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Opinion No. 07-148

Tennessee Handgun Carry Permit Laws

QUESTIONS

1. May the holder of a valid handgun carry permit that was issued pursuant to Tenn. Code Ann. § 39-17-1351 lawfully carry a handgun into a room where judicial proceedings are in progress?

2. If a handgun carry permit holder is prohibited from carrying a handgun into a room where judicial proceedings are being conducted, are courts required to post signs that conform to the requirements of Tenn. Code Ann. § 39-17-1359 to effectively prohibit a person from bringing a handgun to judicial proceedings?

3. May the holder of a valid handgun carry permit that was issued pursuant to Tenn. Code Ann. § 39-17-1351 lawfully carry a handgun into public parks, playgrounds, civic centers, or other buildings, facilities, areas or other properties that are owned, used or operated by municipalities, counties or the state for recreational purposes?

4. If a handgun carry permit holder is prohibited from carrying a handgun into public parks, playgrounds, civic centers, or other buildings, facilities, areas or other properties that are owned, used or operated by municipalities, counties or the state for recreational purposes, are those facilities required to post signs that conform to the requirements of Tenn. Code Ann. § 39-17-1359?

5. Can the holder of a valid handgun carry permit be prosecuted for criminal trespass in violation of Tenn. Code Ann. § 39-14-405 if the owner has not posted a sign that satisfies the requirements of Tenn. Code Ann. § 39-17-1359 but has ordered the permit holder to leave the property because he or she is armed and the permit holder has then refused to vacate the premises?

6. Can the holder of a valid handgun carry permit be prosecuted for criminal trespass in violation of Tenn. Code Ann. § 39-14-405 if the permit holder reenters the property while armed after the owner has ordered the holder to vacate the premises and not return while armed in cases where the owner has not posted a sign that satisfies the requirements of Tenn. Code Ann. § 39-17-1359?

7. Can a property owner regulate the manner in which the holder of a valid handgun carry permit may possess or carry his or her handgun on the owner's property?

OPINIONS

1. No. Tenn. Code Ann. § 39-17-1306 prohibits the holders of valid handgun carry permits that are issued pursuant to Tenn. Code Ann. § 39-17-1351 from carrying their handguns into any room where judicial proceedings are being conducted.

2. No. There is nothing in the language of Tenn. Code Ann. § 39-17-1306 that requires the posting of notices that the carrying of handguns onto premises where judicial proceedings are being conducted is prohibited.

3. No. Tenn. Code Ann. § 39-17-1311 prohibits the carrying of handguns into public parks, playgrounds, civic centers, or other buildings, facilities, areas or other properties that are owned, used or operated by municipalities, counties or the state for recreational purposes.

4. Yes. Tenn. Code Ann. § 39-17-1311(c) states that notices meeting the requirements of that statute shall be posted on such property unless the appropriate legislative body or other regulatory authority has exempted the property from compliance with such notice requirements.

5. Yes. The holder of a valid handgun carry permit can be prosecuted for criminal trespass in violation of Tenn. Code Ann. § 39-14-405 if the owner has not posted a sign that satisfies the requirements of Tenn. Code Ann. § 39-17-1359 but has ordered the permit holder to leave the property because he or she is armed, or for any other lawful reason, and the permit holder has then refused to vacate the premises.

6. Yes. The holder of a valid handgun carry permit can be prosecuted for criminal trespass in violation of Tenn. Code Ann. § 39-14-405 if the permit holder reenters the property while armed after the owner has ordered the holder to vacate the premises and not return while armed in cases where the owner has not posted a sign that satisfies the requirements of Tenn. Code Ann. § 39-17-1359.

7. Yes. A property owner has the right to regulate the manner in which the holder of a valid handgun carry permit may possess or carry his or her handgun on the owner's property. In exercising such right, the property owner may allow a handgun carry permit holder to carry the handgun concealed but not openly, openly but not concealed or in any other manner that the property owner deems appropriate.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1306(a) prohibits the carrying of weapons into rooms where judicial proceedings are in progress. It states:

> No person shall intentionally, knowingly, or recklessly carry on or about the person while inside any room in which judicial proceedings are in progress any weapon prohibited by § 39-17-1302(a), for the purpose of going armed; provided, that if the

> weapon carried is a firearm, the person is in violation of this section regardless of whether the weapon is carried for the purpose of going armed.[1]

Tenn. Code Ann. § 39-17-1306(c) exempts certain classes of persons from the prohibitions set forth in subsection (a). Persons who may carry firearms into rooms where judicial proceedings are being conducted include law enforcement officers, active duty military personnel and members of the national guard, pursuant to military regulations, and bailiffs and other courtroom security personnel.

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Freeman Industries, LLC v. Eastman Chemical Co.*, 172 S.W.3d 512 (Tenn. 2005). If the language is clear and unambiguous, legislative intent is to be ascertained from the plain meaning of the statutory text. *Bostic v. Dalton,* 158 S.W.3d 347 (Tenn. 2005).

Reading the unambiguous language of Tenn. Code Ann. § 39-17-1306 as a whole indicates that the legislature intended to establish a general prohibition against the possession of firearms and other weapons in places where judicial proceedings are being conducted. At the same time, the language of subsection (c) shows that the legislature recognized that certain classes of people ought to be allowed to possess firearms where judicial proceedings are being conducted and created specific exemptions for those classes of persons.

In the construction of statutes, the express mention of one subject excludes other subjects that are not mentioned. *State v. Peele*, 58 S.W.3d 701 (Tenn. 2001). Tenn. Code Ann. § 39-17-1306(c) expressly mentions various classes of persons, such as court security personnel, law enforcement officers and active duty military personnel but does not mention holders of handgun carry permits. The omission of handgun carry permit holders indicates that the legislature intended to prohibit such persons from possessing handguns in places where judicial proceedings are being held unless they fall within one of the classes of persons expressly exempted from the ban.

2. Under rules of statutory construction, where one statute controls a subject generally and another governs a specific subject, the specific statute governs over the more general statute. *Valley Fidelity Bank & Trust Co. v. Ayers*, 861 S.W.2d 366 (Tenn. App. 1993). Tenn. Code Ann. § 39-17-1359 authorizes both public and private property owners, generally, to prohibit the possession of weapons on property that they own or manage. Any such property owner who chooses to prohibit such activity is required to post a sign or signs that satisfy the requirements of the statute. Tenn. Code Ann. § 39-17-1306, on the other hand, is more specific. It is directed only against the carrying of firearms in places where judicial proceedings are being held.

Unlike Tenn. Code Ann. § 39-17-1359, section 39-17-1306 does not require the posting of

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[1]Tenn. Code Ann. § 39-17-1302 prohibits the carrying of a variety of weapons for the purpose of going armed. In addition to prohibiting the carrying of firearms, the statute also prohibits the carrying of explosive devices, hoax devices, switchblades and knuckles.

signs. The omission of such a requirement indicates that the legislature did not intend to require judicial bodies to post such signs in areas where the possession of firearms is prohibited.[2]

3. The unambiguous language of Tenn. Code Ann. § 39-17-1311 prohibits the carrying of weapons in public parks, playgrounds and other recreational areas. Subsection (b) exempts specific classes of persons from the prohibitions set forth in subsection (a). Handgun carry permit holders are not mentioned in any of the exempt classes. The omission of such persons from the classes listed in subsection (b) indicates that the legislature did not intend to authorize holders of handgun carry permits to carry their handguns into such areas unless they fall within one of the classes of persons expressly exempted from the ban.

4. Under the unambiguous language of Tenn. Code Ann. § 39-17-1311(c), the owner or administrator of the park or recreational facility is required to post a notice that conforms to the requirements of the statute. That requirement, however may be waived by the appropriate legislative body or other committee that has authority to regulate the facility. Unless a valid waiver exists, signs are required to be posted at such facilities.

State parks fall within the language of section 39-17-1311 in that they are recreational areas that are owned by the state. Such facilities are required to post the signs required under the statute unless there is a valid waiver of the posting requirements.

5. The crime of criminal trespass is defined in Tenn. Code Ann. § 39-14-405(a). It states, in relevant part:

> A person commits the crime of criminal trespass who, knowing the person does not have the owner's effective consent to do so, enters or remains on property or a portion thereof. Knowledge that the person did not have the owner's effective consent may be inferred where notice entering or remaining is given by:
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> * * *
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> (1) Personal communication to the person by the owner or by someone with apparent authority to act for the owner;
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> * * *
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> (3) posting reasonably likely to come to the attention of intruders.

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[2]The inclusion of posting requirements in other statutes that prohibit the possession of firearms in specified areas provides further support that the exclusion of such requirements for judicial proceedings was intentional. For example, both Tenn. Code Ann. § 39-17-1309, which prohibits the possession of weapons on school property, and Tenn. Code Ann. § 39-17-1311, which prohibits the carrying of weapons in public parks, playgrounds and other recreational facilities, require the posting of signs. The inclusion of such a requirement in both statutes shows that the legislature knows how to impose such a requirement when it wishes to do so.

State v. Ash, 12 S.W.3d 800 (Tenn. Crim. App. 1999), is instructive. As that case shows, the gravamen of the offense is the entry onto or continued occupation of property after the owner has informed the defendant that he or she is not permitted to enter or remain on the property.

The sign requirement set forth in Tenn. Code Ann. § 39-17-1359, read in light of Tenn. Code Ann. § 39-14-405 and *Ash*, provides the means to establish guilty knowledge on the part of a defendant. Such signs, if conspicuously posted at the entrance or entrances to the property, provide objective proof that persons in possession of firearms, including handgun carry permit holders, are not welcome and their entry is against the consent of the owner. A handgun carry permit holder who enters a posted property could therefore be subject to prosecution for criminal trespass.

The failure to post signs means that it might be more difficult in a given case to prosecute a handgun carry permit holder because the permit holder could argue that he or she lacked guilty knowledge. The text of Tenn. Code Ann. § 39-14-405, however, indicates that the holder of such a permit could become subject to prosecution if he or she refused to leave after the owner has directed him or her to vacate the premises.[3]

6. An armed handgun carry permit holder who reenters property after being ordered to vacate does so with knowledge that the reentry is without the effective consent of the owner and would therefore be subject to prosecution for criminal trespass. The fact that the trespasser holds a valid handgun carry permit is not a defense to a criminal trespass charge under Tenn. Code Ann. § 39-14-405.[4]

7. Owners of property have the right to possess, enjoy and use their property. *State ex rel. Elvis Presley Foundation v. Crowell*, 733 S.W.2d 89 (Tenn. App. 1987). Such a right carries with it the right to set the terms and conditions governing the use of property. The right to set terms and conditions governing the use of property rests with both private parties and federal, state and local governments. *See, e.g., United States v. Grace*, 461 U.S. 171 (1983); *Adderly v. Florida*, 385 U.S. 39 (1966); *State v. Lyons*, 802 S.W.2d 590 (Tenn. 1990).

A property owner's right to set terms and conditions governing the use of property would naturally include the right to determine whether others may enter or remain on the property while armed. In situations where the owner permits the possession of firearms on the property, the right to impose restrictions would also include the right to determine whether firearms may be carried

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[3]Tenn. Code Ann. § 39-14-405 states that a person can commit the offense by either the entry or remaining on the property without the effective consent of the owner. As shown by *Ash*, *supra*, a person can be subjected to prosecution for criminal trespass if he or she remains on the property after the owner has ordered him or her to vacate.

[4]There is nothing in the language of Tenn. Code Ann. §39-14-405(b) to suggest that the possession of a valid handgun carry permit is a defense to a criminal trespass charge. That subsection sets forth the defenses that are available to such a charge. Possession of a valid handgun carry permit is not mentioned.

openly, concealed or either openly or concealed.

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