state speed limits by whatever means they deem appropriate. This is a smaller category of states, with only four states having this type of statute. An example of such a statute is from Kansas, which states that “the provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from: . . . regulating traffic by means of police officers or official traffic-control devices . . .”²⁹ Although this is a small category of states, these states still support the PSMA’s mission because all of these states allow municipal police the use of RADAR³⁰, albeit not statutorily, to detect speeding motorists. States that fall into this category, in addition to Kansas, include the following: Illinois³¹, Louisiana³², and South Dakota³³.

States Silent on the Use of RADAR

The final category of states is those states that have no statutes or regulations governing the use of RADAR to detect speeding motorists. This category is the second largest category

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21. OHIO REV. CODE ANN. § 4511.091(C)(1)(a) (West 2011).
 22. OKLA. STAT. ANN. 47 § 16-114 (West 2012).
 23. OR. REV. STAT. ANN. § 810.420 (West 2012).
 24. S.C. CODE ANN. § 56-7-35(a)(4) (2011); S.C. CODE ANN. REGS. 38-011 (2012).
 25. TENN. CODE ANN. § 24-7-124(a) (2012).
 26. TEX. TRANSP. CODE ANN. § 644.101(d) (West 2011).
 27. UTAH CODE ANN. § 41-6a-608(1), (2)(b), (d) (West 2011).
 28. WASH. REV. CODE ANN. § 46.61.470(2) (West 2012).
 29. KAN. STAT. ANN. § 8-2002(a)(2) (West 2011).
 30. Contact was made with representatives of each state to confirm that municipal police were permitted to use RADAR in these states.
 31. 625 ILL. COMP. STAT. ANN. 5/11-208.3 (West 2012).
 32. LA. REV. STAT. ANN. § 32:41(A)(2) (2011).
 33. S.D. CODIFIED LAWS § 9-31-3 (2011).

containing 18 states. The states that have no statute that governs the use of RADAR to detect speeding motorists include: Alaska, Arizona, Colorado, Hawaii, Idaho, Indiana, Kentucky, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Wisconsin, and Wyoming. While these states provided the greatest challenge to the research project, they also provided the most advantageous, beneficial, and interesting information.

In order to determine whether each of these states allowed municipal police to use RADAR to detect speeding motorists, contact was made with various government officials from each state, including Assistant Attorney Generals and Chiefs of Police. Every state confirmed that their municipal police officers used RADAR to detect speeding motorists. Each state has no statute permitting any type of police to use RADAR, yet each state unequivocally allows their municipal police to use RADAR. To these states, this is a non-issue. While each state and municipality has its own standards and training that it requires its police officers to undertake, this sort of governance is generally handled at the individual or municipal level. It is simply not a state issue.

Additionally, upon contacting officials from each of these states, the officials from these states had a distinct reaction to Pennsylvania's statute, which specifically prohibits municipal police from using RADAR to detect speeding motorists. While speaking with several of these officials over the phone, many used adjectives like "crazy," "wild," and "astonishing" to describe Pennsylvania's RADAR law. Several of these officials were even willing to send email testimonials of their thoughts on Pennsylvania's law and the use of RADAR by municipal police.

For example, Thomas Clemons, Chief of Police for the Seward Police Department (Alaska) stated that "[a]ny law enforcement officer can use RADAR in Alaska. There is no

written authority for this. It is considered part of their regular duties. Sounds a little too restrictive in Penn[sylvania].” Another strong response came from Chief A. Wayne Sampson (Ret.), Esquire, Executive Director, Massachusetts Chiefs of Police Association, Inc., who said,

Massachusetts has allowed Municipal Police to conduct unrestricted RADAR patrols since the inception of the device. The only requirement is that the operator becomes certified to use it, which is a very simple one-day training issue. This is not even a question in our courts. It is not even a question of law; any officer is allowed to use the device. There is absolutely no justification to not allow a trained officer to use a RADAR unit.

Perhaps the best reaction came from government officials from the New Mexico Department of Public Safety. Elliott Guttman pointedly provided that,

To us, a RADAR gun is like a breath alcohol machine: it’s a valuable tool that helps law enforcement and citizens alike. For example, we have a statute that a motorist having over a .08 breath test is presumed to be intoxicated. A motorist may argue he or she was not intoxicated. If the result is below .08, the motorist has evidence that may support their argument. The test results are admissible because officers follow procedures to ensure their accuracy.

Now let’s take that one step further, to RADAR. An officer may think a motorist is speeding but isn’t sure. If RADAR shows the motorist isn’t speeding, the officer will usually decide not to make the stop (there may be other factors: inclement weather, bad road conditions, etc.). Sometimes a motorist argues in court he or she wasn’t speeding. RADAR can support the officer or the motorist.

Talking with a number of officers, we were astonished Pennsylvania has a law prohibiting municipal officers from using RADAR.

This testimony demonstrates just how out-of-touch Pennsylvania’s law is with the laws, standards, and practices of the other 49 states in the Union. Finally, several police chiefs were adamant that municipalities do not use RADAR as a source of revenue, it is simply about making the roadways safer.

Conclusion

Pennsylvania is the only state in the United States that only allows its State Police to use RADAR to detect speeding motorists. Research of the laws, standards, and practices of the other

49 states shows that RADAR is a normal and integral tool that all police officers use everyday. To review, Pennsylvania’s statute states that, “[e]xcept as otherwise provided in paragraph (3), electronic devices such as radio-microwave devices (commonly referred to as electronic speed meters or radar) *may be used only by members of the Pennsylvania State Police.*”³⁴ All that the Pennsylvania State Legislature would need to do to amend this statute would be to change it to read, “[e]xcept as otherwise provided in paragraph (3), electronic devices such as radio-microwave devices (commonly referred to as electronic speed meters or radar) *may be used by any police officer.*” Such a simple change would go a long way to making our local roads safer and our local governments more efficient.

34. 75 PA. CONS. STAT. ANN. § 3368(c)(2).