STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 13-110

Constables Carrying Firearms

QUESTION

May constables carry firearms anywhere in the State of Tennessee?

OPINION

Constables may only carry firearms as permitted by the law of Tennessee. Constables, like other citizens, may carry a handgun anywhere in the state upon obtaining a handgun-carry permit from the Tennessee Department of Safety pursuant to Tenn. Code Ann. § 39-17-1351. Additionally, constables from counties having the populations described in Tenn. Code Ann. § 39-17-1351(a)(2) may carry a handgun anywhere in the state upon written directive issued by the sheriff.

ANALYSIS

Tennessee law generally provides that a person commits a criminal offense who carries a firearm with the intent to go armed. Tenn. Code Ann. § 34-17-1307. There are numerous exceptions that constitute defenses to this criminal statute and authorize a person to carry a firearm. See, e.g., Tenn. Code Ann. §§ 39-17-1307, -1308, -1350 and -1351. A constable elected or appointed pursuant to Tenn. Code Ann. §§8-10-101 to -206 may lawfully carry a firearm anywhere in Tennessee as permitted by these statutes.

A constable is not considered a law-enforcement officer authorized to carry a firearm under Tenn. Code Ann. § 39-17-1350. This statute permits, except as otherwise provided, "any law enforcement officer" to "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." Tenn. Code Ann. § 39-17-1350(a). For purposes of Tenn. Code Ann. § 39-17-1350, "law enforcement officer" means "a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission, or a commissioned reserve duty sheriff as authorized in writing by the chief of police." Tenn. Code Ann. § 39-17-1350(d)(1), or certain department of correction employees or correctional officers, Tenn. Code Ann. § 39-17-1350(d)(2). Because a constable is not a "full-time employee of the state," a "full-time police officer," a "commissioned reserve deputy sheriff," a "commissioned reserve or auxiliary police officer," or one of the specified department of correction employees or correctional officers under Tenn. Code Ann. § 39-17-1350(d)(2), a

constable is not a "law enforcement officer" within the meaning of Tenn. Code Ann. § 39-17-1350.

Certain persons also are authorized to carry handguns pursuant to a written directive. Tenn. Code Ann. § 39-17-1315. A written directive to carry a handgun may be issued by a law-enforcement agency to which an officer is attached. Tenn. Code Ann. § 39-17-1315(a)(1). This Office has previously opined that, because constables are not part of a law-enforcement agency, this subsection does not apply to them. Tenn. Att'y Gen. Op. 92-18 at 6 (Feb. 28, 1992). Subsection (a)(2) however contains a narrow, constable-specific exception, stating:

> Any duly elected and sworn constable in any county having a population of not less than eleven thousand one hundred (11,100) nor more than eleven thousand two hundred (11,200), according to the 1970 federal census or any subsequent federal census, and being a county in which constables retain law enforcement powers and duties under the provisions of §§ 8-10-108, 40-6-210, 55-8-152, 57-5-202 and 57-9-101, are authorized to and may carry handguns at all times and may equip their vehicles with blue and red lights and sirens. The sheriff of such county shall issue a written directive or permit authorizing the constables to carry a handgun; provided, that each constable has completed the same eight-hour annual firearm training program as is required by this subsection (a).

Tenn. Code Ann. § 39-17-1315(a)(2). Thus, constables from counties falling within the population band described in this subsection may carry a handgun "at all times" if they obtain a written directive from the sheriff and meet statutory firearm-training requirements. A court is likely to interpret the "at all times" phraseology to allow these constables to carry a handgun outside their territorial (county-wide) jurisdictions. *See Anderson v. State*, 545 S.W.2d 951, 952 (Tenn. Crim. App 1976) ("Nothing in the statute suggests that the protection afforded policemen [from liability for carrying dangerous weapons] is limited by geography. The statute must be construed in favor of the appellant.").

Regarding firearm training, "[c]onstables must be range-qualified prior to being authorized to carry a firearm." Tenn. Code Ann. § 8-10-203. This statute regarding firearm training does not modify any of the requirements of Tenn. Code Ann. § 39-17-1315 as they apply to constables—much of which have since been replaced by the handgun-permitting process of Tenn. Code Ann. § 39-17-1351[1]—but rather restates the requirement that constables be qualified on the firing range and allows the Tennessee Constables Association or the local law-enforcement authority to sponsor the qualification. Tenn. Att'y Gen. Op. 93-62 (Oct. 20, 1993); *cf.* Tenn. Att'y Gen. Op. 03-092 at 3 (July 28, 2003) ("Constables with law enforcement authority are authorized, therefore, to carry a firearm provided they satisfy other statutory requirements.").

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[1] S*ee* Tenn. Att'y Gen. Op. 99-025 (Feb. 16, 1999) ("The sheriff's written directive and permit required for constables to carry a gun under former Tenn. Code Ann. § 39-17-1315(b), referred to in prior opinion of this Office as applicable to constables, has been deleted from statute and replaced by the handgun permitting process of Tenn. Code Ann. § 39-17-1351. Constables must apply to the Department of Safety for a handgun-carry permit pursuant to Tenn. Code Ann. § 39-17-1351." (footnote omitted)).

Tennessee's general handgun-carry permit requirements are codified at Tenn. Code Ann. § 39-17-1351. A permit holder is entitled "to carry any handgun or handguns that the permit holder legally owns or possesses." *Id.* § 39-17-1351(n)(1). A constable, like other citizens, may obtain a permit (provided that he or she meets the requirements of the permitting statute) and lawfully carry a handgun within Tennessee. *See* Tenn. Att'y Gen. Op. 99-038 (Feb. 24, 1999) ("As an individual, a constable, like other citizens, may obtain a handgun carry permit from the Department of Safety under Tenn. Code Ann. § 39-17-1351.").

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