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Honorable David C. Laney
Sheriff, Cullman County
500 2nd Avenue, SW
Cullman, AL 35055

Sheriffs - Investigations -
Minors - Drugs

If a sheriff's department seeks to use a minor as an informant or agent in a drug surveillance or counter-drug operation, the guidelines formulated by the Alabama Supreme Court in Ex Parte Alabama Alcoholic Beverage Control Board, No. 1910325 (Ala. 1993) should be followed.

Dear Sheriff Laney:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

If the Sheriff's Department seeks to utilize an individual under 19 (nineteen) years of age as an informant or agent in a drug surveillance or counter-drug operation, would the guidelines and required judicial order as established in Ex parte Alabama Alcoholic Beverage Control Board, 1993 WL 40341 (Ala.), be applicable?

FACTS, LAW AND ANALYSIS

The following facts are set forth in your request:

During the course of undercover operations, it sometimes becomes possible to utilize an individual as an informant who is not of the age of majority. Specifically, those individuals become most readily available with regard to illicit drug possession and drug trafficking.

In Ex parte Alabama Alcoholic Beverage Control Board, No. 1910325 (Ala. 1993), the Alabama Supreme Court considered the following issue:

"The issue presented in this case is whether the actions of the Alcoholic Beverage Control Board (ABC Board), in using a minor (we use the term 'minor' to mean a person who has not attained the legal age for purchasing and consuming alcoholic beverages: see § 28-3-1(18), Ala. Code 1975), as a participant in an undercover operation, invoked the operation of § 13A-3-22, Ala. Code 1975, and, if not, under what circumstances the ABC Board may use minors to make undercover buys of alcoholic beverages."

Code of Alabama 1975, § 13A-3-22 provides:

"Unless inconsistent with other provisions of this article, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties or functions."

The Supreme Court concluded that under the facts as presented in Bartlett v. Alabama Alcoholic Beverage Control Board, Ms. 2900536 (Ala. Cr. App. 1991), the Alcoholic Beverage Control Board substantially complied with the minimum procedure to be followed in the use of minors in undercover operations to get the protection afforded by § 13A-3-22.

The Supreme Court in Ex Parte Alabama Alcoholic Beverage Control Board, supra, stated that a procedure should be adopted by the Alcoholic Beverage Control Board, preferably in an administrative rule:

"(1) that will ensure that the minor's parents or guardians consent to the minor's involvement in the undercover operations;

"(2) that designates which officers or agents can appoint or hire a minor to perform undercover work;

"(3) that requires a description of the undercover operation to be performed;

"(4) that provides for the audio-taping or videotaping of the undercover operation; and

"(5) that provides a procedure for marking or otherwise identifying any money used.

"In lieu of adopting an administrative rule setting out this procedure and then following that procedure, the ABC Board could petition the juvenile court for an order authorizing the use of a minor in an undercover operation. In that event, the court will ensure that the minimum standards we have set out here are met."

While the above procedure was set down for the Alcoholic Beverage Control Board for the use of minors in an undercover operation, it would certainly be in the best interests of any law enforcement agency to follow this procedure when using minors in undercover operations. The use of the procedure would provide the necessary safeguards for the minor and the law enforcement agency, and would help to ensure that any conviction arising from such operation would stand. Furthermore, in all likelihood, it is a matter of time before this procedure will be applied by statute, by case law and/or by administrative regulation to all law enforcement agencies wishing to use minors as informants or agents in their surveillance or undercover operations.

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CONCLUSION

If a sheriff's department seeks to use a minor as an informant or agent in a drug surveillance or counter-drug operation, the guidelines formulated by the Alabama Supreme Court in Ex Parte Alabama Alcoholic Beverage Control Board, No. 1910325 (Ala. 1993) should be followed.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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