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

March 9, 2012

Opinion No. 12-32

Courtroom Security

QUESTIONS

1. May the holder of a valid handgun carry permit that was issued pursuant to Tenn. Code Ann. § 39-17-1351 lawfully carry a handgun into a courtroom while it is being used for administrative, as opposed to judicial, meetings?

2. If Tennessee law prohibits the carrying of a handgun into a courtroom while it is being used for some purpose other than judicial proceedings, is the county required to post signs that conform to the notice requirements of Tenn. Code Ann. § 39-17-1359 if the county elects to prohibit handgun possession during such times?

3. If the county has not posted signs that conform to the requirements of Tenn. Code Ann. § 39-17-1359, would detaining a citizen at the entrance of an administrative meeting for the purpose of screening such persons for weapons constitute an unreasonable search and seizure under the Tennessee or United States Constitutions?

4. Is a county required under Tenn. Code Ann. § 16-2-505(b)(4)(d)(2) to establish a security committee for the purpose of determining the security needs of its courtrooms?

5. Are deputy sheriffs assigned to courts as bailiffs during judicial proceedings required to be certified as peace officers by the Peace Officer Standards and Training Commission (POST)?

OPINIONS

1. Yes. Tenn. Code Ann. § 39-17-1306(a) prohibits the carrying of firearms into rooms where judicial proceedings are in progress. Section 1306(a) does not serve to prevent a holder of a handgun carry permit from lawfully carrying a firearm into a courtroom if there is no judicial proceeding in progress and the courtroom is being used to hold an administrative meeting or for some other purpose. An individual, business or government entity is, however, authorized under Tenn. Code Ann. § 39-17-1359 to prohibit the carrying of firearms into such meetings upon the posting of notice of such prohibition in such a manner as required by the statute.

2. Yes. Tenn. Code Ann. § 39-17-1359(b) requires that notice of the prohibition against carrying firearms be posted in English and in prominent locations, including all entrances primarily

used for entering the property, building or room where the weapon is prohibited.

3. Under the plain meaning of Tenn. Code Ann. § 39-17-1359, if notice is not properly posted, it is not a violation of the statute and thus not a criminal offense for an individual to possess a firearm at an administrative meeting if that individual has a valid handgun carry permit issued pursuant to Tenn. Code Ann. § 39-17-1351. Whether the detention of a person at the entrance of such meeting for the purpose of screening or searching for weapons constitutes an unreasonable search and seizure under the Tennessee and United States Constitutions will depend upon the totality of the specific circumstances.

4. Yes. Under Tenn. Code Ann. § 16-2-505(d)(2) a county is required to establish a security committee for the purpose of determining the security needs of the courtrooms.

5. Yes. With the exception of court officers in Davidson County, a bailiff or court officer must be a deputy sheriff, must obtain POST certification within one year of employment, and, if newly assigned to the courts after July 1, 2008, must also complete forty hours of basic training in courthouse security and sixteen hours of annual training.

ANALYSIS

1. Tennessee law prohibits the carrying of firearms into rooms where judicial proceedings are in progress, stating as follows:

> No person shall intentionally, knowingly, or recklessly carry on or about the person while inside any room *in which judicial proceedings are in progress* any weapon prohibited by § 39-17-1302(a), for the purpose of going armed; provided, that if the weapon carried is a firearm, the person is in violation of this section regardless of whether the weapon is carried for the purpose of going armed.

Tenn. Code Ann. § 39-17-1306(a) (emphasis added).[1]

The primary objective of statutory construction is to ascertain and give effect to the intent of the Legislature. *Freeman Industries, LLC v. Eastman Chemical Co.,* 172 S.W.3d 512, 522-23 (Tenn. 2005). If the language is clear and unambiguous, legislative intent is to be ascertained from the plain meaning of the statutory text. *Bostic v. Dalton,* 158 S.W.3d 347, 350 (Tenn. 2005). Generally, when construing a statute, every word within the statute is presumed to "have meaning and purpose and should be given full effect." *State v. Odom,* 928 S.W.2d 18, 29-30 (Tenn. 1996) (quoting *Marsh v. Henderson,* 221 Tenn. 42, 424 S.W.2d 193, 196 (1968)).

Applying these standards to Tenn. Code Ann. § 39-17-1306, it is clear that the Legislature intended to establish a general prohibition against the possession of firearms and other weapons in

1 Tenn. Code Ann. § 39-17-1302 prohibits the carrying of a variety of weapons for the purpose of going armed. In addition to prohibiting the carrying of firearms, the statute also prohibits the carrying of explosive devices, hoax devices, switchblades and knuckles.

places where judicial proceedings are in progress.[2] The Tennessee Court of Criminal Appeals has recognized that this statute is intended "to ensure the safety of judges, lawyers, court personnel, litigants, witnesses, and observers present in the courtroom and to assure the proper decorum and deportment during judicial proceedings." *State v. Williams,* 854 S.W.2d 904, 907-08 (Tenn. Crim. App. 1993).

By its terms Tenn. Code Ann. § 39-17-1306(a) does not prohibit the carrying of firearms in a courtroom if judicial proceeding are not in progress. The express language of the statute limits the prohibition against possession of firearms to times when judicial proceedings are being conducted.

2. Tenn. Code Ann. § 39-17-1359 authorizes the prohibition of firearms at certain meetings conditioned upon the posting of notice in such a manner as to conform to the requirements of the statute, stating as follows:

> An individual, corporation, business entity or local, state or federal government entity or agent thereof is authorized to prohibit the possession of weapons by any person who is at a meeting conducted by, or on property owned, operated, or managed or under the control of the individual, corporation, business entity or government entity.

Tenn. Code Ann. § 39-17-1359(a)(1). This prohibition applies to any person who is authorized to carry a firearm under Tenn. Code Ann. § 39-17-1351, the statute which addresses the issuance of handgun permits. Tenn. Code Ann. 39-17-1359(a)(2).

Tenn. Code Ann. § 39-17-1359(b) requires that notice of any such prohibition be accomplished by displaying one or both of the notices described in subdivision (b)(3) in prominent locations, including all entrances primarily used for entering the building or room where the weapon is prohibited, stating in relevant part:

> If a sign is used as the method of posting, it shall contain language substantially similar to the following:
>
> AS AUTHORIZED BY T.C.A § 39-17-1359, POSSESSION OF A WEAPON ON POSTED PROPERTY OR IN A POSTED BUILDING IS PROHIBITED AND IS A CRIMINAL OFFENSE.

Tenn. Code Ann. § 39-17-1359(b)(3)(A). The "language substantially similar to" means the sign should contain language plainly stating that:

(i) The property is posted under authority of Tennessee law;

---

2 The responses to questions one and two in this opinion do not apply to individuals who are carrying a weapon pursuant to their status as a law enforcement officer. Tenn. Code Ann. § 39-17-1350(a) provides that, subject to certain limited exceptions, any law enforcement officer "may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer's regular duty hours or assignments."

> (ii) Weapons or firearms are prohibited on the property, in the building, or on the portion of the property or building that is posted; and
> (iii) Possessing a weapon in an area that has been posted is a criminal offense.

Tenn. Code Ann. § 39-17-1359(b)(3)(B).

Alternatively, notice of prohibition may be posted in prominent locations by means of "[t]he international circle and slash symbolizing the prohibition of the item within the circle." Tenn. Code Ann. § 39-17-1359(b)(3)(C)(i).[3]

These Tennessee statutes accordingly balance the right of an individual to bear arms with the public's right through its elected representatives to regulate the wearing of arms in order to prevent crime. Thus, in *McDonald v. City of Chicago,* ___U.S.___, 130 S. Ct. 3020, 3028-42, (2010), the United States Supreme Court held that the Second Amendment confers a personal, fundamental right to possess a firearm, including a handgun, that is incorporated by and applied to the states by the Fourteenth Amendment. The Court made clear, however, the Second Amendment does not interfere with regulatory measures such as "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Id:* at 3047. Similarly the Tennessee Constitution states that "citizens of this State have a right to keep and bear arms for their common defense, but the Legislature shall have the power, by law, to regulate the wearing of arms with a view to prevent crime." Tenn. Const. art. I, § 26. In that regard, the General Assembly enacted Tenn. Code Ann. § 39-17-1359 to prohibit the possession of weapons at certain meetings provided that notice of such prohibition is properly posted in accordance with the requirements of the statute.[4]

In sum, there are the only two methods of notice authorized by Tenn. Code Ann. § 39-17-1351. In construing statutes, the express mention of one subject excludes other subjects that are not mentioned. *State v. Peele,* 58 S.W.3d 701, 704 (Tenn. 2001). If notice does not conform to either of the specifically mentioned requirements, it is insufficient under the statute.

3. Turning to the third question, this question is only tangentially related to whether a person with a permit may carry a handgun into a judicial proceeding or a properly noticed non-judicial meeting in a courtroom. In both of these factual scenarios, no person may carry a gun into such meetings even if holding an appropriate permit. The third question however addresses screening processes that may be employed for entry into the courtroom, or the public building where the courtroom is located, regardless whether Tennessee law will then allow a handgun permit holder to

---

3 This provision was added in 2010. 2010 Tenn. Pub. Acts 1009, § 3. Prior to this date, § 39-17-1359(a) authorized the use of the international circle and slash symbol in addition to, but not in lieu of, the written notice requirements proscribed by statute. Op. Tenn. Att'y. Gen. No. 07-43 (April 9, 2007).

4 The Legislature also has expressly prohibited a permit holder from carrying a handgun, either openly or concealed, with the intent of going armed, in areas where alcoholic beverages are served (Tenn. Code Ann. § 39-17-1305), on the grounds of any public or private school (Tenn. Code Ann. § 39-17-1309) and in public parks, playgrounds, civic centers, and other public recreational buildings and grounds (Tenn. Code Ann. § 39-17-1311).

carry his or her handgun into the meeting or proceeding occurring in the courtroom. Screening processes or searches are intended primarily to ensure the safety of those in the public building, and to prohibit the carrying of unauthorized weapons into the building. Thus, if a person with an appropriate handgun permit were to enter a State public building or courtroom where State law allowed the person to carry the handgun, the person would go thru the screening process but would be allowed to carry his or her handgun upon proof of an appropriate permit.

With that perspective, the issue of the validity of scans or searches of persons entering a public building, or entering a room in a public building, requires a review of the constitutional provisions governing unreasonable searches and seizures. The Fourth Amendment to the United States Constitution and Article I, Section 7, of the Tennessee Constitution prohibit unreasonable searches and seizures. *State v. Meeks,* 262 S.W.3d 710, 722 (Tenn. 2008) (citing *California v. Carney,* 471 U.S. 386, 390 (1985)). Thus generally law enforcement officials must first obtain a valid warrant before conducting a search. *Id.* There exist various narrowly defined exceptions to this general rule, including (1) a search incident to an arrest, (2) the "plain view" doctrine, (3) a consent to the search, (4) a "stop and frisk" search under appropriate circumstances, and (5) the existence of exigent circumstances. *State v. Turner,* 297 S.W.3d 155, 160 (Tenn. 2009).

The "stop and frisk" exception to this standard allows a law enforcement officer to conduct a protective warrentless search for weapons when such a search is necessary to ensure the officer's or others' safety. *Gomez v. Markley,* 385 Fed. Appx. 79, 82 (3rd Cir. 2010) (citing *Terry v. Ohio,* 392 U.S. 1, 19 (1968)). The Tennessee Supreme Court has stated that, in determining whether a warrantless search is reasonable, courts should "‚balance the need to search against the invasion which the search entails[,]'…., thereby weighing an individual's legitimate expectations of privacy and personal security on one hand and the ‚government's need for effective methods to deal with breaches of public order' on the other." *R.D.S. v. State,* 245 S.W.3d 356, 365 (Tenn. 2008) (quoting *Camara v. Mun. Court,* 387 U.S. 523, 536-37 (1967) and *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985)). The question of whether an unreasonable search occurs under the "stop and frisk" exception to the warrantless search requirement necessarily depends upon the totality of the existing circumstances.

In considering the question of whether requiring a person to pass through a metal detector prior to entering a courtroom or government building is reasonable within the meaning of the Fourth Amendment, the courts use the same balancing test articulated in *Camara,* weighing the public's security interest or threat of potential harm against the intrusion of the individual being searched. State and federal courts have widely accepted that the requirement to pass through a metal detector is minimally invasive and thus generally reasonable. *See* Wayne R. LaFave, Search and Seizure: A Treatise On the Fourth Amendment, Chapter 10: Inspections and Regulatory Searches, section (a) Courthouses and other public-use facilities (4th ed. 2011). Indeed the United States District Court for the Middle District of Tennessee found that ensuring the security of the federal courthouse justified the inspection of all packages and briefcases prior to entering that government building, stating as follows:

> The Fourth Amendment to the Constitution prohibits "unreasonable searches." But does it prohibit the government from conducting in its buildings casual eye inspections of an individual entrant's packages or briefcases to determine if guns or explosives are present? Can this inspection in light of the interest it seeks to protect be so offensive, or overly broad so as to offend the guarantees of the Fourth Amendment and constitute an "unreasonable" search? This Court thinks not.

Barrett v. Kunzig, 331 F. Supp. 266, 274 (M.D. Tenn. 1971), *cert. denied,* 409 U.S. 914 (1972).

Other courts have also recognized that administrative searches such as by a metal detector or scanner are justified in light of the increasing threats of violence aimed at public facilities and public officials. *Downing v. State*, 454 F.2d 1230, 1232-33 (6th Cir. 1972); *Gibson v. State*, 921 S.W.2d 747, 757-63 (Tex. Ct. App. 1996). One court pointed out the threats justifying such non-invasive searches as follows:

> Regarding the risk of violence in federal courthouses, the U.S. Marshals and Court Security officers have detected 350,000 weapons (knives or guns) since 1987. Moreover, during that same period of time there have been over 2000 threats to the judiciary. U.S. Marshall Service, Court Security Statistics (1993). In 1992, a court security officer and a U.S. Marshall were fatally wounded by a prisoner while escorting him back to the jail from a court hearing at the federal courthouse in Chicago, Illinois.

Gibson v. State, 921 S.W.2d at 764 (quoting *Woods v. Thieret,* 5 F.3d 244, 246 n. 1 (7th Cir.1993)). The security concerns in state courthouses are no different than those confronting federal office buildings.

Furthermore, in such cases, courts have upheld security point screenings and searches under the "consent" exception to the search warrant requirement. In those cases, the courts have found that where persons were alerted that they must pass through a metal detector and could potentially be subjected to a limited search, an individual electing to pass through such a security checkpoint gives implied consent to any subsequent search. *See State v. Plante,* 134 N.H. 585, 588-89, 594 A.2d 165, 167 (1991), *cert. denied,* 502 U.S. 984 (1991); *Smith v. Washington County,* 180 Or. App. 505, 516-16, 43 P.3d 1171, 1177 (2002).

A pat-down search, as opposed to the use of a scanning device, is more intrusive and will require circumstances evidencing a greater threat in order to be a reasonable search. *See McMorris v. Alioto*, 567 F.2d 897, 901 n. 3 (9th Cir. 1978).

In light of these standards, the question whether an unreasonable search occurs when a person is detained to be searched or scanned for weapons before that person enters a courtroom for a non-judicial meeting, where signs prohibiting firearms have not been appropriately posted under Tenn. Code Ann. § 39-17-1359, will necessarily depend on the totality of the existing circumstances.

4. Tennessee law requires a county to establish a security committee for the purpose of determining the security needs of the courtrooms, stating as follows:

> Each county *shall* establish a court security committee composed of the county mayor, sheriff, district attorney general, the presiding judge of the judicial district and a court clerk from the county to be designated by the presiding judge, for the purposes of examining the space and facilities to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities.

Tenn. Code Ann. § 16-2-505(a)(2) (emphasis added).

The use of the verb "shall," as opposed to "may," means the Legislature intended to require each county to form a safety committee. When used in statutes or contracts, the word "shall" is generally imperative or mandatory. *Stubbs v. State,* 216 Tenn. 567, 576, 393 S.W.2d 150, 154 (1965); *State v. Haddon,* 109 S.W.3d 382, 386 (Tenn. Crim. App. 2002).

Moreover, as this Office has previously opined, we are unaware of any constitutional provisions this statute might violate. *See* Op. Tenn. Atty. Gen. No. 02-052 (April 24, 2002). The statute is not unconstitutionally vague, nor is it overbroad. The Legislature has the authority to enact measures reasonably calculated to enhance public safety, which encompasses the authority to provide for safe and secure court facilities, and Tenn. Code Ann. § 16-2-505(d)(2) constitutes a reasonable exercise of that authority. *Id.*

5. In Op. Tenn. Att'y Gen. 10-107, this Office opined that all bailiffs and court officers must be certified by the Peace Officer Standards and Training Commission ("POST").[5] As noted in that opinion, sheriffs are peace officers who are under a duty, among other things, to provide courtroom security, attend to the courts, and obey the lawful orders and directives of the courts. *See* Tenn. Code Ann. § 8-8-201(a)(2)(A). Deputy sheriffs, likewise, are required to be certified as peace officers within one year of employment. Tenn. Code Ann. §§ 38-8-102 to 122. As with sheriffs, the Legislature has imposed training requirements for deputy sheriffs who serve as bailiffs.[6]

Reading Tenn. Code Ann. §§ 5-7-108(a)(2), 8-8-201(a)(2)(A) and 38-8-102 to 122 *in pari materia* confirms that the Legislature intended to impose certification and training requirements upon the persons a sheriff assigns to serve as bailiffs and court officers. As this Office previously opined, to construe such statutes as authorizing a sheriff to circumvent such express requirements by assigning persons who do not possess the title of deputy sheriff to serve as bailiffs or court officers

---

5 In Davidson County only, local judges are authorized to appoint their own court officers. Tenn. Code Ann. § 8-8-201(a)(2)(B)(i). *See* Op. Tenn. Att'y Gen. 10-107 (October 28, 2010).

6 Deputy sheriffs who are newly appointed to the courts after July 1, 2008, must initially complete forty hours of training in courthouse security and an additional sixteen hours of annual training in courthouse security. Tenn. Code Ann. § 5-7-108(a)(2).

would be contrary to that intent. Op. Tenn. Att'y Gen. 10-107 (October 28, 2010).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

FRANK BORGER-GILLIGAN
Assistant Attorney General

Requested by:

Honorable Mae Beavers
State Senator 17th Judicial District
7 Legislative Plaza
Nashville, TN 37243-0223