S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-17

Convicted Felon in Possession of Black Powder Weapon / Officer in Possession of Firearm in Judicial Proceeding

QUESTIONS

1. Does a person convicted of a felony violate Tennessee or federal law by possessing a black powder weapon?[1]

2. Can a law enforcement officer carry a firearm during a judicial proceeding?

OPINIONS

1. A felon may lawfully possess a black powder weapon that meets the definition of an "antique firearm" set forth in 18 U.S.C.§ 921(16)(C).

2. A law enforcement officer may carry a firearm during a judicial proceeding if he is engaged in the actual discharge of his official duties or has been directed by a court to bring the firearm for purposes of providing evidence.

ANALYSIS

1. While Tennessee law prohibits persons convicted of certain violent felonies and drug offenses from possessing a handgun,[2] it does not prohibit an otherwise qualified felon from

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[1] This opinion is based on the assumption that "black powder weapon" refers to any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. 18 U.S.C. § 921(16)(C).

[2] Tenn. Code Ann. § 39-17-1307(b)(1) provides:

* * *

(b)(1) A person commits an offense who possesses a handgun and:
(A) Has been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon; or
(B) Has been convicted of a felony drug offense.

possessing a handgun or firearm.[3] However, federal law does prohibit any felon from possessing a firearm.[4] Notwithstanding these statutory prohibitions, it is possible for a felon to lawfully possess a black powder weapon without violating Tennessee or federal law; under Tennessee and federal law, a black powder weapon may be classified as an "antique firearm", and neither Tennessee nor federal law prohibits the sale of antique firearms to felons.

Tenn. Code Ann. § 39-17-1316 adopts the definition of "antique firearm" set forth in 18 U.S.C.§ 921(16)(C) [5] and states:

> (a)(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring them; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, and who are ineligible to receive them under 18 U.S.C. § 922, are prohibited.

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[3] Tenn. Code Ann.§ 39-11-106(11) defines "firearm" as "any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use."

[4] 18 U.S.C.§ 922(g) provides:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport in interstate or foreign commerce, or **possess** in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(Emphasis added).

[5] 18 U.S.C. § 921(16) provides:

(16) The term "antique firearm" means—

* * *

(C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use **black powder**, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted to a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechlock, or any combination thereof.

(Emphasis added).

* * *

> (b)(1) As used in this section, "firearm" has the meaning as defined in § 39-11-106, including handguns, long guns, and all other weapons that meet the definition **except** "antique firearms" as defined in 18 U.S.C. § 921.

Tenn. Code Ann. § 39-17-1316 (Emphasis added).[6]

Accordingly, if a firearm meets the definition of "antique firearm" under 18 U.S.C.§ 921(16)(C), it is not a "firearm" subject to the Tennessee and federal statutory prohibitions against possession of firearms by felons.

2. As a general rule, a law enforcement officer has the authority to carry a firearm at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer's regular duty hours or assignments.[7] However, an officer may carry a firearm during a judicial proceeding only when the officer is engaged in the actual discharge of his official duties, [8]or when directed by a court to bring the firearm for the purpose of providing evidence.[9]

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[6] Under 18 U.S.C. § 921(3), the definition of "firearm" does not include an antique firearm.

[7] Tenn. Code Ann. § 39-17-1350(a) provides:

> (a) Notwithstanding any provision of law to the contrary, any law enforcement officer may carry firearms at all times and in all places within Tennessee, on-duty- or off-duty, regardless of the officer's regular duty hours or assignments, except as provided by subsection (c), federal law, lawful orders of court or the written directives of the executive supervisor of the employing agency.

[8] Tenn. Code Ann. § 39-17-1350(c)provides:

> (c) The authority conferred by this section shall not extend to a law enforcement officer:
>
> (4) Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.

[9] Tenn. Code Ann. § 39-17-1306 provides:

> (a) 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.
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> * * *
>
> (c) The provisions of subsection (a) shall not apply to any person who:
> (1) Is in the actual discharge of official duties as a law enforcement officer, . . . ; or

The statutory prohibition against carrying weapons during a judicial proceeding contains two prohibitions.[10] First, it prohibits carrying "prohibited weapons" enumerated in Tenn. Code Ann. § 39-17-1302(a) where judicial proceedings are in progress for the purpose of going armed.[11] Second, it prohibits carrying "firearms" where judicial proceedings are in progress regardless of whether the firearm is carried for the purpose of going armed. *State v. Williams*, 854 S.W.2d 904, 907 (Tenn. Crim. App. 1993).[12] The phrase "for the purpose of going armed" means that the person who is carrying the weapon does so with the intent of being armed or wearing it for the purpose of being armed. *Liming v. State*, 220 Tenn. 371, 417 S.W.2d 769, 773 (1967). Furthermore, although not specifically enumerated as a prohibited weapon in Tenn. Code Ann. § 39-17-1302(a), a pistol or handgun is included among the prohibited weapons. *Williams*, 854 S.W.2d at 907. Moreover, the reference to "firearm" in Tenn. Code Ann. § 39-17-1306(a) refers to all firearms and not just to the prohibited weapons specifically enumerated in Tenn. Code Ann. § 39-17-1302(a). *Id.*

The pertinent inquiry is whether the officer is engaged in the discharge of his or her official duties when carrying the firearm. Generally, an off-duty officer is not engaged in the discharge of his official duties. Thus, an officer can carry a firearm where a judicial proceeding is in progress only if he is engaged in the discharge of his official duties, or he has been directed by the court, by subpoena or otherwise, to bring the firearm to the judicial proceeding for purposes of providing evidence.

> (2) Has been directed by a court to bring the firearm for purposes of providing evidence.

[10] *See* Tenn. Code Ann. § 39-17-1306.

[11] Tenn. Code Ann. § 39-17-1302(a) provides:

> (a) A person commits an offense who intentionally or knowingly possesses, manufactures, transports, repairs, or sells:
> (1) An explosive or explosive weapon;
> (2) A device principally designed, made or adapted for delivering or shooting an explosive weapon;
> (3) A machine gun;
> (4) A short-barrel rifle or shotgun;
> (5) A firearm silencer;
> (6) Hoax device;
> (7) A switchblade knife or knuckles; or
> (8) Any other implement for infliction of serious bodily injury or death that has no common lawful purpose.

[12] "Firearm" is defined as any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use. Tenn. Code Ann. § 39-11-106(11).

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

WILLIAM R. LUNDY, JR.
Assistant Attorney General

Requested by:

Honorable Ben West, Jr.
State Representative
108 War Memorial Building
Nashville, TN 37243