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CRIMINAL LAW:
Monitoring Police
Radio Bands

Honorable Robert A. Downs
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Dear Mr. Downs:

I received your letter requesting an opinion on the following questions:

Is it a violation of the law for a private citizen to monitor police calls carried on the regular police frequencies?

If your answer to the above question is in the positive, would you please furnish me with the chapter and section which would constitute such violation.

In addition, if it is not a violation for a private citizen to monitor said police calls, does

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the County Board have the authority to pass local ordinance prohibiting such activity?"

Pursuant to the Commerce Clause of the United States Constitution (art. I, sec. 8, cl. 3), Congress has the power to regulate radio communication. Technical Radio Laboratory v. Federal Radio Commission, 36 F. 2d 111 (D.C. Cir., 1929).

Section 605 of the Communications Act of 1934 (47 U.S.C.A. sec. 605) provides in part:

"* * * [N]o person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person * * *."

Since regulation of radio communications by the Federal Communications Commission has been established by the Communications Act of 1934, I will next consider whether this grant of Federal power is sufficient to oust State regulation of radio monitoring. In Head v. New Mexico Board, 374 U.S. 424, 10 L. Ed. 2d 983, 83 S. Ct. 1759 (1963), the United States Supreme Court held that New Mexico's jurisdiction to regulate radio advertising was not preempted by the Communications Act of 1934. At page 430, the court said:

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"[T]he 'question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State, must be answered by a judgment upon the particular case.' * * * In areas of the law not inherently requiring national uniformity, our decisions are clear in requiring that state statutes, otherwise valid, must be upheld unless there is found 'such actual conflict between the two schemes of regulation that both cannot stand in the same area, [or] evidence of a congressional design to preempt the field.' Florida Avocado Growers v. Paul, 373 U.S. 132, 141."

Since there is no Federal law specifically prohibiting the monitoring of police bands by private citizens nor requiring the licensing or regulation of the equipment necessary to conduct such activity, there apparently would be no conflict between such a State law and the current Federal legislation.

Indication of State power in this area might also be implied from the fact that several States have enacted regulatory legislation on the use of monitoring equipment.

The State of New York makes it a misdemeanor to equip a motor vehicle with a radio capable of receiving signals on frequencies allocated to police without a permit. (N.Y. Vehicle

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and Traffic Law, §397 (McKinney 1970).) Other States with similar statutes are: Florida (Fla. Stat. Ann. §843.16 (1965)), Indiana (Burns Ind. Ann. Stat. §10-4915 (1956)), Kentucky (Ky. Rev. Stat. §432.70 (1974)), Michigan (Mich. Comp. Laws Ann. §750.508 (1968)), and South Dakota (S. Dak. Consol. Laws §§23-4-1 to 23-4-6 (1967)).

In State of Minnesota v. Peterfest, 169 N.W. 2d 18 (Minn. 1969), the Supreme Court of Minnesota struck down a statute prohibiting any person from transferring, ordering, exchanging, or selling any radio equipment capable of being used in a motor vehicle on police frequency to any person without a required permit. In declaring the law unconstitutional, the court said:

"The purpose of the statute is to prevent persons who commit crimes from determining the activities of the police dispatched to apprehend them. To that end, the statute would be valid if it were restricted to prohibiting the use of devices capable of receiving emergency frequencies. However, to prohibit their sale when their function outside of an automobile may be entirely innocent is an impermissible limitation on legitimate activity."

The section of the statute found unconstitutional was subsequently repealed. The current statute now prohibits all persons other than peace officers from equipping motor vehicles with equipment capable of receiving police frequencies

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unless permission is obtained from the authorities. Minn. Stat. Ann. §299C.37 (1972).

A statute making it a misdemeanor to have in an automobile a radio receiver operating on frequencies assigned for fire, police, municipal, or other governmental uses without first obtaining a permit was upheld in State of New Jersey v. Smith, 130 N.J. Super. 442, 327 A. 2d 462 (1974). The New Jersey Superior Court held that State interest in avoiding interference with fire, police, or governmental agencies in carrying out their functions and making it more difficult for those engaged in illegal activities to become aware of their detection justified enactment of the statute. In regard to the defendant's contention of a constitutional right to be a party to communications transmitted on police frequencies, the court said:

"It cannot seriously be contended that a person has a constitutional right to be a party to a communication, e.g., from one police officer to another directing the latter to proceed to a

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designated location to investigate a reported crime. The crime of violation of defendant's right of free speech is completely without merit."

While none of these laws are broad anti-monitoring statutes, courts have seemed to indicate there is no constitutional right to such listening included in the first amendment guarantee to freedom of speech. In State v. Miller, 187 So. 2d 461 (La. App., 1966), an anti-monitoring ordinance was challenged as unconstitutional. Since the case was decided on other grounds, the constitutional issues were never decided.

In 1931 the General Assembly passed and there became effective "AN ACT in relation to the establishment and operation of radio broadcasting stations and the acquisition and installation of radio receiving sets for police purposes". (Laws of 1931, p. 460.) Section 4 of said Act provided:

"§ 4. No person, except peace officers in this State, shall equip any automobile with a short wave length radio receiving set or use the same in such automobile without first obtaining permission to do so from the sheriff of the county, from which such automobile is registered as shown by the records of the Secretary of State or in the case of a non-resident from the Department of Public Works and Buildings. Before granting such permission, the sheriff or the department shall

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require a sworn written statement, that such radio receiving set will not be used to assist in the escape of any criminal or for any other unlawful purpose, from the person to whom he grants such permission."

Section 4 was repealed in 1949. Laws of 1949, p. 72.

The Eavesdropping Statute (Ill. Rev. Stat. 1973, ch. 38, pars. 14-1 et seq.) which prohibits the unauthorized use of an eavesdropping device to hear or record all or any part of any conversation has exemptions applicable to police radio communications. Section 14-3 provides in part:

"The following activities shall be exempt from the provisions of this Article:

(a) Listening to radio, wireless and television communications of any sort where the same are publicly made;

* * *

(d) Recording or listening with the aid of any device to any emergency communication made in the normal course of operations by any federal, state or local law enforcement agency or institutions dealing in emergency services, including, but not limited to, hospitals, clinics, ambulance services, fire fighting agencies, any public utility, emergency repair facility, civilian defense establishment or military installation."

Since most police broadcasts are either "publicly made" or can be classified as "an emergency communication made

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in the normal course of operations", the monitoring of police bands by private citizens is not precluded. Therefore, in answer to your first question, in the State of Illinois there is no statute prohibiting a private citizen from monitoring police radio frequencies.

Your second question pertains to the power of Fulton County to pass an ordinance prohibiting a private citizen from monitoring police radio frequencies. Fulton County is not a home rule unit. As such Fulton County has only those powers expressly granted to it by law plus those powers that may be implied as necessary to carry out its statutory powers. Ill. Const., art. VII, sec. 7; Connelly v. County of Clark, 16 Ill. App. 3d 947; Ashton v. County of Cook, 384 Ill. 287.

Counties are delegated power to maintain and operate a radio broadcasting station and receiving sets under section 25.11 of "AN ACT to revise the law in relation to counties". (Ill. Rev. Stat. 1973, ch. 34, par. 416.) Said section 25.11 reads as follows:

"§ 25.11. To purchase, lease or otherwise acquire and maintain and operate, a radio broadcasting station, for police and fire protection purposes only, in its county, or to join with one or

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more counties in this State in purchasing, leasing or otherwise acquiring and maintaining and operating a radio broadcasting station, for police or fire protection purposes only, in said counties, the broadcasting station to be equipped to send messages to and receive messages from peace officers and fire protection officers and employees; and to purchase or otherwise acquire radio receiving sets and equipment necessary for receiving messages from and sending messages to the broadcasting station and to furnish such receiving sets and equipment to peace officers and fire protection officers and employees in the county or counties for use by them, for police and fire protection purposes only."

In answer to your second question, I am of the opinion that section 25.11 does not grant Fulton County power to prohibit private citizens from monitoring police radio frequencies nor may it be fairly implied that such an ordinance is necessary or essential to enable the county to carry out the powers granted to it by section 25.11.

Very truly yours,

A T T O R N E Y G E N E R A L