

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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February 22, 2013

Opinion No. 13-15

Possession of Firearms and Firearm Ammunition on School Property

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**QUESTION**

Senate Bill 142/House Bill 118 of the 108th Tennessee General Assembly (hereinafter “SB142”) would allow a handgun carry permit holder to transport and store firearms and ammunition in the holder’s privately owned vehicle in any public or private parking lot under specified conditions. If enacted, would the language of SB142, which applies “notwithstanding” the provisions of Tenn. Code Ann. § 39-17-1309 governing carrying weapons on school property, supplant, repeal or otherwise render ineffective the language in Tenn. Code Ann § 39-17-1309(c)(1) that allows nonstudent adults to possess a firearm on campus in a private vehicle under specified conditions?

**OPINION**

No. SB142 does not explicitly or implicitly repeal or impact the current exceptions to the provisions of Tenn. Code Ann. § 39-17-1309 generally prohibiting the possession of firearms on school property. These exceptions are codified at Tenn. Code Ann. § 39-17-1309(c)(1) and Tenn. Code Ann. § 39-17-1309(e). Thus, if enacted, SB142 would authorize a handgun carry permit holder to transport and store a firearm or firearm ammunition in the permit holder’s vehicle while in a parking area on school property, thereby adding another exception to the current exceptions listed in Tenn. Code Ann. § 39-17-1309.

**ANALYSIS**

Under present Tennessee law, with certain exceptions, it is a criminal offense to possess or carry a firearm, whether openly or concealed, “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.” Tenn. Code Ann. §§ 39-17-1309(b)(1) & (c)(1). If the person acts with an intent to go armed, the conduct is a Class E felony; otherwise, it is a Class B misdemeanor. Tenn. Code Ann. §§ 39-17-1309(b)(2) & (c)(2).

The exceptions to this criminal offense are set forth at Tenn. Code Ann. § 39-17-1309(c)(1) and Tenn. Code Ann. § 39-17-1309(e), which specifically state as follows:

(c)(1) It is an offense for any person to possess or carry, whether openly or concealed, any firearm, 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. It is not an offense under this subsection (c) for a nonstudent adult to possess a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with the expressed or implied consent of the adult, while the vehicle is on school property.

. . . .

(e) The provisions of subsections (b) and (c) do not apply to the following persons:

(1) Persons employed in the army, air force, navy, coast guard or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(2) Civil officers of the United States in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties;

(5) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(6) Any private police employed by the administration or board of trustees of any public or private institution of higher education in the discharge of their duties; and

(7) Any registered security guard/officer who meets the requirements of title 62, chapter 35, and who is discharging the officer's official duties.

(Emphasis added).

If enacted, SB142 as currently proposed<sup>1</sup> would allow “the holder of a valid handgun carry permit recognized in Tennessee” to transport and store a firearm or firearm ammunition in the permit holder’s privately-owned motor vehicle while the permit holder is on or utilizing any public or private parking area if:

- (1) The permit holder’s vehicle is parked in a location where it is permitted to be;  
and
- (2) The firearm or ammunition being transported or stored in the vehicle:
  - (A) Is kept from ordinary observation if the permit holder is in the motor vehicle; or
  - (B) Is kept from ordinary observation and locked within the trunk,  
glove box, or interior of the person’s privately owned motor vehicle or a container securely affixed to such vehicle if the permit holder is not in the vehicle.

SB142, § 1. A “parking area” is defined as “any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately-owned motor vehicles.” *Id.* A “parking area” does not include “the grounds or property of a owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence.” *Id.* SB142 does not modify or amend Tenn. Code Ann. § 39-17-1309 but would apply “[n]otwithstanding [§] 39-17-1309.” *Id.*<sup>2</sup>

When construing a statute, such as SB142 if enacted, a reviewing court must “ascertain and give effect to the intention and purpose of the legislature,” which is derived ““whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language.”” *State v. Hannah*, 259 S.W.3d 716, 721 (Tenn. 2008) (quoting *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000)). “When the statutory language is clear and unambiguous, [the court] must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute’s application.” *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

Construing the plain and ordinary meaning of the clear and unambiguous language utilized in SB142 and applying such language to school property, SB142 carves out an additional exception to the present prohibition of firearms and firearm ammunition on school property set forth in Tenn. Code Ann. § 39-17-1309. If all the requirements of SB142 are satisfied, then the holder of a valid handgun carry permit recognized in Tennessee could transport and store a firearm or firearm ammunition in the permit holder’s vehicle on school property.

This new exception to the criminal offense outlined in Tenn. Code Ann. § 39-17-1309 does not explicitly or implicitly repeal the current exceptions existing at Tenn. Code Ann. §§ 39-17-1309(c)(1) & (e). *See State v. Martin*, 146 S.W.3d 64, 73 (recognizing that a “statute may be

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<sup>1</sup> This Opinion is based on SB142, as amended, which passed the Senate on Feb. 11, 2013.

<sup>2</sup> This Office has previously opined that a bill similar to SB142 is constitutionally defensible. Tenn. Att’y Gen. Op. 12-40 (March 20, 2012).

repealed by a subsequent statute either expressly or by implication”). SB142 makes no mention of these current exceptions and evidences no explicit legislative intent to repeal these exceptions. *See State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007) (stating the general rule that a statute should be construed to “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope”). Nor is there any irreconcilable conflict between SB142 and the current exceptions to the criminal offense set forth by Tenn. Code Ann. § 39-17-1309 that would create an implicit repeal of any of these exceptions by the passage of SB142. Implicit repeals are disfavored, and “will be recognized only when no fair and reasonable construction will permit the statutes to stand together.” *Hayes v. Gibson County*, 288 S.W.3d 334, 337-38 (Tenn. 2009) (quoting *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995)). Repeals by implication will only be found “when the conflict between the statutes is irreconcilable.” *Id.* at 338.

Here, while the various exceptions listed in current law and created by SB142 may overlap with each other, they are not inconsistent or in conflict with each other, and the fact that a person may come within more than one exception poses no disruption in the harmonious operation of the provisions of this statute.

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