



Office of the Attorney General
State of Texas

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May 26, 1995

Honorable Judith Zaffirini
Chair
Committee on Health and Human Services
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 95-034

Re: Whether a school district violates the law by installing a video surveillance camera in a student locker room or gymnasium to identify students who allegedly are stealing property (ID# 31560)

Dear Senator Zaffirini:

You ask whether it is a violation of state or federal law for a Texas independent public school district to place a video camera in student locker rooms or gymnasiums to identify students who allegedly are stealing property belonging to the school district or to other students.

We have found no state or federal statute specifically addressing this question. However, your question may involve issues of federal constitutional rights and common law privacy. See U.S. Const. amend. IV; *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (motion to suppress evidence of drug dealing that school administrator discovered in searching student's purse); *Acton v. Vernonia Sch. Dist.* 47J, 23 F.3d 1514 (9th Cir. 1994), *cert. granted*, 115 S. Ct. 571 (1994) (No. 94-590) (suit challenging school district drug testing policy under Fourth Amendment of United States Constitution and under Oregon Constitution).

First, the United States Supreme Court held in *New Jersey v. T.L.O.* that the Fourth Amendment of the Constitution of the United States, which protects people against unreasonable searches and seizures, applies to searches of students conducted by public school officials. *T.L.O.*, 469 U.S. at 325. The Court determined that the student's interest in privacy must be balanced against the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. *Id.* at 339. The Court rejected the requirement of probable cause for a search. *Id.* at 340-41. Instead, a search of a student by a teacher or other school administrator must be justified at its inception by reasonable grounds for suspecting that the search will reveal evidence that the student has violated the law or the rules of the school, and it must be reasonably related in scope "to the objectives of the search and not excessively intrusive in light of the

age and sex of the student and the nature of the infraction.” *Id.* at 342. Applying this standard in *T.L.O.*, the Court determined that under the facts of that case, a school administrator’s search of a student’s purse was not unreasonable. *Id.* at 343.

The Court’s standard for determining the reasonableness of a search requires a thorough development of the facts regarding the reasons for the search and the way it was carried out. Since an attorney general opinion cannot investigate or resolve questions of fact, we cannot determine whether or not video camera surveillance in the locker room or gymnasium would violate the Fourth Amendment rights of any student.

The Supreme Court did not decide whether individualized suspicion was an essential element of the reasonableness standard, *id.* at 343 n.8, a question that appears to be relevant to the legality of the surveillance of a group of students by video camera. Moreover, the Supreme Court is again considering searches of public school students by administrators, in a challenge to a school policy requiring routine drug testing for student athletes. *See Acton*, 115 S. Ct. 571 (granting certiorari). In view of the developing state of the law on searches of public school students, as well as the importance of evidentiary matters in addressing such questions, we cannot predict how a court might rule on the validity under the Fourth Amendment of the search you have outlined.

Second, the tort claim of invasion of the right of privacy may also be relevant to the question you ask. An unwarranted invasion of the right of privacy constitutes a legal injury for which a remedy will be granted. *Billings v. Atkinson*, 489 S.W.2d 858 (Tex. 1973). The Texas Supreme Court has approved the following definition of the right of privacy:

[I]t is the right to be free from . . . the publicizing of one’s private affairs with which the public has no legitimate concern, or the wrongful intrusion into one’s private activities in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

Id. at 859. *But see* Civ. Prac. & Rem. Code § 101.051 (partial exclusion of school districts from Texas Tort Claims Act).

The common-law right of privacy may be relevant to deciding whether an individual has a “legitimate expectation of privacy” protected by the Fourth Amendment. *T.L.O.*, 469 U.S. at 339. Judicial decisions on an invasion of privacy at common law and on the legality of searches and seizures consider whether an individual has an expectation

of privacy in a particular place.¹ See *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176 (7th Cir. 1993) (video surveillance of doorway to company locker room)²; *Marrs v. Marriott Corp.*, 830 F. Supp. 274 (D. Md. 1992) (no expectation of privacy in open office); *Gillett v. State*, 588 S.W.2d 361 (Tex. Crim. App. 1979) (no expectation of privacy in department store fitting room where posted signs state that fitting room is under surveillance).

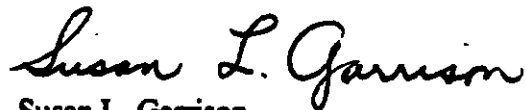
¹With regard to your question on videotaping students in the locker room or gymnasium, we feel that it is unlikely that a court would object to videotaping in the gymnasium. A judicial decision regarding video camera surveillance in a locker room setting would turn on the facts of the case, such as the location of the video camera and the age, sex, and state of undress of the students filmed by it. Thus, we cannot theorize about the outcome of a case involving video camera surveillance of students in a locker room.

²The factual basis of the claimed violation of the tort right of privacy raised in *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, is of interest because of similarities to the situation you present, although the case also addresses labor law issues that mooted the claim of all but one plaintiff. This case illustrates the need to present and evaluate evidence in determining whether an individual's privacy has been violated. A video camera was placed inside a locker room where female employees changed from street clothes to work clothes. *Id.* at 1182. The company had received complaints that on the night shift a male supervisor and a female worker were leaving their work stations and going into the locker room together. Motivated by various concerns including possible liability for sexual harassment, the management installed a video camera at the entrance to the locker room. The camera was installed in the ceiling of the locker room itself, pointing toward the door rather than toward the interior of the room, where it was unlikely that anyone had been photographed in a state of undress. The plaintiff presented no evidence that she had been videotaped in a state of undress, and thus was unable to defeat a summary judgment dismissing the suit.

S U M M A R Y

We have found no statute that expressly states whether a school district may install a video surveillance camera in student locker rooms or gymnasiums to identify students who allegedly are stealing property. Whether such surveillance would constitute an illegal search in violation of the Fourth Amendment of the United States Constitution or an invasion of privacy under Texas law involves the investigation and resolution of fact questions.

Yours very truly,



Susan L. Garrison
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Opinion Committee