

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

May 19, 2014

Opinion No. 14-56

County Employees Carrying Handguns while on Duty

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**QUESTIONS**

1. Excluding the county sheriff, does Tenn. Code Ann. § 39-17-1315(a), or any other statute, authorize a county official, specifically an executive supervisor of a county agency that is not a law-enforcement agency, to issue a written directive authorizing an employee who is a handgun-carry-permit holder to carry a handgun in the scope of the employee's official duties?

2. In the absence of a written directive issued pursuant to Tenn. Code Ann. § 39-17-1315(a), would a county have immunity under Tennessee's Governmental Tort Liability Act for a claim involving a county employee's carrying a handgun while on duty where the county has no written personnel policy prohibiting employees from carrying a firearm while on duty and has not posted notices prohibiting firearms on county property?

**OPINIONS**

1. No. There is no statutory authority providing for an executive supervisor of a county agency that is not a law-enforcement agency to issue a written directive authorizing an employee to carry a handgun in the scope of the employee's official duties.

2. A county would have immunity under the Governmental Tort Liability Act for injuries alleged to have arisen out of the county's failure to have a written personnel policy prohibiting employees from carrying a firearm while on duty or to post notices prohibiting firearms on county property.

**ANALYSIS**

1. Under Tenn. Code Ann. § 39-17-1315(a)(1)(A)(i), state and local law-enforcement officers who meet certain training requirements "may carry handguns at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed, regardless of the person's regular duty hours or assignments." The statute makes similar provision for employees of the Tennessee Emergency Management Agency, certain

representatives or employees of the Tennessee Department of Correction, and “[a]ny other officer or person authorized to carry handguns by this, or any other law of this state.” *Id.* § 39-17-1315(a)(1)(A)(ii)-(iv). *See, e.g.*, Tenn. Code Ann. § 13-20-419(b) (providing that officers of public-housing security force may receive a written directive to carry handguns under § 39-17-1315). But with the possible exception of subdivision (a)(1)(A)(i)’s inclusion of county magistrates,<sup>1</sup> nothing in Tenn. Code Ann. § 1315(a) or any other statute empowers a county agency that is not a law-enforcement agency to issue a written directive authorizing its employees to carry handguns at all times.<sup>2</sup> Indeed, the statute expressly contemplates that these written directives will be issued only by law-enforcement agencies. *See* Tenn. Code Ann. § 39-17-1315(a)(1)(B) (requiring that a copy of the written directive be retained by “the particular law enforcement agency that shall issue the directive”). *See also* Tenn. Att’y Gen. Op. 00-009 (Jan. 19, 2000) (§ 39-17-1315(a) “contemplates issuance of a written directive by a law enforcement agency to which an officer is attached”) (citing Tenn. Att’y Gen. Op. 92-18 (Feb. 28, 1992)).

Tennessee’s general handgun-carry-permit requirements are codified at Tenn. Code Ann. § 39-17-1351, and a permit holder is entitled “to carry any handgun or handguns that the permit holder legally owns or possesses.” Tenn. Code Ann. § 39-17-1351(n)(1). Provided that he or she meets the requirements of the permitting statute, a county employee who is not a law-enforcement officer may obtain a permit and lawfully carry a handgun within Tennessee. But the authority granted by Tenn. Code Ann. § 39-17-1315(a)(1)(A) does not extend to such a person.

2. Under the Tennessee Governmental Tort Liability Act (GTLA), local governmental entities are immune from suit for injuries resulting from their activities, except where the General Assembly has expressly removed such immunity. Tenn. Code Ann. § 29-20-201(a). “Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment,” Tenn. Code Ann. § 29-20-205, except where the injury arises out of, among other things, the “exercise or performance or the failure to exercise or perform a discretionary function,” *id.* § 29-20-205(1).

Although the term “discretionary function” is not defined in the GTLA, the Tennessee Supreme Court has adopted a test to determine whether an employee was

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<sup>1</sup> County magistrates are included in the list of those who may be authorized to carry handguns under § 1315(a)(1)(A)(i), *see* 2003 Tenn. Pub. Acts, ch. 144, but it is unclear under the statute whether such a written directive would be issued by the county governing body or by the county sheriff. The language cited above from § 1315(a)(1)(B), however, suggests the latter.

<sup>2</sup> Under Tenn. Code Ann. § 49-6-815, a director of schools, in conjunction with a school principal, may authorize persons to carry or possess firearms on school property, but such persons must be current or former law-enforcement officers. *Id.* § 49-6-815(a)(3). And in Tenn. Att’y Gen. Op. 00-009 (Jan. 19, 2000), this Office opined that a judge could authorize a court officer to carry arms as part of the judge’s inherent authority, citing Tenn. Code Ann. § 39-17-1306(c).

acting within the scope of discretionary-function immunity. *See Bowers v. City of Chattanooga*, 826 S.W.2d 427, 430 (Tenn.1992). Under this test, decisions that rise to the level of planning or policymaking are considered discretionary acts that do not give rise to tort liability; decisions that are merely operational are not considered discretionary acts and may give rise to liability. *Id.* at 430. A county's decision not to have a written personnel policy prohibiting employees from carrying a firearm while on duty would no doubt constitute policymaking; a county's decision not to post notices prohibiting firearms on county property would likely also amount to policymaking. Accordingly, under Tenn. Code Ann. § 29-20-205(1), a county's immunity under the GTLA would not be removed for injuries alleged to have arisen out of the county's failure to have such a personnel policy or to post such notices. Whether the county could still be liable under § 29-20-205 for injuries alleged to have arisen out of a county employee's negligent discharge of a firearm within the scope of his employment, however, would depend entirely upon the circumstances and is thus a question that is beyond the scope of this opinion.

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