

**STATE OF TENNESSEE**  
OFFICE OF THE  
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May 14, 2009

Opinion No. 09-85

Commissioner's Authority Under SB 976 to Regulate On Duty Carrying of Firearms

**QUESTION**

Would SB 976, if enacted, restrict the authority that the Commissioner of the Department of Environment and Conservation now possesses to regulate the carrying of firearms by state park employees while they are on duty?

**OPINION**

No. If SB 976 is enacted, it would no longer be a crime for the holder of a valid handgun carry permit to carry a firearm in a public park. There is nothing in the language of the bill to indicate that it would remove or restrict the authority that the Commissioner now possesses to make and enforce work rules, including those governing the carrying of firearms by state park employees while they are on duty.

**ANALYSIS**

Tenn. Code Ann. § 39-17-1311(a), as presently written, prohibits the carrying of weapons in public parks owned by state, county and municipal governments. Subsection (b) exempts certain classes of persons from the prohibitions of subsection (a). Among those who are permitted to carry firearms in or on public parks are officers of the state or any county or municipality who are charged with the enforcement of laws in connection with the discharge of their duties. Tenn. Code Ann. § 39-17-1311(b)(1)(D). SB 976, if enacted, would amend subsection (b) to include the holders of lawfully issued handgun carry permit holders within the classes of persons who could lawfully carry firearms on or into state and other public parks. It states, in relevant part:

( ) A Tennessee resident possessing a handgun permit while within the boundaries of any state park, if the resident is in immediate possession of a valid handgun carry permit issued to such resident pursuant to Tenn. Code A. § 39-17-1351.

Agencies of state government are creatures of statute. They, and their commissioners, may exercise only those powers as the legislature, by statute, confers upon them. *In re Sentinel Trust Co.*, 206 S.W.3d 501 (Tenn. App. 2005). Conversely, agencies, and their commissioners,

may not exercise authority over matters that the legislature, by statute, has placed beyond their reach.<sup>1</sup>

The primary objective of statutory construction is to ascertain and give effect to the intention 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 the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). Under rules of statutory construction, the express mention of one subject in a statute means the exclusion of subjects that are not mentioned. *State v. Edmondson*, 231 S.W.3d 925 (Tenn. 2007).

The language of SB 976 is plain and unambiguous. If the bill is enacted, it would no longer be a crime for holders of valid handgun carry permits to possess firearms in state and other publicly owned parks. There is nothing in the language of SB 976 to indicate that the legislature intended to affect the authority that the Commissioner presently has to regulate the conduct of state park employees, or any other department employees, while they are on duty, including his present authority to regulate the carrying and use of firearms by park employees while they are on duty.<sup>2</sup>

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<sup>1</sup> See, e.g., Op. Tenn. Att’y Gen. 09-30 (Tenn. Code Ann. § 39-17-1350 removed the authority of the Board of Regents to prohibit off duty police officers from carrying firearms on campuses under its control).

<sup>2</sup> Under SB 976, although a state park employee who possesses a valid handgun carry permit could not be prosecuted criminally for possessing a firearm while working at a state park, that employee could still be subject to employment related discipline if his possession of a firearm violated workplace rules.

Requested by:

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