STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 18, 2014

Opinion No. 14-87

Constitutionality of Firearms-in-Parking-Lots Statute on Vagueness Grounds

QUESTIONS

Is Tenn. Code Ann. § 39-17-1313 unconstitutionally vague so as to render it unenforceable?

OPINIONS

No.

ANALYSIS

As this Office observed in Tenn. Att'y Gen. Op. 13-41 (May 28, 2013), 2013 Tenn. Pub. Acts, ch. 16, worked a change to the criminal enforcement scheme for the State's regulation of firearms possession. That legislation enacted Tenn. Code Ann. § 39-17-1313, which makes special provision for the transportation and storage of firearms and ammunition in a handgun carry permit holder's motor vehicle while it is on any public or private parking area.

Tenn. Code Ann. § 39-17-1313 currently provides:[1]

> Notwithstanding any provision of law or any ordinance or resolution adopted by the governing body of a city, county or metropolitan government . . . that prohibits or regulates the possession, transportation or storage of a firearm or firearm ammunition by a handgun carry permit holder, the holder of a valid handgun carry permit recognized in Tennessee may, unless expressly prohibited by federal law, transport and store a firearm or firearm ammunition in the permit holder's motor vehicle, as defined in § 55-1-103, while on or utilizing any public or private parking area . . . .

In order for this exception to apply, the permit holder's vehicle must be "parked in a location where it is permitted to be," and the firearm or ammunition being transported or stored must be "kept from ordinary observation" if the permit holder

[1] Three amendments were made to the statute in 2014. *See* 2014 Tenn. Pub. Acts, chs. 498, 505, 768.

is in the vehicle. If the permit holder is not in the vehicle, the firearm or ammunition must be "kept from ordinary observation *and* locked within the trunk, glove box, or interior of the person's motor vehicle or a container securely affixed to such motor vehicle." Tenn. Code Ann. § 39-17-1313(a)(1), (2) (emphasis added). The terms "motor vehicle" and "parking area" are defined by the statute in subsection (c), and subsection (d) provides that the statute is not violated if the firearm or ammunition "is observed by another person or security device during the ordinary course" of the permit holder's securing it from observation "in or on a motor vehicle."

Due process requires notice of what the law prohibits. *City of Knoxville v. Entm't Res., LLC.*, 166 S.W.3d 650, 655 (Tenn. 2005). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). *See State v. Pickett*, 211 S.W.3d 696, 704-05 (Tenn. 2007). A criminal statute must give fair notice that certain activities are unlawful, *id.* at 702; it must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited," *Entm't Res.*, 166 S.W.3d at 655. *See Young v. State*, 531 S.W.2d 560, 562 (Tenn. 1975) ("All the Due Process Clause requires is that the law give sufficient warning that [people] may conform their conduct so as to avoid that which is forbidden.").

Tenn. Code Ann. § 39-17-1313, read in conjunction with other firearms laws but particularly Tenn. Code Ann. §§ 39-17-1309, -1311, and -1359,[2] gives fair notice that certain activities are unlawful, because it defines the exception to firearms offenses with sufficient definiteness that ordinary people can understand what conduct is *not* prohibited and thus know how "to avoid that which is forbidden." *Young*, 531 S.W.2d at 562.

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[2] Sections -1309, -1311, and -1359 prohibit the carrying or possession of firearms and other weapons on school property, public parks, and properly posted public or private property, respectively. Tenn. Code Ann. § 39-17-1307(a) prohibits the general carrying of a firearm. But 2014 Tenn. Pub. Acts, ch. 870, amended subsection (e) of Section -1307 to provide that it is an exception to the application of subsection (a) that a person is carrying or possessing a firearm or ammunition in a motor vehicle if the person (1) is not prohibited from possessing, receiving, or purchasing a firearm under federal or state law, and (2) is in lawful possession of the motor vehicle.

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