S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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May 28, 2013

Opinion No. 13-41

Employee's Possession of Firearms and Firearm Ammunition on Employer Property

QUESTIONS

1. Does 2013 Tenn. Pub. Acts, ch. 16 ("Chapter 16") prohibit an employer from terminating an at-will employee who brings a firearm or firearm ammunition onto the employer's property?

2. Does Chapter 16 apply to a handgun carry permit holder operating a privately-owned motor vehicle that has been leased, rented, or borrowed by the permit holder?

3. Under the provisions of Chapter 16, does the permit holder violate the requirement that the firearm or firearm ammunition be "kept from ordinary observation" when a parking lot security camera records him or her placing the firearm or firearm ammunition into a nonobservable location in the vehicle?

4. Would Chapter 16 authorize a handgun carry permit holder to transport and store both a firearm and firearm ammunition in the permit holder's vehicle?

OPINIONS

1. No. Chapter 16 does not impact the employer/employee relationship.

2. No.

3. Yes.

4. Yes.

ANALYSIS

1. Chapter 16 amends Title 39 of the Tennessee Code governing criminal offenses. 2013 Tenn. Pub. Acts, ch. 16. Chapter 16 applies "[n]otwithstanding [Tenn. Code Ann.] §§ 39-17-1309, 39-17-1311, or § 39-17-1359," which regulate and, subject to certain exceptions, criminalize the possession of firearms respectively (1) on school property, (2) on public property used for recreational purposes, and (3) at certain meetings. *Id.* Chapter 16 specifically allows—without criminal penalty—"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, as defined in § 55-1-103, while 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;
>
> (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.

Chapter 16, § 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" would not include "the grounds or property of an owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence." *Id.*

In Tenn. Att'y Gen. Op. 13-15 (Feb. 22, 2013), this Office considered the impact of Senate Bill 142 of the 108th Session of the Tennessee General Assembly (2013) (hereinafter "SB 142"), which was ultimately enacted as Chapter 16, on the possession of firearms and firearm ammunition upon school property. This Office recognized that 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.

Tenn. Att'y Gen. Op. 13-15 at 3. This Office further observed that "[t]his new exception to the criminal offense outlined in Tenn. Code Ann. § 39-17-1309 does not explicitly or implicitly repeal the current exceptions" already authorizing the possession of firearms and firearm ammunition on school property. *Id.*

Chapter 16 by its terms only decriminalizes the carrying and storage of firearms and firearm ammunition in a permit holder's privately owned motor vehicles in public and private parking areas under defined circumstances. Chapter 16 does not address and thus has no impact on the employment relationship between an employer and an employee. The State of Tennessee "has long adhered to the employment-at-will doctrine in employment relationships not established or formalized by a contract for a definite term," under which "both the employer and the employee are generally permitted, with certain exceptions, to terminate the employment relationship 'at any time for good cause, bad cause, or no cause.'" *Crews v. Buckman Labs.*

International, Inc., 78 S.W.3d 852, 857 (Tenn. 2002) (quoting *Sullivan v. Baptist Memorial Hosp.*, 995 S.W.2d 569, 574 (Tenn. 1999)) (footnote omitted). Furthermore, an employer may establish employment policies that an employee must follow in the workplace, and such policies may restrict otherwise lawful activities. *See Sloan v. Tri-County Electric Membership Corp.*, No. M2000-01794-COA-R3-CV, 2002 WL 192571 (Feb. 7, 2002) (anti-nepotism policy); John B. Phillips, Jr., *No Smoking Anywhere, You Lepers of the 21st Century!*, Tenn. Emp. L. Letter, Vol. 25, Issue 4 (Apr. 2010) (workplace smoking policies); Stephen P. Pepe & Scott H. Dunham, *Avoiding and Defending Wrongful Discharge Claims* § 4:1 (Feb. 2013) (listing various array of possible workplace rules). The plain and unambiguous language of Chapter 16 does not address or alter the employer/employee relationship or prohibit an employer from terminating an employee for possessing a firearm or firearm ammunition on the employer's property. *See Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004) (stating the established rule of statutory constriction that "[w]hen 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").[1]

Further evidence that Chapter 16 does not address the employer/employee relationship is the fact that the General Assembly has directly addressed similar issues elsewhere in the Tennessee Code but chose not to do so in Chapter 16. Specifically, in Title 50 of the Tennessee Code, which governs employment relationships and practices, Tenn. Code Ann. § 50-1-304(e)(2) states that "[n]o employee shall be discharged or terminated solely for participating or engaging in the use of [an agricultural] product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law if the employee participates or engages in the activity during times when employee is not working." *See also* Tenn. Code Ann. § 50-1-304(e)(1). Tennessee courts have observed that "[w]hen one statute contains a given provision, the omission of the same provision from a similar statute is significant to show that a different intention existed." *State v. Lewis*, 958 S.W.2d 736, 739 (Tenn. 1997). *See also Amos v. Metropolitan Government of Nashville and Davidson County*, 259 S.W.3d 705, 715 (Tenn. 2008).

2. Chapter 16 authorizes a handgun carry permit holder to "transport and store a firearm or firearm ammunition in the permit holder's privately-owned motor vehicle." Chapter 16, § 1. The phrase "permit holder's privately-owned motor vehicle" does not include a vehicle leased, rented, or borrowed by the permit holder. When the language of a statute is clear and unambiguous, the statute is read to convey the plain meaning of the words used. *Eastman Chem. Co.*, 151 S.W.3d at 507. Here, the General Assembly chose to use the possessive adjectival phrase—"permit holder's"—to describe the privately owned motor vehicles to which the bill applies. Accordingly, the clear import of this wording is that the privately owned vehicle is owned by the permit holder. Had the General Assembly intended the bill to reach to leased, borrowed, or rented cars, it could easily have used different language, such as referring to vehicles in the lawful possession of the permit holder.[2] Indeed, the General Assembly knows

[1] Because the statute is unambiguous, there is no need to review the legislative history of Chapter 16 to discern the General Assembly's intent. *See, e.g., Brundage v. Cumberland County*, 357 S.W.3d 361, 365 (Tenn. 2011); *State v. McNack*, 356 S.W.3d 906, 908 (Tenn. 2011).

[2] When the Tennessee House of Representatives considered the bill ultimately enacted as Chapter 16 on February 28, 2013, two proposed amendments that would have amended the bill to broaden its applicability beyond a motor

how to make a statutory provision applicable to both owners and possessors but did not do so in Chapter 16. *See, e.g.*, Tenn. Code Ann. § 12-2-209 (providing for seizure and confiscation of intoxicating beverages "owned or possessed" in violation of liquor laws). *See also Amos*, 259 S.W.3d at 715.

3. Chapter 16 requires that the firearm or firearm ammunition must at all times be "kept from ordinary observation." Chapter 16, § 1. If the permit holder is not inside the motor vehicle, then the firearm or firearm ammunition must be "locked within the trunk, glove box, or interior of the person's privately owned motor vehicle or a container securely affixed to such vehicle." *Id.* A permit holder would fail to meet these requirements if the firearm or firearm ammunition is briefly observable by a security camera while the permit holder places the firearm or firearm ammunition into a nonobservable location inside the vehicle.

Observation by a security camera would constitute "ordinary observation." The word "ordinary" means "occurring or encountered in the usual course of events: not uncommon or exceptional: not remarkable: routine, normal." *Webster's Third New International Dictionary* 1589 (1986). A security camera is not such an uncommon instrument as to be extraordinary. Furthermore, the "kept from ordinary observation" requirement of Chapter 16 contains no exception for the transition period during which a firearm or firearm ammunition is being placed into a nonobservable location inside the vehicle. Therefore, if the firearm or firearm ammunition is observable by a security camera during this transition, the permit holder would fail to meet the requirement that the firearm or firearm ammunition be "kept from ordinary observation."

4. Chapter 16 permits the transportation and storage of "a firearm or firearm ammunition." Chapter 16, § 1. Chapter 16 thus allows the permit holder to possess both a firearm and firearm ammunition. Taken in context, it is clear that the word "or" between "firearm" and "firearm ammunition" is being used throughout Chapter 16 conjunctively in the sense of "and," not disjunctively. *See, e.g.*, *Bird v. State*, 131 Tenn. 518, 175 S.W. 554, 556 (1915) (holding that statute prohibiting shipping or conveying intoxicating liquor should be construed to mean shipping and conveying, the words "or" and "and" being "often convertible"). Therefore, the more persuasive construction is that Chapter 16 would authorize a handgun-carry-permit holder to keep both a firearm and firearm ammunition inside the permit holder's vehicle.

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vehicle owned by the permit holder were tabled. *See* http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?Bill-Number=HB0118&GA=108.

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