

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 09-54

Liability of State for Failing to Change Signs in State Parks Regarding Guns

QUESTION

If HB 716 becomes law but the signs at parks stating that no weapons are allowed are not taken down, is there any basis for holding the State liable in the event someone is misled into believing that guns are not allowed in the park?

OPINION

It is the opinion of this Office that, insofar as can be determined in the abstract, the failure to change or remove misleading signs in the context described would not impose any liability on the State.

ANALYSIS

House Bill 716 permits Tennessee residents to possess handguns within the boundaries of state parks if they are in immediate possession of a valid handgun carry permit issued pursuant to Tenn. Code Ann. §39-17-1351. Currently, the state parks prohibit handguns and display signs to that effect. If HB 716 becomes law but the signs are not changed or removed, is there any basis for holding the State liable in the event someone is misled into believing that guns are not allowed in the park ?

The Tennessee constitution provides that the State is immune from suit except as it consents to be sued. Tenn. Const. Art. I, §17. No court has the power to entertain a tort suit against the State with a view to reach the state treasury. Tenn. Code Ann. §20-13-102. The only forum for tort suits against the State is provided by the Tennessee Claims Commission. Tenn. Code Ann. §9-8-307. Claims against the State may proceed only if they fall within one or more of the jurisdictional categories of §9-8-307. Upon a careful review of the statute no jurisdictional basis for a claim based on the failure to change or remove misleading signs is readily apparent. If there were jurisdiction, any such claim would require proof of: (1) a duty of care owed by the State to the claimant; (2) conduct by the State falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause. *Hale v. Ostrow*, 166 S.W.3d 713, 716 (Tenn. 2005).

Determining issues of liability turns on the operative facts and the causes of action alleged, and it is difficult to give definitive opinions in the abstract. However, as a general rule, it does not appear that the failure to change or remove misleading signs in the context described would impose any liability on the State.

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