



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

February 25, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable William K. Barlow
Member, House of Delegates
Post Office Box 240
Smithfield, Virginia 23431

Dear Delegate Barlow:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You pose two questions regarding licensing through the Department of Criminal Justice Services pursuant to §§ 9.1-138 through 9.1-150. Specifically, you ask whether a license is required for the installation of wiring and/or equipment¹ which may ultimately be used to support "electronic security equipment."² You further inquire as to whether an independent contractor must be licensed when installing, maintaining, modifying or repairing "electronic security equipment" when the prime contractor is licensed under § 9.1-138.

Response

It is my opinion that when an employee who is installing wiring or equipment has access to "confidential information concerning the design, extent, status . . . or location of an end user's electronic security equipment," the contractor or subcontractor employing this individual must obtain a license from the Department of Criminal Justice Services as required by § 9.1-138, *et seq.*

Background

Your question centers on a business that primarily provides wiring and data services, including the installation and maintenance of business telephone and data systems, wiring and computer networks. You state that this business "certainly provide[s] wiring and data services that could, and no doubt are used by others, such as licensed alarm companies, to support . . . security equipment" and that the business "does not always know in advance which of the wires it installs will be used to support which device." You relate that the business installs wiring that "although they may not be aware of it, might

¹ Your inquiry identifies the following examples: "telephones, computers, dial tone, telephone lines, Cat 5-e wiring, fiber optic cabling, COAX cabling, patch panels, 66-M150 connecting blocks, RJ-45, RJ-14, RJ-21X, and RJ-31X jacks, network routers, Ethernet switches, internet access, electronics, network circuits, and associated terminal equipment."

² See VA. CODE ANN. § 9.1-138 (Supp. 2010).

very well be used for security devices such as cameras, motion detectors, and the like.” You also note that this business performs maintenance and repair work on “electronic security equipment” as a subcontractor for a prime contractor who is licensed under § 9.1-139.

Applicable Law and Discussion

Virginia law requires persons who “engage in the private security services business” to be licensed through the Department of Criminal Justice Services.³ The statutory definitions that govern your inquiry are as follows:

“Private security services business” means any person engaged in the business of providing, or who undertakes to provide . . . electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

“Electronic security employee” means an individual who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user’s electronic security equipment.

“Electronic security business” means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user . . . or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user’s electronic security equipment.^[4]

The statute does not distinguish between contractors and subcontractors. What matters under the plain language of the statute is whether the individual who is performing the work has access to confidential information concerning the “end user’s electronic security equipment.”⁵ If that is the case, the individual performing the installation or repair is deemed an “electronic security employee” who is employed by an “electronic security business.” That, in turn, means that the business employing this individual is a “private security services business” that must obtain a license under § 9.1-139.⁶

If the employee of a contractor or subcontractor does not have “access to information concerning the design, extent, status . . . or location of an end user’s electronic security equipment,” he would not be classified as an “electronic security employee.”⁷ The inquiry is fact specific. The fact that the services provided *might* be used for a security system does not trigger the requirement for a license. But in cases where the employee has access to confidential information concerning the design, extent, status . . . or

³ Section 9.1-139(A) (Supp. 2010)

⁴ Section 9.1-138.

⁵ *See id.*

⁶ You note that the business you describe often does precisely the same work as Verizon and other large telephone companies. The licensing requirement of § 9.1-139, however, is subject to a limited exception. “Unarmed regular employees of telephone public service companies” need not be licensed, provided that “the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers’ affiliates, and other communications common carriers.” Section 9.1-140(11) (Supp. 2010).

⁷ Section 9.1-138.

location of an end user's electronic security equipment," the contractor or subcontractor employing this individual must obtain the required license.

Conclusion

Accordingly, it is my opinion that when an employee who is installing wiring or equipment has access to "confidential information concerning the design, extent, status . . . or location of an end user's electronic security equipment," the contractor or subcontractor employing this individual must obtain a license from the Department of Criminal Justice Services as required by § 9.1-138, *et seq.*

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized with a large "K" and "C", and the Roman numeral "II" is written to the right of the "C".

Kenneth T. Cuccinelli, II
Attorney General