

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

April 10, 2015

Opinion No. 15-33

License to Hunt and Possession of Firearms

Question 1

May a person who has been convicted of a felony or an offense involving domestic violence, with or without a subsequent restoration of rights, expungement or pardon, obtain a hunting license in Tennessee?

Opinion 1

Yes. Neither the wildlife statutes nor the rules promulgated thereunder disqualify a person convicted of a felony or an offense involving domestic violence from obtaining a hunting license.

Question 2

If a person who has been convicted of a felony or an offense involving domestic violence, with or without a subsequent restoration of rights, expungement or pardon, obtains a hunting license, are there any restrictions upon the type of weapon (*e.g.*, modern firearm, archery equipment, black-powder arms) such person may use for hunting?

Opinion 2

As a general matter, a person convicted of a felony or a misdemeanor crime of domestic violence is subject to the prohibitions against the possession of firearms or handguns in Tenn. Code Ann. § 39-17-1307. While it is a defense to the application of § 39-17-1307 if the possession or carrying was incident to lawful hunting, this defense is not available to persons convicted of a violent felony or a drug felony. The restoration of citizenship rights or the expunction of such convictions might remove the firearms disability under limited circumstances. Such persons would not be restricted from hunting with lawful archery equipment.

Question 3

May an adult who has been convicted of a felony or an offense involving domestic violence, with or without a subsequent restoration of rights, expungement or pardon, lawfully supervise a juvenile who is hunting under a license that permits adult supervision?

Opinion 3

When a juvenile is authorized to hunt under a license requiring adult supervision and the juvenile wishes to hunt with a firearm, an adult's ability to lawfully supervise the juvenile will depend upon the adult's ability to lawfully possess a firearm while hunting.

Question 4

May a person who has been convicted of a felony or an offense involving domestic violence lawfully, with or without a subsequent restoration of rights, expungement or pardon, possess any type of archery equipment, black-powder firearm, or other firearm?

Opinion 4

This question is answered in Opinion 2 above.

Question 5

If a person has been convicted of a crime that does not impose a disability against owning firearms under 18 U.S.C. § 922(g) because the crime was not an offense that is punishable by imprisonment by a term exceeding one year, as that term is defined in 18 U.S.C. § 921(a)(20), is that person prohibited from possessing a firearm under Tenn. Code Ann. § 39-17-1307 or some other provision of state law, with or without a subsequent restoration of rights, expungement or pardon?

Opinion 5

Because Tennessee's definition of a felony varies from the federal definition, it is possible for a person with a particular conviction to be prohibited from possessing a firearm or a handgun under Tenn. Code Ann. § 39-13-1307 even though the possession would not be prohibited under 18 U.S.C. § 922(g)(1).

Question 6

Under what circumstances may an individual under the age of twenty-one legally possess or own a firearm in Tennessee?

Opinion 6

Tennessee law expressly prohibits a person under 18 from knowingly possessing a handgun, though there are several defenses to prosecution for this offense. Tennessee law does not expressly prohibit a person under 21 from owning or possessing a firearm, but it does prohibit a person from purchasing a firearm knowing that he or she is prohibited from doing so under federal law, and federal law prohibits the sale of a firearm (other than a shotgun or rifle) to a person under 21.

ANALYSIS

1. The licensure provisions for hunting wildlife in Tennessee are codified at Tenn. Code Ann. §§ 70-2-101 to -226. It is unlawful to hunt in Tennessee without the requisite license. Tenn. Code Ann. §§ 70-2-101(a), -102(a). While the General Assembly has established certain exemptions to this general hunting-license requirement (*e.g.*, certain state residents born before March 1, 1926, *see* Tenn. Code Ann. § 70-2-201(c)(1), and landowners and tenants hunting on their own farmlands, *see* Tenn. Code Ann. § 70-2-204(a)), it has enacted only minimal qualifications for obtaining a hunting license.¹ Those qualifications consist primarily of certain age requirements and a schedule of fees for residents, Tenn. Code Ann. § 70-2-201(a), and nonresidents, Tenn. Code Ann. § 70-2-202(a), both of whom must “provide the correct information specified” on the license application. Tenn. Code Ann. §§ 70-2-201(b), -202(b). Neither the wildlife statutes nor the regulations promulgated thereunder by the Tennessee Fish and Wildlife Commission (TFWC) contain any provisions disqualifying persons convicted of a felony or an offense involving domestic violence from obtaining a hunting license or using a lawful hunting weapon.²

2 and 4. Article XI, § 13, of the Tennessee Constitution, which governs the protection and preservation of game and fish, was amended in 2010 to include the following pertinent language:

The citizens of this state shall have the personal right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law. The recognition of this right does not abrogate any private or public property rights, nor does it limit the state’s power to regulate commercial activity. Traditional manners and means may be used to take non-threatened species.

At the same time, Article I, § 26, of the Tennessee Constitution authorizes the legislature “to regulate the wearing of arms with a view to prevent crime.” A hunting license is not a license to carry or possess firearms, and Tennessee statutes impose specific disabilities regarding the possession and carrying of firearms on persons convicted of certain crimes.

It is unlawful for anyone convicted of a felony drug offense or a felony “involving the use or attempted use of force, violence, or a deadly weapon” to possess a firearm. Tenn. Code Ann. § 39-17-1307(b)(1). It is also unlawful for anyone convicted of any felony to possess a handgun. *Id.* § 39-17-1307(c)(1).³ And it is unlawful for anyone convicted of a misdemeanor crime of

¹ In addition to obtaining a license, persons born on or after January 1, 1969, must provide proof of satisfactory completion of an approved hunter-education course before hunting in Tennessee. Tenn. Code Ann. § 70-2-108(a).

² The TFWC is authorized to prescribe the manner and means for taking specific wildlife, and this is accomplished through the issuance of proclamations, which establish weapon and ammunition types for big and small game. *See* Tenn. Code Ann. § 70-4-107; *Tennessee Hunting & Trapping Guide 2014-15*, at 14 (available at <http://www.tn.gov/twra/pdfs/huntguide.pdf>).

³ A “firearm” means “any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.” Tenn. Code Ann. § 39-11-106(a)(11). A “handgun” is “any firearm with a barrel length of less than twelve inches (12”) that is designed, made or adapted to be fired with one (1) hand.” *Id.* § 39-11-106(a)(16).

domestic violence to possess a firearm. *Id.* § 39-17-1307(f)(1)(A).⁴ It is a defense to the application of § 39-17-1307 if the possession or carrying was “[i]ncident to lawful hunting.” *Id.* § 39-17-1308(a)(4).⁵ But this defense is not available to persons described in § 39-17-1307(b)(1), *i.e.*, those convicted of a drug felony or a felony involving the use of force or violence. *Id.* § 39-17-1308(b). These persons would therefore be prohibited from using any firearm, including any black-powder arms, while hunting.⁶ Such persons would not, however, be restricted from hunting through the use of lawful archery equipment, which would not meet the definition of a “firearm.”⁷

The Tennessee Supreme Court has held that the legislature intended that a person who has been convicted of a felony involving the use of force or violence “cannot possess a handgun, even where his or her citizenship rights have been restored pursuant to Tenn. Code Ann. § 40-29-101, *et seq.*” *State v. Johnson*, 79 S.W.3d 522, 528 (Tenn. 2002).⁸ The holding in *Johnson* applies as well to one convicted of a felony drug offense, *State v. Ferguson*, 106 S.W.3d 665, 667 (Tenn. Ct. App. 2003), but the law appears to recognize an exception for a felony drug offense that is more than 10 years old and involved a Schedule VI drug.

Tennessee Code Annotated § 39-17-1351 is the handgun-carry-permit statute, and under subdivision (j)(3) of that statute, no permit application shall be denied if the applicant’s full rights of citizenship have been restored, except for certain listed offenses. The excepted offenses include felony drug offenses involving Schedule VI drugs but only where “the offense occurred within ten (10) years of the date of application or renewal.”⁹ *See Smith v. State*, No. M2012-00115-COA-

⁴ Under subdivision (f)(1)(A), a person commits an offense who possesses a firearm and “[h]as been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921, and is still subject to the disabilities of such a conviction.”

⁵ This is not, however, a defense to the application of *federal law*, which imposes its own firearms disabilities on persons convicted of a felony or a misdemeanor crime of domestic violence. *See* 18 U.S.C. § 922(g)(1), (9).

⁶ *See supra* note 3. Black-powder arms would generally include muzzleloading firearms into which a projectile and/or propellant charge is loaded from the muzzle of the gun. Muzzleloading firearms are legal hunting devices under current TFWC Proclamation No. 13-08 (effective Aug. 1, 2013). *See* <http://tnsos.org/rules/WildlifeProclamations.php>. A black-powder arm may qualify as an “antique” firearm under federal law, *see* 18 U.S.C. § 921(16)(C); while Tennessee law exempts antique firearms from the prohibitions on sales by licensed dealers, *see* Tenn. Code Ann. § 39-17-1316(b)(1), it does not exempt them from the prohibitions on possession in § 39-17-1307, which apply to firearms “as defined in § 39-11-106.” (In Tenn. Att’y Gen. Op. 08-17 (Jan. 31, 2008), this Office opined to the contrary, but § 39-17-1307 has been amended since the date of that opinion.) *But see* Tenn. Code Ann. § 39-17-1364 (providing that it is lawful to purchase and have shipped directly to a person’s residence a black-powder weapon that meets the federal definition, *notwithstanding* § 39-17-1307).

⁷ TFWC Proclamation No. 13-08 recognizes longbows, recurves, compounds, and crossbows as legal archery hunting devices. The same proclamation expressly prohibits possession of “explosive arrowheads” while archery hunting. *See* TFWC Proclamation No. 13-08, §§ I, II(7)(c), <http://tnsos.org/rules/WildlifeProclamations.php>.

⁸ The version of § 39-17-1307(b)(1) in effect at the time prohibited the possession of a handgun by persons so convicted; in 2008, this subdivision was amended to prohibit the possession of a firearm. *See* 2008 Tenn. Pub. Acts, ch. 1166, § 1. The Court’s reasoning in *Johnson* applies equally to a violent or drug felon’s possession of a firearm.

⁹ Subdivision (j)(3) also excepts convictions for “burglary, any felony offense involving violence or use of a firearm or any felony drug offense involving a Schedule I, II, III, IV or V controlled substance or a controlled substance

R3-CV, 2012 WL 2914178, at *3 n.1 (Tenn. Ct. App. July 17, 2012) (citing Tenn. Code Ann. § 39-17-1351(j)(3)) (because handgun-carry-permit applicant’s felony Schedule VI drug offense was more than 10 years old, “so long as his full civil rights have been restored, he is eligible to obtain a handgun [permit] pursuant to Tennessee law”).

A person cannot carry a handgun without possessing it, so the specific provision in § 39-17-1351(j)(3) allowing for the issuance of a handgun carry permit to a person who has been convicted of a ten-year-old Schedule VI felony drug offense conflicts with the general prohibition in §§ 39-17-1307(b)(1)(B) and 39-17-1308(b) against the possession of a firearm by persons convicted of felony drug offenses. Under the rules of statutory construction, a specific provision of a statute prevails over a conflicting general provision, even if the conflict were to arise within the same statute. *Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011); *Woodroof v. City of Nashville*, 183 Tenn. 483, 488, 192 S.W.2d 1013, 1015 (1946).¹⁰ Therefore, the specific provision in § 39-17-1351(j)(3) prevails over the general provisions of §§ 39-17-1307(b)(1)(B) and 39-17-1308(b).

Under Tenn. Code Ann. § 40-32-101(g), persons who have been convicted of some low-grade (*i.e.*, Class E) felonies, including certain drug felonies, may be eligible to seek expunction of their offense. If the offender is able to obtain an expunction under this subsection, the firearms disability will be removed. *See id.* § 40-32-101(g)(15)(E) (“Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this subsection . . . shall be eligible to purchase a firearm . . . and apply for and be granted a handgun carry permit . . .”).

A pardon would enable a person with a *nonviolent* felony drug offense to obtain an expunction and the restoration of his or her right to possess a firearm. Tennessee Code Annotated § 40-32-101(h) permits “a person who was convicted of a nonviolent crime after January 1, 1980” to petition to have his record expunged and his firearm rights restored if he receives an executive pardon for his crime. *See Blackwell v. Haslam*, No. M2012-01991-COA-R3-CV, 2013 WL 3379364, at *11, *15 (Tenn. Ct. App. June 28, 2013), *perm. app. denied* (Tenn. Oct. 16, 2013).

3. A number of Tennessee regulations apply to hunters under the age of 17, some of whom must be accompanied by a qualified adult 21 years of age or older in order to hunt. For example, juveniles who are 10 years of age or older are eligible for an “apprentice hunting license” requiring adult supervision if they have not completed the mandatory hunter-education course as required in Tenn. Code Ann. § 70-2-108. *See* Tenn. Comp. R. & Regs. 1660-01-28-.05. The requirement of adult accompaniment or supervision contemplates that the adult must have access to the hunting weapon to be used by the juvenile. Indeed, current wildlife proclamations

analogue.” (The subdivision was amended in 2012 to add the reference to controlled-substance analogues. 2012 Tenn. Pub. Acts, ch. 848, § 27.)

¹⁰ Like those with a Schedule VI drug felony that occurred more than 10 years prior to their permit application, “[o]ther felons who are otherwise qualified can obtain a handgun permit if they have had their ‘full rights of citizenship’ restored pursuant to Tenn. Code Ann. §§ 39-17-1351(j)(3).” Tenn. Att’y Gen. Op. 02-110 (Oct. 24, 2002). For persons convicted of a non-violent or non-drug felony, all of the defenses under § 39-17-1308(a) would be available, including the defense for possession or carrying by a person authorized to carry under § 39-17-1351. *See id.* § 39-17-1308(a)(2).

concerning youth hunts specify that the accompanying adult “must remain in a position to take immediate control of the hunting device.” *See* TFWC Proclamation No. 14-05, § I.C.4 and 5.¹¹

When a juvenile is authorized to hunt under a license requiring adult supervision and the juvenile wishes to hunt with a firearm, an adult’s ability to lawfully supervise that juvenile will therefore depend upon the adult’s ability to lawfully possess a firearm while hunting. The ability of a person who has been convicted of a felony or a domestic-violence offense to lawfully possess a firearm while hunting is discussed above. If the juvenile wishes to hunt with lawful archery equipment, however, the same adult may lawfully provide supervision.

5. Federal law prohibits a person from possessing a firearm if he or she has been convicted of a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. § 922(g)(1). A “crime punishable by imprisonment for a term exceeding one year” does not include offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or any state offense classified as a misdemeanor and punishable by a term of imprisonment of two years or less. 18 U.S.C. § 921(a)(20).

As discussed above, Tenn. Code Ann. § 39-13-1307(b) and (c) prohibit a person who has been convicted of certain felonies from possessing a firearm or a handgun. Felonies are “[a]ll violations of law that may be punished by one (1) year or more of confinement or by the infliction of the death penalty.” Tenn. Code Ann. § 39-11-110. Because Tennessee’s definition of a felony varies from the federal definition, it is possible for a person with a particular conviction to be prohibited from possessing a firearm or a handgun under § 39-13-1307 even though the possession would not be prohibited under federal law. Also, because § 39-13-1307(f)(1) further prohibits the possession of a firearm by a person who has been convicted of a misdemeanor crime of domestic violence (as does federal law), the fact that a particular conviction does not satisfy the federal definition of a felony under 18 U.S.C. § 921 would not remove the firearms disability imposed by subdivision (f)(1) of the Tennessee statute.

6. Tennessee law does not expressly prohibit a person under 21 years of age from owning or possessing a firearm. Federal law, however, prohibits a federally licensed firearm dealer from selling a handgun to a person under 21. *See* 18 U.S.C. § 922(b)(1) (prohibiting sale of a firearm “other than a shotgun or rifle . . . to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.” And Tenn. Code Ann. § 39-17-1316(q)(1) prohibits a person from purchasing a firearm “knowing that the person is prohibited by state or federal law from owning, possessing or *purchasing* a firearm”) (emphasis added).¹²

¹¹ See <http://tnsos.org/rules/WildlifeProclamations.php>.

¹² Tennessee law also prohibits a person under 21 from obtaining a handgun carry permit. See *id.* § 39-17-1351(b).

Tennessee law does expressly prohibit a person under 18 years of age (*i.e.*, a juvenile) from knowingly possessing a handgun, Tenn. Code Ann. § 39-17-1319(b), though there are several defenses to prosecution for this offense, *see id.* § 39-17-1319(d).¹³

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¹³ Under § 39-17-1316(a)(1), a licensed firearm dealer is prohibited from selling *any* firearm to a person under 18 years of age. *See* 18 U.S.C. § 922(b)(1); *see also id.* § 922(x) (federal prohibitions against the possession of a handgun by a person under 18 years of age).