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Opinion No. 06-109

Handgun Permit Eligibility

QUESTIONS

What is considered to be "discharged from the armed forces under dishonorable conditions" for the purpose of denying a handgun carry permit under Tenn. Code Ann. § 39-17-1351(c)(14) and Tenn. Comp. R. & Regs. 1340-2-4-.02 (5)?

OPINIONS

Only discharges given by a military tribunal following a conviction are discharges under dishonorable conditions for the purpose of denying a handgun carry permit under Tenn. Code Ann. § 39-17-1351(c)(14) and Tenn. Comp. R. & Regs. 1340-2-4-.02(5).

ANALYSIS

Tenn. Code Ann. § 39-17-1351(c) states:

> The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:
> . . .
> (14) That the applicant has not been discharged from the armed forces under dishonorable conditions;

Pursuant to its rule-making authority in Tenn. Code Ann. § 39-17-1360, the Department of Safety has defined "dishonorable conditions" as a dishonorable discharge, a bad conduct discharge, or an other than honorable discharge. Tenn. Comp. R. & Regs. 1340-2-4-.02(5).[1]

[1] There are six types of discharge, or separation, from the armed forces. Three of which, Dismissals (for commissioned officers and warrant officers, cadets, and midshipmen), Dishonorable Discharges (for enlisted persons, non-commissioned warrant officers) and Bad Conduct Discharges, are punitive separations and can only be given after conviction by a military tribunal. *See* R.C.M. 1003(b)(8), Manual for Courts Martial United States (2005 Edition), II-125. Honorable Discharges, General Discharges, and Discharge Under Other than Honorable Conditions, are administrative separations which do not require a conviction. *See, e.g.*, AR 635-200, ¶ 3-7, http://www.apd.army.mil/pdffiles/r635_200.pdf;. AFI 36-3207, ¶ 1.7, http://www.e-publishing.af.mil. Honorable

"It is the prerogative of the legislature to declare the policy of the State touching the general welfare. And where the legislature speaks upon a particular subject, its utterance is the public policy ... upon that subject." *Memphis Publishing Company v. Holt*, 710 S.W.2d 514, 517 (Tenn. 1986). "In interpreting statutes the legislative intent must be determined from the plain language it contains, read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

Tenn. Code Ann. § 39-17-1351(c)(14) is plain and unambiguous. A person who has been discharged from the armed forces under dishonorable conditions is not eligible for a handgun permit in Tennessee. Dishonorable conditions is clear under military law. Only a discharge or a dismissal given after conviction by a military tribunal carries a dishonorable connotation. *See* R.C.M. 1003(b)(8), Manual for Courts Martial United States (2005 Edition), II-125.

Agencies in Tennessee which are given legislative power to make rules and regulations do not have the power to make a rule or regulation which is inconsistent with the constitution or other law on the subject. *Tasco Developing and Bldg. Corp. v. Long*, 368 S.W.2d 65, 67 (Tenn. 1963). The grant of legislative power does not include the authority to make rules affecting or creating substantive rights. As the statute is unambiguous, the regulations must be read so that they go no farther than the statutory authority. Therefore, only persons who have been discharged from the armed forces by a military tribunal following conviction can be denied handgun permits in Tennessee.

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Discharges and General Discharges are characterized as being under honorable conditions. *Id.*

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