

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**July 29, 2015**

**Opinion No. 15-63**

**Possession of Firearms in Public Parks Owned by Counties and Municipalities**

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**Question 1**

If a municipality that owns a public park contracts with a nonprofit corporation to operate that park on behalf of the municipality, does the park lose its status as a “public park” so that the nonprofit corporation may prohibit holders of valid handgun carry permits from possessing handguns within that park?

**Opinion 1**

No. The property retains its status as a public park, and the nonprofit corporation that contracts with a county or municipal government to operate a park, playground, civic center, or other facility owned by the county or municipality may not prohibit holders of valid handgun carry permits from possessing handguns on the premises.

**Question 2**

If the nonprofit corporation that contracts to operate a public park on behalf of a municipality does not have the authority to prohibit the possession of firearms within the park, and if the nonprofit corporation permits or authorizes a third party, by lease or contract, to use the park for a specific event or for a set period of time, may the third party prohibit holders of valid handgun carry permits from possessing handguns within the park for the duration of that event?

**Opinion 2**

No. A third party that obtains any authorization from a contracted nonprofit operator for the temporary use of a park, playground, civic center, or other facility owned by the county or municipality may not prohibit holders of valid handgun carry permits from possessing handguns on the premises.

**Question 3**

Does a public park lose its status as a “public park” if a municipality or nonprofit corporation operating the park on behalf of the municipality charges a fee to members of the public to enter or use the park?

**Opinion 3**

No.

**Question 4**

Does a public park lose its status as a “public park” if, in addition to charging an entry or use fee, the municipality or nonprofit corporation that operates the park on behalf of the municipality erects a fence or other barrier around the premises?

**Opinion 4**

No.

**ANALYSIS**

Tennessee Code Annotated § 39-17-1311(a) makes it a criminal offense for any person to possess or carry certain weapons, including handguns, “in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.” Subsection (a) does not apply, however, to “[p]ersons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof.” Tenn. Code Ann. § 39-17-1311(b)(1)(H). Thus, because of the exception in subsection (b)(1)(H), it is not an offense for persons with valid handgun permits to carry handguns in public parks.

You have asked, in essence, whether the operation of a city-owned public park by a private company will change the status of the park from public to non-public so that that the exception in subsection (b)(1)(H) would not apply and guns could be banned in parks operated by a private company under subsection (a). You have asked, along those same lines, whether charging an entry or use fee or physically limiting access to a public park would make the park non-public and, therefore, not subject to the exception.

When construing a statute, the primary object is to give effect to the intent of the legislature. *Morgan Keegan Co., Inc. v. Smythe*, 401 S.W.3d 595. 602 (Tenn. 2013). If the statutory text is clear and unambiguous, legislative intent is to be found in the ordinary and natural meaning of the

statutory language. *Nye v. Bayer Cropscience, Inc.*, 347 S.W.3d 686, 694 (Tenn. 2011). If legislative intent can be found in the plain meaning of the statute, courts will “neither alter or amend statutes nor substitute their own policy judgments for those of the General Assembly.” *Armbrister v. Armbrister*, 414 S.W.3d 685, 704 (Tenn. 2013). A court will not find a statute to be ambiguous unless the language “is capable of conveying more than one meaning.” *Sallee v. Barrett*, 171 S.W.3d 822, 828 (Tenn. 2005). *See also, State v. Hannah*, 259 S.W.3d 716, 721 (Tenn. 2008).

“As a general rule of statutory construction, a change in the language of a statute indicates a departure from the old language was intended.” *Lavin v. Jordon*, 16 S.W.3d 362, 369 (Tenn. 2000). When a statute has been amended, it should “be construed with reference to pre-existing law and should not be interpreted to change it further than the express terms or necessary implications.” *State v. Bowery*, 189 S.W.3d 240, 248 (Tenn. Crim. App. 2004).

The exception set out in subsection (b)(1)(H) was amended, effective April 6, 2015, by Chapter 250 of the 2015 Public Acts of Tennessee. Before that amendment, persons who possessed valid handgun carry permits were, likewise, excluded from the scope of subsection (a) and were, therefore, conditionally authorized to carry handguns in public parks, playgrounds, civic centers, and other facilities owned, used, or operated for recreational purposes by the state or any county or municipal government. Tenn. Code Ann. § 39-17-1311(b)(1)(H) (2014). At the same time, however, the municipal or county government could opt to prohibit the possession of handguns carried by individuals with valid handgun carry permits in parks and other recreational facilities by following certain procedures specified in Tenn. Code Ann. §§ 39-17-1311(c), (d), and (e).

After the enactment of Chapter 250, municipal and county governments no longer have the option of prohibiting the possession of handguns carried by individuals with valid handgun carry permits in public parks and other recreational facilities. The legislature eliminated this option by repealing Tenn. Code Ann. §§ 39-17-1311(c), (d), and (e) and by deleting the phrase “except as otherwise provided in subsection (d)” from subsection (b)(1)(H). 2015 Public Acts of Tennessee, Ch. 250, § 1, § 2.

The language of Tenn. Code Ann. § 39-17-1311 in both its prior version and as amended by Chapter 250 is clear and unambiguous. Reading Chapter 250 in light of prior law leaves little room for doubt that the legislature intended to remove from counties and municipalities the option they had before the effective date of Chapter 250 to prohibit holders of valid handgun carry permits from possessing handguns in parks and other recreational facilities owned by those governmental entities. By repealing subsections(c), (d), and (e) and removing the companion language in subsection (b)(1)(H), the legislature clearly and unambiguously removed any option or authority that counties and municipalities formerly had to prohibit a handgun carry permit holder from possessing a handgun in a park or other recreational facility.

By its terms, Tenn. Code Ann. § 39-17-1311 applies “in or on the grounds of any public park, playground or civic center or other building facility, area or property owned, used or operated by any municipal county or state government, or instrumentality thereof, for recreational

purposes.” Tenn. Code Ann. § 39-17-1311(a). The statute does not make any exceptions for facilities that are owned by a county or municipality but are operated under contract by a nonprofit corporation or other non-governmental entity. It makes no exception for facilities that charge admission or user fees or for facilities that have fences or other barriers to control ingress and egress. Applicability of the statute is not limited to normal or customary hours of operation of the facilities, and there is no exception for facilities that may be temporarily used for special events with limited attendance.

“It is a well settled principle of law that one cannot do indirectly what cannot be done directly.” *Haynes v. City of Pigeon Forge*, 883 S.W.2d 619, 622 (Tenn. App. 1994). Since counties and municipalities cannot use direct means to prohibit handgun possession by individuals with valid handgun carry permits in their parks, they cannot use indirect means--such as contracting with nonprofit entities to disallow the possession of such handguns in their parks or other recreational facilities.

It is likewise well established that one cannot transfer something one does not possess. *See, e.g., Lisenbee v. Parr*, 465 S.W.2d 361, 365 (Tenn. App. 1970). Since a county or municipality no longer has the authority to prohibit handgun carry permit holders from possessing handguns in public parks and other recreational facilities, a county or municipality cannot convey or delegate any such authority to anyone else, either directly or indirectly.

By its plain terms, as amended, Tenn. Code Ann. § 39-17-1311 applies to all parks and all other recreational facilities that are owned or operated by a county or municipality. County or municipal ownership is all that is needed to bring the property within the scope of the statute. Whether a fee is charged for use or admission or whether use or admission is free of charge is irrelevant. Likewise, it is irrelevant whether access is controlled by physical barriers or not.

Moreover, an admission or use charge or a fence would not cause a public park or other public facility to lose its status as a public park or public facility. The term “public” commonly connotes property that has been set aside or is used to serve the state, county, or municipality as a whole as opposed property used for private gain. *See, Webster’s Ninth New Collegiate Dictionary*, at 952 (1988). The nature or character of the facility thus depends upon its purpose or the reason for its existence. The fact that admission or use fees may be charged does not alter the public character of a public facility. For example, the legislature has from time to time authorized the construction of toll roads and bridges. Those roads and bridges were intended to serve the public at large. That purpose is not changed by the imposition of the costs of construction and maintenance on those who use them. *See, e.g., Montgomery County Clarksville & Russellville Turnpike Co.*, 109 S.W. 1152 (Tenn. 1908). State parks provide another example. Fees are charged to use campgrounds, golf courses, and other recreational facilities and to stay in lodges or cabins that are located within state parks. Such facilities do not lose their public character because the fee or other charge is imposed to defray the cost of providing the services offered and maintaining the properties.

Nor does the presence of gates, fences, or other barriers destroy the public character of a park or other public facility. Many municipal and county parks and other recreational facilities

are not always open on a 24/7 basis. They often have set days and hours of operation and commonly use locked doors or gates and walls and fences to control access and to secure the property when it not in operation. Public swimming pools are a prime example, as are dog parks. Controlled and limited access to swimming pools is, indeed, mandatory for safety reasons, but that does not make the swimming pool non “public.” In short, a park or other facility will not lose its public character simply because access is limited or controlled either physically or by the imposition of a fee.

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