STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-158

Authorization of County and Municipal Governments to Prohibit Handguns in Parks They Own

QUESTIONS

1. Does Art. I, § 26, which authorizes the legislature to regulate the wearing of arms with a view to prevent crime, impose any non-delegable duties upon the General Assembly?

2. Would the adoption of a resolution by a county or municipal government prohibiting the carrying of firearms in a park which it owns violate the provision in Art. I, § 26, of the Tennessee Constitution which states that the legislature may "by law" regulate the wearing of arms with a view to prevent crime?

3. What restrictions to regulate the wearing of arms are imposed on the legislature by the phrase "with a view to prevent crime" in Art. I, § 26, of the Tennessee Constitution?

4. Does Art. I, § 26, of the Tennessee Constitution, impose a duty on the legislature to make specific findings about the effect that a bill, if enacted, would have on preventing crime before it passes legislation that would regulate the wearing of arms?

5. If a county or municipality chooses to prohibit the carrying of firearms in parks which they own, where must they post their signs to satisfy the posting requirements that are set forth in Chapter 428?

6. If a county or municipality chooses to prohibit the carrying of firearms in parks which they own, could a permit holder be convicted of violating Tenn. Code Ann. § 39-17-1311 if such county or municipality failed to comply with the posting requirements set forth in Chapter 428?

7. If a county or municipality chooses to prohibit the carrying of firearms in parks which they own, could a permit holder be convicted of violating Tenn. Code Ann. § 39-17-1311 if he is in possession of a firearm while traveling on a public street or road that passes through such park?

8. Is a county or municipality that elects to prohibit handgun carry permit holders from carrying firearms into parks which it owns subject to liability if a permit holder is injured in such a park?

OPINIONS

1. Art. II, § 3, not Art. I, § 26, of the Tennessee Constitution prohibits the General Assembly from delegating any of its legislative authority, including its authority to regulate the wearing of arms. As more fully set forth in Op. Tenn. Att'y Gen. 09-152, Chapter 428 of the 2009 Public Acts of Tennessee ought to withstand a challenge brought on the theory that it unconstitutionally delegates legislative authority in violation of Art. II, § 3, of the Tennessee Constitution.

2. A county or municipal ordinance or resolution to prohibit the carrying of firearms in parks, which such county or municipality owns and that is enacted pursuant to Chapter 428, ought to withstand constitutional challenge on the theory that such ordinance is not a regulation made by law within the meaning of Art. I, § 26, of the Tennessee Constitution.

3. The requirement set forth in Art. I, § 26, that restrictions on the wearing of arms be made with a view to preventing crime affords the legislature with substantial latitude in passing laws regulating the wearing of firearms. So long as the law bears a plausible relationship to the prevention of crime, it will be valid.

4. The General Assembly has unlimited power to act within its sphere except where it is restrained by the United States or Tennessee Constitutions. It is not required to make specific findings or satisfy any burden of proof before enacting any statute, including one that regulates the wearing of arms.

5. Under section 2(e)(2) of Chapter 428, a county or municipality that decides to prohibit the carrying of firearms in parks which they own is required to post signs in prominent locations that give notice that firearms are prohibited in such parks. To satisfy that requirement, such signs must be placed at locations that would make them conspicuous to persons who are entering park property.

6. A handgun carry permit holder who carries a firearm into a county or municipal park where the county or municipality has prohibited such carrying could still be convicted of violating Tenn. Code Ann. § 39-17-1311 even if such county or municipality failed to comply with the posting requirements that are set forth in section 2(e)(2) of Chapter 428.

7. A handgun carry permit holder could not be convicted of violating Tenn. Code Ann. § 39-17-1311 if he is in possession of a firearm while traveling on a public street or road that passes through such park, so long as the permit holder is merely passing through on such public road or highway and does not enter park grounds.

8. Counties and municipalities are immune from tort liability unless such liability is waived under the Tennessee Governmental Liability Act, Tenn. Code Ann. §§ 29-20-101 - 29-20-407. There is nothing under that Act which could be construed as waiving such immunity for injuries that might be related to the legislative acts of such counties and municipalities. Counties and municipalities that elect to prohibit handgun carry permit holders from carrying

firearms into parks which they own will not, by reason of that action, be under any greater duties or assign any greater liabilities to permit holders who are injured while using such parks.

ANALYSIS

A. Questions related to Art. I, § 26, and Art. II, § 3, of the Tennessee Constitution. You ask a series of questions concerning whether a city or municipality may, by ordinance or resolution, lawfully prohibit the carrying of firearms in parks which they own. The questions address the constitutionality of Chapter 428 of the 2009 Public Acts of Tennessee, which enables counties and municipalities to take such action.[1] Specifically, you ask if such action violates Art. I, § 26, of the Tennessee Constitution. The specific questions will be addressed in parts 1 through 4, below.

1. You ask if the authority granted to the legislature under Art. I, § 26, of the Tennessee Constitution to regulate the carrying of firearms can be delegated to counties and municipalities. *Andrews v. State,* 50 Tenn. 165 (1871), is instructive on the nature and extent of the limitations that Art. I, § 26, imposes upon the legislature's authority to enact laws regulating the wearing of firearms. As that case shows, Art. I, § 26, limits the authority of the legislature to enact substantive laws that regulate the wearing and use of firearms. That provision does not address the legality of the delegation of legislative authority.

The prohibition against delegations of legislative authority is found in Art. II, § 3, of the Tennessee Constitution. As more fully set forth in Op. Tenn. Att'y Gen. 09-152 (copy attached), Chapter 428 ought to withstand a challenge brought on the theory that it unconstitutionally delegates legislative authority in violation of Art. II, § 3, of the Tennessee Constitution.[2]

2. You ask about the meaning of the term "by law," as used in Art. I, § 26, and inquire whether a resolution or ordinance that is enacted by a county or municipal government that is enacted pursuant to Chapter 428 would come within that definition. In *Andrews*, the Court, defined the term. It said:

> The well-settled common law definition of a law is, a rule of action prescribed by the law making power.

Andrews, 50 Tenn. at 171.

A "law" within the meaning of Art. I, § 26, is thus a legislative enactment or statute that is passed by the General Assembly. As more fully set forth in Op. Tenn. Att'y Gen. 09-152, Chapter 428 is a complete and therefore constitutionally valid "law" that regulates the wearing of arms. The fact that Chapter 428 enables counties and municipalities to prohibit the carrying of

[1] Before the enactment of Chapter 428, Tenn. Code Ann. § 39-17-1311 prohibited the carrying of firearms into parks and other recreational facilities that are owned by the state, counties or municipalities. That prohibition extended to the holders of handgun carry permits. Chapter 428 amended section 39-17-1311 to authorize handgun carry permit holders to bring firearms into such parks and other recreational facilities. Chapter 428 also enables counties and municipalities to elect to prohibit permit holders from carrying firearms into parks and facilities which they own.

[2] The question that was posed in that opinion was substantially similar to the question that has been presented here.

firearms in parks does not alter its character as a valid enactment of the General Assembly and thus does not alter its character as a valid "law'' within the meaning of Art. I, § 26.

3. You ask about the limits that the clause, "to regulate the wearing of arms with a view to prevent crime," in Art. I, § 26, places on the legislature's authority to regulate the wearing of firearms. In *Andrews*, the Court in different passages in the opinion discussed those limitations. At one place it said:

> But the power is given to regulate, with a view to prevent crime. The enactment of the Legislature on this subject must be guided by, and restrained to this end, and bear some well defined relation to the prevention of crime, or else it is unauthorized by this clause of the Constitution.

Andrews, 50 Tenn. at 173.

The Court provided further explanation when it also said:

> [W]hen he carries his property abroad, goes among the people in public assemblages where others are affected by his conduct, then he brings himself within the pale of public regulation, and must submit to such restriction on the mode of using or carrying his property as the people through their Legislature, shall see fit to impose for the general good.

Andrews, 50 Tenn. at 175.

The Court then summed up its discussion by stating:

> If the Legislature think proper, they may by a proper law regulate the carrying of this weapon publicly, or abroad, in such a manner as may be deemed most conducive to the public peace, and the protection and safety of the community from lawless violence.

Andrews, 50 Tenn. at 176.

Andrews makes clear that Art. I, § 26, affords the legislature with substantial latitude in regulating the carrying of firearms in public. As long as the law bears a plausible relationship to the prevention of crime, the legislature may exercise its discretion and enact any law that it believes will promote the public good and community safety by preventing lawless violence and crime.

4. You also ask if the legislature must collect evidence and make findings that a bill will actually prevent crime before it may enact it into law and, if so, what standard of proof is required by Art. I, § 26..

The power to enact laws rests solely with the General Assembly. That power is unlimited except as expressly or impliedly limited by the Constitutions of the United States or Tennessee. If a law is constitutional, courts have no authority to question it; they are bound to enforce it as written. *Dennis v. Sears, Roebuck & Co., Inc.*, 223 Tenn. 415, 426, 446 S.W.2d 260, 266 (1969). Statutes are presumed to be valid unless there is proof that they violate some constitutional provision. *Genesco, Inc. v. Woods*, 578 S.W.2d 639 (Tenn. 1979). A statute will be upheld if any reasonable basis to support it can be found. *McConnell v. City of Lebanon*, 203 Tenn. 498, 314 S.W.2d 12 (1958).

A statute that regulates the wearing of firearms will be upheld if any reasonable relationship between the restrictions it imposes and community safety can be found. The legislature is not required to make specific findings or satisfy any burden of proof before it may enact such legislation.[3]

B. Questions related to the operation and effect of Chapter 428. You also ask a series of questions related to the operation and application of the provisions of Chapter 428. The questions address the requirements for the posting of signs in parks where the carrying of firearms has been prohibited and the legal effect of failing properly to post such signs. Another question asks this office to address the legality of a handgun carry permit holder's carrying a firearm while traveling on a public road that goes through a park where the possession of firearms is prohibited. Finally, you ask whether a county or municipality could face a greater risk of liability if the holder of a handgun carry permit is injured in a park where the possession of handguns has been prohibited. These questions are addressed in parts 5 through 8, below.

5. Section 2(e)(2) of Chapter 428 states that if a county or municipality elects to prohibit handgun carry permit holders from carrying firearms into parks which they own, they are required to post signs at prominent locations to give notice that handguns are prohibited in the park.[4] You have asked about the meaning of the term "prominently" as defined in that statute.

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008). When the language of the statute is clear and unambiguous, that intent will be found from the plain and ordinary meaning of its language. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008).

The language of section 2(e)(2) of Chapter is clear and unambiguous. In common usage, the term "prominent" means readily noticeable. Webster's Ninth New Collegiate Dictionary 941 (1988). Under the plain meaning of the statute, therefore, counties and municipalities that prohibit permit holders from carrying firearms into parks which they own must post the required

[3] *Hill v. State*, 201 Tenn. 299, 298 S.W.2d 799 (1957), provides an example. In that case, the court concluded that the purpose of a criminal statute that prohibited the carrying of firearms and other weapons for purposes of going armed was to discourage the using of certain weapons which have a tendency to cause crimes. From the Court's discussion, it is apparent that it reached this conclusion from the language of the statute itself without resorting to the legislative history or any other extrinsic aids. *See Hill*, 201 Tenn. at 300, 298 S.W.2d at 800.

[4] The signs must meet the requirements that are set forth in Tenn. Code Ann. § 39-17-1311(c)(1). Under that subsection, the signs must satisfy certain minimum size requirements and contain the language that is set forth in that subsection.

signs in such locations as necessary to make them readily noticeable to anyone who might seek to enter the park at all regular and established entrances.

6. You ask if a handgun carry permit holder could be convicted of violating Tenn. Code Ann. § 39-17-1311 for carrying a firearm into a county or municipal park where such carrying is prohibited if the county or municipality failed to comply with the posting requirements that are set forth in Chapter 428. In the prosecution of a criminal case, the State bears the burden of proving every element of an offense. *State v. Dotson*, 254 S.W.3d 378 (Tenn. 2008). The question is thus whether proof that such signs were properly posted is an element of the offense. If the failure to post signs in a park where the carrying of firearms is prohibited is such an element, then a carry permit holder could not be convicted of violating Tenn. Code Ann. § 39-17-1311 if the state failed to prove that such signs were posted. On the other hand if proof of such posting is not an element, then a handgun carry permit holder could be convicted of violating Tenn. Code Ann. § 39-17-1311 even if the county or municipality that has prohibited the carrying of firearms in parks which they own has failed to post the required signage.

State v. Brooks, 741 S.W.2d 920 (Tenn. Crim. App. 1987), is directly on point. In that case, the court held that the failure of a school to satisfy the sign posting requirements was not a defense to a charge of carrying a firearm on school grounds. The court concluded that the sign posting requirement was not an element of the offense. Applying the reasoning in *Brooks* to Tenn. Code Ann. § 39-17-1311, as amended by Chapter 428, the posting of signs in parks where the carrying of firearms is prohibited is not an element of a violation of Tenn. Code Ann. § 39-17-1311. A handgun carry permit holder could therefore be convicted of violating Tenn. Code Ann. § 39-17-1311 for carrying a firearm into a county or municipal park, where such carrying is prohibited, even if such county or municipality failed to post the required signs.

7. You ask if a permit holder could be convicted of violating Tenn. Code Ann. § 39-17-1311 for carrying a firearm while on a public road or highway, if the permit holder is merely passing through such park and does not actually enter the park grounds. Under the plain and unambiguous language of the statute, a violation would occur when a handgun carry permit holder carries a firearm into the grounds of a park where the possession of firearms has been prohibited. In common parlance, park grounds are the areas in which members of the public engage in the activities for which the park was built and would not include public roads and highways that go through the park. A handgun carry permit holder who is carrying a firearm while traveling on a public road that goes through such a park could not be convicted of violating Tenn. Code Ann. § 39-17-1311 so long as the permit holder does not leave the highway and enter park grounds.

8. Finally, you ask if a county or municipality that elects to prohibit firearms in a park which it owns would be liable for any injuries that an unarmed permit holder might suffer in a park where firearms are prohibited. County and municipal governments are immune from tort liability unless such liability has been waived under the Tennessee Governmental Liability Act, Tenn. Code Ann. §§ 29-20-101-29-20-407. *Fretwell v. Chaffin*, 652 S.W.2d 755 (Tenn. 1983). There is nothing in that Act that can be construed as waiving the immunity of a county or municipality for legislative acts. Therefore, counties and municipalities that decide to prohibit

handgun carry permit holders from carrying firearms in parks do not, by virtue of that action, assume any increased liabilities or duties to handgun carry permit holders injured in such a park.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MICHAEL A. MEYER
Deputy Attorney General

Requested by:
The Honorable Ben West, Jr.
State Representative
108 War Memorial Bldg
Nashville, Tennessee 37243