

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

Neal Kurk, et al.

v.

City of Manchester

Docket No. 216-2019-CV-00501

ORDER

Plaintiffs have brought this action seeking declaratory and injunctive relief. The case arises out of the planned installation of surveillance cameras on Elm Street in Manchester. On August 12, 2019, the Court dismissed two plaintiffs for lack of standing and also denied a motion for preliminary injunction. The remaining plaintiffs now move for summary judgment on their claim for declaratory relief. Upon consideration of the pleadings, arguments, and applicable law, the Court finds and rules as follows.

Factual Background

The Manchester Police Department, with the approval of the Mayor and Board of Alderman, currently plans to install three permanent surveillance cameras in the area of City Hall that will monitor Elm Street to the north and south. The cameras will have the ability to zoom, pan, and tilt, but will not be equipped with facial recognition software or license plate readers. The cameras will transmit a live feed of their recordings to the Manchester Police Department's dispatch office, where it will be accessible for review twenty-four hours a day. Recordings will be saved for two weeks.

In 2006, the New Hampshire Legislature passed RSA 236:130. That statute provides, in pertinent part:

I. In this subdivision, “surveillance” means the act of determining the ownership of a motor vehicle or the identity of a motor vehicle’s occupants on the public ways of the state or its political subdivisions through the use of a camera . . . that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants.

II. Neither the state of New Hampshire nor its political subdivisions shall engage in surveillance on any public ways of the state or its political subdivisions.

. . . .

V. Any person violating the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

Petitioners now move for summary judgment, seeking a declaration that the City’s planned use of the cameras on Elm Street will violate the provisions of RSA 236:130.

Analysis

In their prayer for relief, plaintiffs ask that the Court “issue a judgment declaring that the City of Manchester’s planned use of surveillance cameras on Elm Street will violate RSA 236:130 because the cameras can and will cause the Department to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants.” (Pls.’ Mot. Summ. J. at 11.) In support of their motion, plaintiffs rely in part upon the Court’s statement in its prior order that “it is virtually inevitable that in reviewing the footage generated by the cameras, a government actor will, given enough time, recognize someone in a car on Elm Street, even if by accident.” (Order at 4.) However,

for the reasons that follow, plaintiffs' prayer for relief, as written, is overbroad and appears to misconstrue or misapply the Court's prior statements in this matter.

The City's planned use in this case consists of the installation of cameras; the recording of Elm Street, including the vehicles and motorists on the road; and the review of footage by Manchester Police dispatch. None of these things, alone or together, constitutes "surveillance" as defined in the statute. Instead, in order to violate the statute, a government employee reviewing the footage would need to: (1) take the additional step of searching a license plate captured by the recording or running the recording through facial recognition software; or (2) recognize a vehicle or occupant thereof by virtue of their own personal knowledge. While both of these events are possibilities, neither appears to be the intended purpose of the installation of the cameras. Instead, the stated purpose of the cameras is to monitor for and respond to crimes taking place in or around the businesses and residences located on Elm Street. (See Bissonnette Aff. 8/29/19, Ex. A, D.) At most, it could be argued that the City's planned use will *enable* the government to violate the statute. However, simply because footage generated by the cameras could be used to violate the law does not mean the installation or use of the cameras itself violates the law.

Plaintiffs make reference to the legislative history of RSA 236:130, arguing that the representatives who sponsored and/or voted for the law believed that it would act as a "total bar on surveillance capturing motorist information." (Pls.' Mot. Summ. J. at 9.) Regardless of their intention, however, that is not what the law says. By defining "surveillance" as it did, the legislature limited the conduct prohibited by the statute to certain specific uses of recorded footage rather than proscribing the capture of said

footage in the first instance. Further, the Court only looks to the legislative history of a statute if the statutory language is ambiguous, which it is not here. See State v. Folds, ___ N.H. ___, 216 A.3d 58, 66 (2019) (“When the language of a statute is ambiguous, [the Court] review[s] legislative history to aid [its] analysis.”).

Upon consideration of the foregoing, the Court cannot find as a matter of law that the planned use of surveillance cameras will violate RSA 236:130. Instead, the Court can only speculate that, once the cameras are installed, a government employee reviewing the footage will be capable of engaging in additional conduct that will violate the statute. Accordingly, plaintiffs’ motion for summary judgment is DENIED.

SO ORDERED.

November 18, 2019 _____

Date



Judge Tina L. Nadeau

Clerk's Notice of Decision
Document Sent to Parties
on 11/20/2019