STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 18, 2014

Opinion No. 14-88

Possession of Firearms on Athletic Fields Used by Schools

QUESTIONS

1. Is Tenn. Att'y Gen. Op. 09-129 (July 24, 2009) still valid insofar as it opined that Tenn. Code Ann. § 39-17-1309 prohibits a handgun carry permit holder from possessing a firearm on or in an athletic field or recreation area situated in a public park while the athletic field or recreation area is being used by a school?

2. If the answer to Question 1 is yes, is Tenn. Code Ann. § 39-17-1309 void for vagueness?

OPINIONS

1. Yes, Tenn. Att'y Gen. Op. 09-129 remains valid.

2. No, Tenn. Code Ann. § 39-17-1309 is not void for vagueness.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1309 prohibits the possession of firearms and other weapons "on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any [school entity] for the administration of any public or private educational institution." *Id.* § 39-17-1309(b)(1), (c)(1). The statute makes no exception for the holder of a handgun carry permit. *See id.* § 39-17-1309(e) (listing exceptions to prohibition); *see also id.* § 39-17-1310 (listing affirmative defenses).

Tenn. Code Ann. § 39-17-1311 prohibits the possession of firearms and other weapons in or on any public park. *Id.* § 39-17-1311(a). This statute, however, does make an exception for the holder of a handgun carry permit. *See id.* § 39-17-1311(b)(1)(H). When an athletic field or recreation area used by a school entity is situated in a public park, this Office opined in Tenn. Att'y Gen. Op. 09-129 (July 24, 2009), that the exception for handgun carry permit holders in § 39-17-1311 must be read in harmony with § 39-17-1309 and concluded: "the legislature intended to allow handgun carry permit holders to carry their firearms into public parks *except onto athletic fields and into other recreation areas at times when they are actually being used by schools*." *Id.* at 3 (emphasis added). *See also* Tenn. Att'y Gen. Op. 09-160, at

3 (Sept. 28, 2009) ("The area where firearm possession would be prohibited could cover the entire park, or portions of the park, depending upon the nature of the school activity taking place and the configuration of the park property.").

Neither statute has been materially amended since 2009,[1] and Op. 09-129 remains valid. Tenn. Code Ann. § 39-17-1309 prohibits the possession of firearms on school athletic fields, school recreation areas, or any *other* property "owned, *used* or operated" by a school "for the administration of any public or private educational institution" (emphasis added). The word "other," which modifies the general category of "property used for the administration of an educational institution," signals that this general category is meant to describe, and thus *includes*, the specific kinds of property that immediately preceded it, i.e., athletic fields and recreation areas. It is not meant to be read in isolation such that it would apply only to school administrative buildings. *See* 2A N. Singer & J. Singer, *Sutherland on Statutory Construction* § 47:17 (7th ed. 2007) (quoting *Nat'l Bank of Commerce v. Estate of Ripley*, 61 S.W. 587, 588 (1901)) (where general words follow specific words in a statute, the rule of *ejusdem generis* "treat[s] the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words"). The statute thus prohibits the possession of firearms on or in any athletic fields or recreation areas used by schools. *See* Tenn. Att'y Gen. Op. 09-160, at 3 ("A plain reading of Tenn. Code Ann. § 39-17-1309 indicates that guns are prohibited on property used by the school.").

2. 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. 39-17-1309 is not void for vagueness. As discussed above, the statute gives fair notice that firearms may not be possessed on public athletic fields or recreation areas while such fields or areas are actually being used by a school; it thus allows ordinary people to know how "to avoid that which is forbidden." *Young*,

[1] In 2010, § 39-17-1311 was amended to include a definition for the term "greenway." *See* 2010 Tenn. Pub. Acts, ch. 1006. In 2013, the legislature enacted Tenn. Code Ann. § 39-17-1313, *see* 2013 Tenn. Pub. Acts, ch. 16, § 1, which authorizes the holder of a handgun carry permit to transport and store firearms in a motor vehicle while utilizing a public parking area.

531 S.W.2d at 562. As observed in Tenn. Att'y Gen. Op. 09-160, schools can use public athletic fields and recreation areas for athletic-team practices and competitions, classroom instruction, field days, and the like. *Id.* at 2, 3 n.3. "The presence of these activities would indicate that a park is in fact being 'used' by a school so that Tenn. Code Ann. 39-17-1309 would prohibit handgun carry permit holders from carrying firearms into the area where such activities are taking place." *Id.* at 2. "[I]t is not 'unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.'" *State v. Burkhart*, 58 S.W.3d 694, 698 (Tenn. 2001) (quoting *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952)). "A person who is aware of a possible application of the statute and nevertheless proceeds cannot complain of inadequate notice when arrested." *Burkhart*, 58 S.W.3d at 698.

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