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

September 28, 2009

Opinion No. 09-160

Carrying of Firearms in Parks Being Used by Schools

QUESTIONS

1. Please clarify the phrase "actually being used by schools" as used in Op. Tenn. Att'y Gen. 09-129.

2. If a park is being used by a school, where, and at what times, may a handgun carry permit holder lawfully carry his or her firearm in that park?

3. If handgun carry permit holders are permitted to carry firearms in parks pursuant to Chapter 428 of the 2009 Public Acts of Tennessee, and a park, where the carrying of firearms is otherwise permitted, is being used by a school, who is responsible for the posting of notices that handguns are prohibited in the park because a school is using the park, and what form should such notice take?

OPINIONS

1. Tenn. Code Ann. § 39-17-1309 (b) and (c) prohibit the carrying of firearms on any property "used" by schools. A school is "using" the park when students and administrators are present on park grounds and are using park facilities for a school-sponsored activity.

2. Where and at what times a handgun carry permit holder may lawfully carry his or her firearm into a park being used by a school is fact driven and can only be determined on a case-by-case basis.

3. There is no requirement for the posting of signs while a park or its facilities are being used by a school.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1309(b) and (c) prohibit the carrying of firearms in any public or private school building, bus, grounds, campus, athletic field, or recreational facility that is owned, used, or operated by any school board, school or college. In Op. Tenn. Att'y Gen. 09-129 (July 24, 2009), this office opined that Tenn. Code Ann. § 39-17-1309 prohibits handgun carry permit holders from possessing firearms in public parks at times during which the

athletic fields or other recreational facilities are "actually being used by schools." You have asked for a clarification of that opinion.

The primary objective of statutory construction is to ascertain the intent of the legislature. *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn.2000). If the statutory language is clear and unambiguous, that intent is to be found "from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning." *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000). "[I]f the language of a statute is clear, we must apply its plain meaning without a forced interpretation." *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 514 (Tenn. 2005).

Tenn. Code Ann. § 37-17-1309(b)(1) states:

> (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, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any 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.[1]

Webster's New College Dictionary (1995) defines "use" as "the enjoyment of property, as by occupying or exercising it." Therefore, the plain meaning of the word indicates that the legislature intended that firearms be prohibited from park property while such property is actually being occupied or used by a school. Some examples of schools using parks include: school-sponsored tennis practice on park tennis courts, school-sponsored softball games on park fields, school-sponsored swim meets held at park recreation facilities, and school sponsored cross country meets that are run on park trails and grounds. The presence of these activities would indicate that a park is in fact being "used" by a school so that Tenn. Code Ann. § 39-17-1309 would prohibit handgun carry permit holders from carrying firearms into the area where such activities are taking place.

2. The area where firearm possession would be prohibited could cover the entire park, or portions of the park, depending upon the nature of the school activity taking place and the configuration of the park property.[2] A plain reading of Tenn. Code Ann. § 39-17-1309 indicates

[1] 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.

[2] For example, a softball game on one field of a park might require the prohibition of firearms in the immediate area around the softball field. On the other hand, a cross country meet that is being run on park trails might require the prohibition of firearms in the entire park.

that guns are prohibited on property used by the school. Therefore, determining what portion of the park a school was using, as it concerns the prohibition of guns, has to be determined in accordance with what activity is taking place in relation to the configuration of the entire park in which it occurs.[3] A determination of where guns could lawfully be carried in a park while a school is using the park would have to be determined on a case-by-case basis.[4]

3. Under the circumstances described in your question, this office can find no legal authority that would require the posting of signs in areas of parks that are being used by schools. Although Tenn. Code Ann. § 39-17-1309 mentions the posting of signs, the statute only speaks to posting of signs "about the school." Tenn. Code Ann. § 39-17-1309(d)(1). The statute is silent regarding the posting of signs on property "used" by schools. Absent any legal authority to the contrary, there is no posting requirement in parks that are being used for a school-sponsored activity.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

LYNDSAY FULLER SANDERS
Assistant Attorney General

Requested by:
The Honorable John Tidwell
State Representative
22 Legislative Plaza
Nashville 37243-0174

[3] A school could be using a park for any number or reasons, for example, team practices, team athletic competitions, conducting class room instruction, field days, etc.

[4] It is likely that schools that use public parks for athletic and other activities will have entered into a written agreement with the county or municipality that owns the park. If such an agreement exists, it will probably assist the parties in making determinations concerning the areas where firearms will be prohibited and the time such prohibitions will be in effect.