**S T A T E O F T E N N E S S E E**
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Opinion No. 08-22

Responses Related to Substance Abuse and Mental Illness on Hand Gun Carry Permit Application

## QUESTIONS

1. May an applicant for a handgun permit legally provide a negative answer to the question on the application which asks if the applicant is an unlawful user of or addicted to alcohol or drugs and has been a patient in a drug or alcohol treatment facility within the last ten years if the applicant falls within one but not the other category described in the question?

2. Can a person who has been adjudicated as a mental defective or who has been confined to a mental institution ever apply for a handgun carry permit in Tennessee?

## OPINIONS

1. An applicant for a hangun permit must provide an affirmative answer to the question whether he or she is an unlawful user of or addicted to alcohol or drugs and has been a patient in a drug or alcohol treatment facility within the last ten years if he or she is either an unlawful user of or addicted to alcohol or drugs or has been a patient in an alcohol or drug rehabilitation facility within the last ten years.

2. Under Tenn. Code Ann. § 39-17-1351 (c)(12), a person who has been adjudicated as a mental defective or confined to a mental institution cannot ever obtain a handgun carry permit in Tennessee.

## ANALYSIS

1. Citizens of Tennessee who satisfy the requirements set forth in Tenn. Code Ann. § 39-17-1351(c) may apply for a handgun carry permit. The Department of Safety has the statutory responsibility of deciding whether a person is qualified to receive a permit. Under Tenn. Code Ann. § 39-17-1351(c), an applicant is required to submit an application on a standard written form. The purpose of that application is to enable the Department to determine whether a person meets the requirements for the issuance of a permit. It is therefore appropriate to read the questions that are set forth in the application in light of their statutory purpose.

Tenn. Code Ann. § 39-17-1351(c) sets forth various acts that will disqualify an applicant from obtaining a handgun carry permit. Subsection (c)(10) renders ineligible persons who are addicted to or unlawful users of alcohol or drugs or who have been treated for substance abuse

problems. It 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:
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> * * *
>
> (10) That the applicant is not an unlawful user of or addicted to alcohol or any controlled substance **and** the applicant has not been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years from the date of the application; (Emphasis added).

The primary objective in statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *Sallee v. Barrett,* 171 S.W.3d 822, 828 (Tenn. 2005). Statutes are to be construed as a whole. *West American Ins. Co. v. Montgomery*, 861 S.W.2d 230 (Tenn. 1993). If the statute is clear and unambiguous, legislative intent is to be derived from the plain and ordinary meaning of the language that has been employed. *Id.; see also State v. Wilson*, 123 S.W.3d 340, 341 (Tenn. 2004).

The language employed is plain and unambiguous. Read as a whole, Tenn. Code Ann. § 39-17-1351(c) requires an applicant to provide information that is relevant to determining whether he or she is qualified for a handgun carry permit. In addition to requiring an applicant to provide information related to identification, the statute also requires an applicant to provide information that demonstrates that he or she is not subject to one or more of the disqualifiers set forth in Tenn. Code Ann. §§ 39-17-1351(c)(6) through (c)(18). Under the clear and unambiguous language of the statute, a handgun permit may not be issued to anyone who is subject to one or more of the disqualifiers set forth in subsections (c)(6) through (c)(18).

Reading the question related to drug and alcohol abuse and addiction in light of the statute indicates that a person is required to answer the question in the affirmative if he or she is subject to one or more of the disqualifiers described therein. Thus, for example, a person must answer the question in the affirmative if he or she is an unlawful user of or addicted to illegal drugs or alcohol, even though he or she has never undergone substance abuse treatment.[1]

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[1] The plain language of both the statute and application support this conclusion. Both employ the conjunctive "and" between the first phrase - "That the applicant is not an unlawful user of or addicted to alcohol or any controlled substance" - and the subsequent phrase - "[t]he applicant has not been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years from the date of the application". The use of this conjunctive clearly indicates an intent that the phrases be joined or added to one another. Thus, subsection (c)(10) states the two requirements that the applicant must confirm at the time of his application to be eligible to obtain the permit. First, he must affirm that he is not an unlawful user of or addicted to alcohol or controlled substances. Secondly, he must also affirm that he has not been a patient in a rehabilitation program or hospitalized for alcohol or controlled substance abuse or addiction within ten (10) years prior to the date of the application.

2. Tenn. Code Ann. § 39-17-1351(c)(12) clearly and unambiguously states that if a person has ever been adjudicated as a mental defective or hospitalized in a mental institution, he or she is disqualified from ever obtaining a handgun carry permit.[2] Unlike Tenn. Code Ann. § 39-17-1351(c)(10), which allows a person to obtain a handgun permit if more than ten years has passed since the applicant received substance abuse treatment, Tenn. Code Ann. § 39-17-1351(c)(12) has no such time limit. The omission of such a time limit in subsection (c)(12) indicates that the legislature intended mental illness to act as a lifetime disqualifier.[3] Likewise, the statute does not distinguish between voluntary or involuntary commitment or whether the treatment was received in a public or private facility. The fact that the statute makes no such distinctions indicates that the legislature intended to treat all forms of mental health treatment the same for purposes of determining whether a person is qualified to receive a handgun permit.

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[2] As more fully set forth in Op. Tenn. Atty. Gen. 03-118, hospitalized in a mental institution means admission for treatment as opposed to admission for evaluation and subsequent release upon a finding that the patient is not mentally ill.

[3] Under established rules of statutory interpretation, the express inclusion of some matters within a statute means the exclusion of matters that are not mentioned. *State v. Hawk*, 170 S.W.3d 547 (Tenn. 2005)