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Opinion No. 09-30

Off Duty Officers' Possession and Carrying of Firearms on Board of Regents Campuses

QUESTION

Does the Tennessee Board of Regents have the authority to prohibit off duty law enforcement officers from carrying a firearm onto a campus or other property that is under the ownership or control of the Tennessee Board of Regents?

OPINION

No. The enactment of Tenn. Code Ann. § 39-17-1350 removed any authority that the Tennessee Board of Regents had, prior to the enactment of that statute, to prohibit off duty law enforcement officers from possessing or carrying firearms on property that is under its control.

ANALYSIS

Agencies of state government are creatures of statute and may exercise only such power and authority as the legislature, by statute, delegates to them. *In re Sentinel Trust Co.*, 206 S.W. 3d 501 (Tenn. App. 2005). Conversely, it follows that agencies may not take actions that the legislature, by statute, prohibits them from taking.

As a state agency, the Boards of Regents is a creature of statute. Tenn. Code Ann. § 49-8-101(a) establishes a system of state universities, technical community colleges and community colleges. As such an agency, it may exercise only those powers that the legislature has deemed fit to confer upon it. Under the applicable statutes, the Board has been given the authority to govern and manage the institutions that are created under subpart (a). Tenn. Code Ann. § 49-8-101(b). Tenn. Code Ann. § 49-8-203(D) and (E) give the Board broad authority to establish policies and regulations governing various matters related to campus life, including safety.

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Auto Credit of Nashville v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find that intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.,* 231 S.W.3d 918 (Tenn. 2007). Reading the foregoing statutes in isolation, it would appear that the Board of Regents would have the

authority to prohibit any person, including off duty law enforcement officers, from carrying firearms on campuses under their control.[1]

Tenn. Code Ann. § 39-17-1309 provides further evidence of a legislative intent to authorize the Board of Regents, and other educational authorities, to prohibit the possession of firearms by off duty law enforcement officers and other persons. Subsection (b) prohibits any person from carrying firearms, and other specified weapons, on school property.[2] Subsection (e)(4) exempts on duty law enforcement officers from the prohibitions that are set forth in subsection (b). That subsection provides no such exemption for off duty law enforcement officers.[3]

Under rules of statutory construction, however, statutes that address the same subject matter are *in pari materia* and are supposed to be read together. *State v. Collins*, 166 S.W.3d 721 (Tenn. 2005). In 2000, the legislature enacted Tenn. Code Ann. § 39-17-1350(a) which affords off duty law enforcement officers with broad authority to carry firearms.[4] It states:

> 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

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[1] The Board promulgated a rule that prohibits the unauthorized possession or use of firearms by students on all campuses under the control of the Tennessee Board of Regents . The unauthorized possession or use of firearms by students is prohibited on all campuses under the control of the Board. Rules of the Tenn. Bd. of Regents, System Wide Student Rules, Rule 0240-2-3.02(h). Likewise, some of the campuses under Board control, such as MTSU, also prohibit all students from possessing or carrying firearms or other dangerous weapons on campus. *2008-09 MTSU Student Handbook*, at 36. Possession of firearms by a student is also a disciplinary offense at MTSU. *2008-09 MTSU Student Rights and Responsibilities*, at 8.

[2] Tenn. Code Ann. § 39-17-1309 states, in pertinent part:

* * *

> (b)(1) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm . . . or other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

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Tenn. Code Ann. § 39-17-1309.

[3] *See also* Tenn. Op. Atty. Gen. No. 99-024 (Feb. 16, 1999). (The legislature has limited the authority of off duty law enforcement officers to carry a weapon onto school property. An off duty law enforcement officer may not carry a weapon onto school property unless he or she is in the discharge of his or her official duties or some other exception which is generally applicable to the public applies).

[4] Public Acts of 2000, Ch. 988, § 1.

> subsection (c), federal law, lawful orders of court or the written directives of the executive supervisor of the employing agency.

The use of the operative phrase "notwithstanding any provision of law to the contrary" indicates a clear and unambiguous legislative intent to remove any and all statutory prohibitions against the carrying of firearms by off duty law enforcement officers.[5] Since the authority of the Board of Regents to prohibit the carrying of firearms is statutory, *In re Sentinel Trust, supra,* reading Tenn. Code Ann. § 39-17-1350 together with the statutory grants of authority that are conferred upon the Board indicates that the legislature intended to remove any authority that the Board might have to prohibit off duty law enforcement officers form carrying firearms on campuses under its control. Off duty law enforcement officers may thus carry firearms on campuses that are under the control of the Board. [6]

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[5] The language of Tenn. Code Ann. § 39-17-1350 also indicates that the legislature intended to remove any prohibitions against the carrying of firearms by law enforcement officers that were imposed by any other section of part 13, chapter 17, title 39. Tenn. Code Ann. § 39-17-1350(b). That would include the restrictions that are imposed under Tenn. Code Ann. § 39-17-1309.

[6] Tenn. Code Ann. § 39-17-1350(c)(1) limits the authority of off duty law enforcement officers to carry firearms on school grounds. That subsection requires the law enforcement officer to notify the principal immediately upon entry onto school property. Based on the context, school property within the meaning of Tenn. Code Ann. § 39-17-1350 is not as broad as the definition of the term in Tenn. Code Ann. § 39-17-1309. In section 1350, the use of the term principal indicates that the notification requirement in that subsection applies to elementary and secondary schools only and has no application to campuses under the control of the Board of Regents. If the legislature had intended to have the notification requirements to apply to college campuses, it would have used terms such as dean, provost, or other term that is commonly associated with college officials. The omission of college officials from the notification requirement set forth in Tenn. Code Ann. § 39-17-1350(c)(1) indicates that the legislature intended to authorize off duty law enforcement officers to carry firearms on college campuses without notifying college officials.

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