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Opinion No. 09-179

Municipality Required to “Opt-Out” of Handguns in Parks Despite Prior Handgun Prohibition

QUESTIONS

1. If a municipality had already enacted an ordinance prohibiting the possession of handguns in its parks prior to the enactment of Chapter 428 of the Public Acts of 2009 (codified as Tenn. Code Ann, § 39-17-1311(d)(Supp. 2009)), is it still required to “opt-out” of the provisions of Chapter 428 in order to continue that prohibition?

2. Does Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) impose any deadlines for municipalities or counties to exercise the “opt-out” provision set forth in the statute?

OPINIONS

1. Whether a municipality must adopt a new resolution to prohibit the possession of firearms in parks which it owns will depend upon the date on which the original resolution was adopted. If such resolution was adopted after April 8, 1986, then the municipality must adopt a new resolution to effectively prohibit the possession of firearms. If on the other hand such resolution was adopted on or before April 8, 1986, the prohibition against the possession of firearms remains in effect without any further action by the municipality.

2. Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) imposes no deadlines. A municipality or county may exercise the “opt-out” provision contained in Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) anytime after September 1, 2009.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1314(a)(Supp. 2009) prohibits a municipality from enacting any ordinance in an attempt to regulate firearms, except as provided in Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009).¹ It states, in relevant part:

¹ Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) authorizes a counties and municipalities to prohibit the possession of handguns in municipal parks by persons with handgun carry permits issued pursuant to Tenn. Code Ann. § 39-17-1351. It states:

(d) Notwithstanding the provisions of subdivision (b)(1)(I), any municipality or county may prohibit, by resolution adopted by a majority vote of its legislative body, persons authorized to carry a handgun pursuant to § 39-17-1351, from possessing such handgun while within or on a public park that is owned or operated by a county, a municipality or instrumentality thereof. If a

(a) Except as provided in § 39-17-1311(d), which allows counties and municipalities to prohibit the possession of handguns while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof, no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; provided, that the provisions of this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.

Tenn. Code Ann. § 39-17-1314(a)(Supp. 2009).

The primary objective of statutory construction is to ascertain and give effect to the intention of the legislature. *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008); *Auto Credit 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). Statutes that relate to the same subject are to be read and construed together. *State v. Edmondson*, 231 S.W.2d 925, 927 (Tenn. 2007).

The language of Tenn. Code Ann. §§ 39-17-1311(d)(Supp. 2009) and 39-17-1314(a)(Supp. 2009) is clear and unambiguous. Reading the two statutes together indicates that the legislature intended to afford different treatment for county and municipal ordinances and resolutions prohibiting the possession of firearms in parks based on whether they were enacted before or after April 8, 1986. Ordinances and resolutions that were enacted on or after April 8, 1986, have been effectively preempted by Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) and the counties and municipalities that enacted such ordinances and resolutions must satisfy the requirements of Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) if they wish to continue to prohibit the possession of firearms in parks which they own. If, however, such ordinance or resolution was enacted before April 8, 1986, Tenn. Code Ann. § 39-17-1314(a)(Supp. 2009) plainly and unambiguously states that such an ordinance or resolution is not affected by the statute and remains in full force and effect. Counties and municipalities that enacted such ordinances and resolutions are therefore not required to take any action as such ordinances and resolutions have not been preempted and therefore remain in full force and effect.

legislative body elects to prohibit the possession of handguns within a park, the prohibition shall apply to the entire park, notwithstanding the provisions of § 39-17-1311(b)(1)(I). If such area is jointly owned or operated by municipalities or counties, then a resolution adopted by a majority vote of all affected legislative bodies, voting individually, is necessary for such municipalities or counties to prohibit persons authorized to carry a handgun pursuant to § 39-17-1351, from possessing such handgun while within such park.

2. There is nothing in the text of Tenn. Code Ann. § 39-17-1311(d)(Supp. 2009) that imposes any deadlines or otherwise sets any time limits within which a county or a municipality must act to prohibit the carrying of firearms in parks which they own. Therefore, a municipality can exercise its right to “opt-out” anytime after September 1, 2009.

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