



# STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

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August 13, 2013

Michael Lisenco  
ARRL Board of Directors-Hudson Division  
1635 East 46<sup>th</sup> Street  
Brooklyn, NY 11234

Re: Ham radios and New York State's cell phone law and texting law

Dear Mr. Lisenco:

This is in response to your letter of August 6, 2013 regarding the application of Vehicle and Traffic Law ("VTL") Sections 1225-c and 1225-d to the use of ham radios. From speaking with you and in reading your correspondence, a ham radio functions as a two-way radio only, is not accessed through a wireless telephone network nor can this device be used to access wireless telephone service.

With the above understanding, it is the opinion of this Department that VTL Section 1225-c (the cell phone law) does not apply to the use of "two-way radios", meaning a radio with a two-way dispatch function that does not use a telephone network, functions like a walkie-talkie (the user pushes a button to talk) and is typically used with the speakerphone embedded in the device. Such devices are not "mobile telephones", as such term is defined in VTL Section 1225-c(1)(a), because the device is not used to access a "wireless telephone service." "Wireless telephone service" is, in turn, defined as "...two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F. R. Section 20.3..." Therefore, the use of such devices does not violate the cell phone law.

As to VTL Section 1225-d (commonly referred to as the texting law), which prohibits the use of a portable electronic device while operating a motor vehicle, portable electronic device is defined as follows:

2.(a) "Portable electronic device" shall mean any hand-held mobile telephone, as defined by subdivision one of section twelve hundred twenty-five-c of this article, personal digital assistant (PDA), hand-held device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

Furthermore, VTL Section 1225-d(2)(b) defines "using" as the following:

...holding a portable electronic device while viewing, taking or transmitting images, playing games, or composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages, or other electronic data.

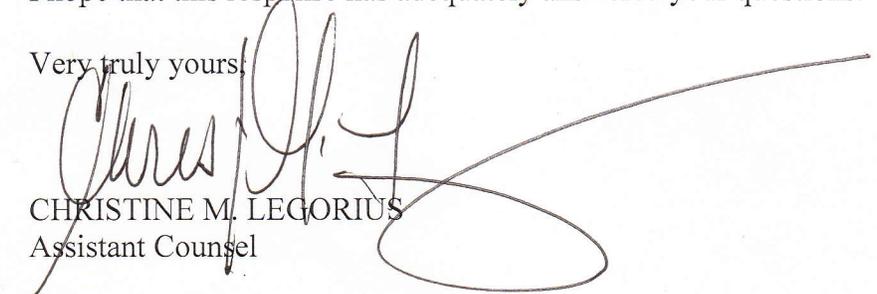
Thus, if the ham radio meets the definition of a portable electronic device, then "using" such device while operating a motor vehicle is prohibited under VTL Section 1225-d (Please note the exceptions as provided in VTL Section 1225-d(3)). However, if the ham radio does not meet the definition of portable electronic device, or if it does but the motorist is not "using" the device as defined above while operating a motor vehicle, then the use of such device while operating a motor vehicle does not violate the texting law.

Please keep in mind that although the use of certain communication devices while driving may be legal, it is not recommended because it contributes to the dangers of distracted driving.

The legal opinions expressed herein are those of this Department and are not binding upon prosecutors, law enforcement or the judiciary.

I hope that this response has adequately answered your questions.

Very truly yours,



CHRISTINE M. LEGORIUS  
Assistant Counsel

CML/dmv