

**STATE OF TENNESSEE**

OFFICE OF THE  
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July 24, 2009

Opinion No. 09-129

Firearms in Public Parks That Have Athletic Fields That are Also Used by Schools

**QUESTIONS**

1. Does Tenn. Code Ann. § 39-17-1309, or any other provision of law, prohibit schools from using athletic fields or other recreational facilities in public parks where holders of handgun carry permits may possess firearms pursuant to Chapter 428 of the 2009 Public Acts of Tennessee?
2. Would a handgun carry permit holder, who may otherwise lawfully carry his firearm in a public park under Chapter 428 of the 2009 Public Acts of Tennessee, violate Tenn. Code Ann. § 39-17-1309 if he carried his firearm on an athletic field or other recreational facility during a time that such athletic field or recreational facility was being used by a school?

**OPINIONS**

1. No. There is nothing in the plain meaning of Tenn. Code Ann. § 39-17-1309, Chapter 428 of the 2009 Public Acts of Tennessee, or any other provision of law, that prohibits schools from using athletic or other recreational facilities in parks where handgun carry permit holders may lawfully possess their firearms pursuant to Chapter 428 of the 2009 Public Acts of Tennessee.
2. Yes. Tenn. Code Ann. § 39-17-1309 prohibits handgun carry permit holders from possessing firearms in public parks during times when the athletic fields or other recreational facilities are actually being used by schools.

**ANALYSIS**

Public Chapter 428 of the 2009 Public Laws of Tennessee amended Tenn. Code Ann. § 39-17-1311 to allow the holders of handgun carry permits to carry firearms in public parks, playgrounds, civic centers and other recreational facilities that are owned by the state, counties or municipalities.<sup>1</sup> Tenn. Code Ann. §§ 39-17-1309(b) and (c) prohibit the possession of

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<sup>1</sup> Chapter 428 also contains provisions that authorize counties and municipalities to prohibit the possession of firearms in their parks and other recreational facilities by handgun carry permit holders. Chapter 428 of the 2009 Public Acts of Tennessee, § 2(d).

firearms in any public or private school building, bus, grounds, campus or athletic field or recreational facility that is owned, used or operated by any school board, school or college.<sup>2</sup>

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *State v. Hannah*, 259 S.W.3d 716 (Tenn. 2008). If the statute is clear and unambiguous, courts find legislative intent from the plain meaning of the text and will enforce the statute as written. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008).

Tenn. Code Ann. § 39-17-1309 is unambiguous. There is nothing in that statute to indicate that the legislature intended to prohibit schools from using athletic fields or recreation areas in public parks where handgun carry permit holders may lawfully possess firearms. Chapter 428 is likewise unambiguous. There is nothing in its text to indicate that the legislature intended to prohibit schools from using athletic fields or other recreation areas in public parks that allow handgun carry permit holders to possess firearms. Furthermore, no other statute has been found that would prohibit schools from using athletic fields or recreation areas where handgun carry permit holders are permitted to possess firearms.<sup>3</sup>

2. In addition to the rules of statutory construction discussed above, statutes having a common purpose or related to the same subject matter must be construed *in pari materia* to advance the common purpose or intent. *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912 (Tenn. 2007). If possible, such statutes should be construed in harmony with each other. *State v. Odum*, 928 S.W.2d 18 (Tenn. 1996).

Tenn. Code Ann. § 39-17-1309 prohibits possession of firearms on various types of property, athletic fields and recreational facilities that are owned, *used* or operated by a school.<sup>4</sup> By its plain terms, it prohibits the possession of firearms on athletic fields and recreational facilities, including those that are located in public parks, if such fields or facilities are actually being used by a school.

Chapter 428, on the other hand, amended Tenn. Code Ann. § 39-17-1311 to authorize handgun carry permit holders to bring their firearms into public parks. There is nothing in its language to indicate that the legislature intended to modify in any way the prohibitions that are set forth in Tenn. Code ann. § 39-17-1309.

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<sup>2</sup> The language of Tenn. Code Ann. § 39-17-1309(b) is similar to the language of subsection (c). The primary differences between the two are that violations of subsection (b) require proof of intent to go armed while subsection (c) has no such requirement. Subsection (c) also provides that a non-student adult may possess a firearm while on school property without violating the statute if the firearm is contained in a vehicle operated by an adult and is not handled by such adult or any other person acting with the consent of such adult while the vehicle is on school property.

<sup>3</sup> The only other statutes related to firearms in schools that were found are Tenn. Code Ann. §§ 49-6-4012 and 4013. Those statutes provide for the adoption of codes of acceptable behavior by school systems. One of the points that is supposed to be covered in such codes is the possession of firearms by students while on school property. There is nothing in either provision that prohibits school systems from using athletic fields or recreation areas in parks where handgun carry permit holders may possess firearms.

<sup>4</sup> Tenn. Code Ann. § 39-17-1309(e) identifies various classes of persons who may possess firearms on school property. Handgun carry permit holders are not among such classes.

Reading Tenn. Code Ann. §39-17-1309 together with Chapter 428 indicates that the legislature intended to allow handgun carry permit holders to carry their firearms into public parks except onto athletic fields and into other recreation areas at times when they are actually being used by schools.<sup>5</sup>

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<sup>5</sup> At such times, non-student permit holders would be permitted to keep their firearms in their automobiles as long as the vehicle was operated by the permit holder, and the firearm was not handled by the permit holder or any other person. Tenn. Code Ann. § 39-11-1309(c).