STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

July 27, 2016

Opinion No. 16-29

Interplay of Tenn. Code Ann. §§ 39-17-1309, -1311, and -1313; Scope of the phrase "while in use by" in the context of Tenn. Code Ann. § 39-17-1309.

Question 1

Does Tenn. Code Ann. § 39-17-1313 (2013) take priority over Tenn. Code Ann. § 39-17-1309 with reference to storage of weapons in vehicles on school grounds?

Opinion 1

Yes, to the extent Tenn. Code Ann. §§ 39-17-1309 and 39-17-1313 (2013) are in conflict, the provisions of 39-17-1313 (2013) take precedence over the conflicting provisions of § 39-17-1309.

Question 2

After the 2014 amendments to Tenn. Code Ann. § 39-17-1313, does Tenn. Code Ann. § 39-17-1313 still take priority over prohibitions on gun storage in Tenn. Code Ann. §§ 39-17-1309, -1311, and -1359?

Opinion 2

Yes. The 2014 amendment to Tenn. Code Ann. § 39-17-1313 broadened the previous exception to the prohibition of the storage of firearms and firearm ammunition, but did not otherwise change the relationship among the various sections of the statute.

Question 3

Does the language "or while in use by" in Tenn. Code Ann. § 39-17-1309, as amended in 2015, apply when no students or personnel of the school are present on the property in question? For instance, if a school simply stored equipment or supplies on private property, would Tenn. Code Ann. § 39-17-1309's prohibitions apply to that private property?

Opinion 3

Yes, the phrase "or while in use by," in the context of Tenn. Code Ann. § 39-17-1309 as a whole, applies even when students or school personnel are not present on the property. Thus, gun possession would be prohibited on property used to store equipment or supplies by an educational institution specified in the statute.

ANALYSIS

Before it was amended in 2014, Tenn. Code Ann. § 39-17-1313(a) (2013) provided that

> [n]otwithstanding §§ 39-17-1309, 39-17-1311, or § 39-17-1359, unless expressly prohibited by federal law, the holder of a valid handgun carry permit recognized in Tennessee may transport and store a firearm or firearm ammunition in the permit holder's privately owned motor vehicle, as defined in § 55-1-103, while on or utilizing any public or private parking area . . . .

After the 2014 amendments, § 39-17-1313(a) was revised as follows:

> Notwithstanding any provision of law or any ordinance or resolution adopted by the governing body of a city, county or metropolitan government, including any ordinance or resolution enacted before April 8, 1986, 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 . . . .

Tenn. Code Ann. § 39-17-1313(a) (2014).

Tennessee Code Annotated § 39-17-1309(b)(1) currently makes it a Class E felony

> . . . for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

Subsection (c)(1)(A) of the statute makes it a Class B misdemeanor

> . . . for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

Tennessee Code Annotated § 39-17-1311(a) makes it

> an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any weapon prohibited by § 39-17-1302(a), not used solely for instructional, display or sanctioned ceremonial purposes, in or on the grounds of any public park, playground, civic center or other building facility, area, or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.

Tennessee Code Annotated § 39-17-1359(a)(1) provides that,

> [e]xcept as provided in § 39-17-1313, an individual, corporation, or business entity or local, state or federal government entity or agent thereof is authorized to prohibit the possession of weapons by any person who is at a meeting conducted by, or on property owned, operated, or managed or under the control of the individual, corporation, business entity or government entity."

The primary objective of statutory construction is to carry out the legislative intent without broadening or restricting the statute beyond its intended scope. *State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013). When the statute is clear, the court will apply the plain meaning of the statute in its normal and accepted use. *State v. McNack*, 356 S.W.3d 906, 909 (Tenn. 2011); *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). When the statutory language is silent to the issue at hand, the reviewing court may consider the objective and spirit of the legislation. *Id*.

1. Tenn. Code Ann. § 39-17-1313 (2013) takes priority over § 39-17-1309 to the extent the two sections are in conflict.

Section 39-17-1313 (2013) in essence established an exception to the offenses and prohibitions enumerated in §§ 39-17-1309, 39-17-1311, and § 39-17-1359. Under its plain language—i.e., "[n]otwithstanding §§ 39-17-1309, 39-17-1311, or § 39-17-1359"—Tenn. Code Ann. § 39-17-1313 (2013) takes priority over Tenn. Code Ann. § 39-17-1309 to the extent the two sections are in conflict. "Notwithstanding" means "in spite of." *Webster's New Collegiate Dictionary* 779 (1981). Accordingly, Tenn. Code Ann. § 39-17-1313, operates and is effective in spite of § 39-17-1309 and, therefore, will take priority over § 39-17-1309 to the extent the two sections are in conflict.

This Office provided the same opinion in 2013. Tenn. Att'y Gen. Op. 13-41, 2013 WL 2455772, at *2 (May 28, 2013); Tenn. Att'y Gen. Op. 13-15, 2013 WL 772787, at *1 (Feb. 22, 2013); *see also* Tenn. Att'y Gen. Op. 09-30, 2009 WL 757330, at *2 (Mar. 18, 2009) (discussing effect of a "notwithstanding" preposition phrase in Tenn. Code Ann. § 39-17-1350 (a)).

2. The 2014 amendment to Tenn. Code Ann. § 39-17-1313 did not change its relationship to §§ 39-17-1309, -1311, and 1359.

The relationship of Tennessee Code Annotated § 39-17-1313 to 39-17-1309, -1311, and -1359 did not change as a result of the 2014 amendment to 39-17-1313. The 2014 amendment

replaced "[n]otwithstanding § 39–17–1309, § 39–17–1311, or § 39–17–1359" with "[n]otwithstanding any provision of law or any ordinance or resolution adopted by the governing body of a city, county or metropolitan government, including any ordinance or resolution enacted before April 8, 1986, that prohibits or regulates the possession, transportation or storage of a firearm or firearm ammunition by a handgun carry permit holder." 2014 Pub. Acts, ch. 768 (Apr. 24, 2014).

In other words, the 2014 amendment broadened the "notwithstanding" prepositional phrase to refer not just to the three enumerated Code sections but to extend to any law, ordinance, or resolution "that prohibits or regulates the possession, transportation or storage of a firearm or firearm ammunition by a handgun carry permit holder." Tennessee Code Annotated §§ 39-17-1309, -11, and -56 all involve prohibitions on weapon possession, transport, or storage. The amendment did not otherwise change the relationship among the statutory provisions or affect the priority discussed above. As a result, § 39-17-1313 still operates and is effective in spite of § 39-17-1309 and, therefore, will take priority over § 39-17-1309 to the extent the two sections conflict.

3. The Plain Language of Tenn. Code Ann. 39-17-1309's "While In Use" Encompasses Use of Property By Schools Even While School Attendees And/Or Personnel Are Not Present.

Tennessee Code Annotated §§ 39-17-1309(b)(1) and (c)(1)(A) prohibit gun possession in any public or private school building or on any campus, grounds, "or any other property owned, operated, *or while in use* by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution." (Emphasis added.)

According to the plain language of the statute, this prohibition applies even when no students or school personnel are present in or on the property being used by the educational institution because the "use" of property in this context is not limited to the physical occupation of property by people. A school may use its own or other property or buildings for storage of materials with no people present, just as a classroom in a school is used by the school whether or not a class is being conducted at any particular time. Both uses fall within the natural and commonly understood meaning of "use." *See Griffis v. Davidson Cnty. Metro Gov't*, 164 S.W.3d 267, 283 (Tenn. 2005) (discussing storage as use of property for school purposes); *Michael v. Jakes*, No. M1999-02257-COA-R3-CV, 2002 WL 1484448, at *8 (Tenn. Ct. App. July 12, 2002) (noting property was used to store vehicles), *perm. app. denied* (Tenn. Dec. 2, 2002).

The natural and commonly understood meaning of "while" is "during the time that." *New Oxford American Dictionary*, 3rd ed. Thus, the phrase "or while in use by" means, in this context, that gun possession is prohibited on property during any time it is used by an educational institution, regardless of whether students or school personnel are present on the property.

Moreover, the conjunction "or" is used to list alternatives, *id*., and, therefore, "or while in use by" signifies that the prohibition is the same for all the alternatives listed in the statute: gun possession is banned in the same way on property owned, operated, or used by an educational institution. The possession ban for classrooms is not lifted when students are outdoors for recess—i.e., the possession ban is not dependent on the physical presence of students or school personnel.

This reading is, moreover, consistent with the Tenn. Code Ann. § 39-17-1309 statutory scheme as a whole. Possession of guns is prohibited in any public or private school building or on any public or private school grounds owned, or operated, or while in use by an educational institution. The only exception is gun possession for instructional or ceremonial purposes. There is no exception for property that is unoccupied by students or school personnel, although the legislature easily could have included such an exception had that been its intent. On the contrary, the statute taken as a whole indicates a legislative intent, subject to the motor vehicle parking area exception established in Tenn. Code Ann. § 39-17-1313 (see Opinion 1 and Opinion 2, above), to ban guns and other weapons at all times from all property owned or used by a school whether or not people are present on or in the property.

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