

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

January 31, 2018

Opinion No. 18-04

Carrying or Possession of Firearms in Parks, Playgrounds, Civic Centers, or Other City or County Owned Public Venues

Question 1

Does Tenn. Code Ann. § 39-17-1311 prohibit possession of only those weapons listed in Tenn. Code Ann. § 39-17-1302(a), as referenced in Tenn. Code Ann. § 39-17-1311(a)?

Opinion 1

Tennessee Code Annotated § 39-17-1311(a) prohibits possession of those weapons listed in Tenn. Code Ann. § 39-17-1302(a) and prohibits possession of other types of weapons on recreational property owned or operated by state, county, or municipal governments at any time the person's conduct does not strictly conform to the requirements of Tenn. Code Ann. § 39-17-1311(b)(1).

Question 2

Does any provision of Tennessee law permit the holder of a valid handgun carry permit to lawfully possess handguns, rifles, or shotguns on the grounds of a public park, playground, civic center, or other building facility, area, or property owned, used, or operated by any state, county, or municipal government for recreational purposes?

Opinion 2

Tennessee Code Annotated § 39-17-1311(b)(1)(H) permits the holder of a valid handgun carry permit to possess only handguns in the areas, places, and facilities that are specifically described therein.

Question 3

Does any provision of Tennessee law permit civilians without a handgun carry permit to lawfully possess handguns, rifles, or shotguns on the grounds of a public park, playground, civic center, or other building facility, area, or property owned, used, or operated by any state, county, or municipal government for recreational purposes?

Opinion 3

Tennessee Code Annotated § 39-17-1311(b)(1)(J) permits civilians with or without a valid handgun carry permit to possess handguns, rifles, and shotguns on the grounds of a public park, playground, civic center, or other building facility, area or property owned, used, or operated by any state, county, or municipal government for recreational purposes, *but only* while the civilian is engaged in one of the activities specified in that subsection and only as long as the civilian's conduct strictly conforms to the statutorily circumscribed activity.

Question 4

If Tenn. Code Ann. § 39-17-1311 authorizes possession of firearms in or on the grounds of a public park, playground, civic center, building facility, area, or property owned by any state, county, or municipal government, or any instrumentality thereof for recreational purposes, may a county or municipal government prohibit possession of firearms in or on that property, and, if so, under what circumstances?

Opinion 4

With the enactment of Tenn. Code Ann. §§ 39-17-1311 and 1314, the State has chosen to preempt the entire field of regulation of firearms. Thus, county and municipal governments may not prohibit or otherwise regulate the possession of firearms in a manner that conflicts with State law.

ANALYSIS

1. Tennessee Code Ann. § 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.¹

The Legislature has exempted persons carrying other types of weapons from subsection (a), but only to the extent that their conduct conforms to one of the specific classifications in Tenn. Code Ann. § 39-17-1311(b)(1). Tenn. Code Ann. § 39-17-1311(b)(2). *See* Tenn. Att'y Gen. Op. 08-26 (February 14, 2008).

¹ The weapons listed in Tenn. Code Ann. § 39-17-1302(a) are: (1) An explosive or an explosive weapon, (2) A device principally designed, made or adapted for delivering or shooting an explosive weapon, (3) A machine gun, (4) A short-barrel rifle or shotgun, (5) Deleted by 2017 Pub. Acts, c. 339, § 3, eff. July 1, 2017, (6) Hoax device; (7) Knuckles, or (8) Any other implement for infliction of serious bodily injury or death that has no common lawful purpose.

Accordingly, Tenn. Code Ann. § 39-17-1311(a) prohibits possession of those weapons listed in Tenn. Code Ann. § 39-17-1302(a) and prohibits possession of other types of weapons on recreational property owned or operated by state, county, or municipal governments at any time the person's conduct does not strictly conform to the requirements of Tenn. Code Ann. § 39-17-1311(b)(1).

2. Tennessee Code Annotated § 39-17-1311 generally prohibits possession of firearms in or on recreational properties or other facilities owned by the state, county, or municipal governments. Tennessee Code Annotated § 39-11-1311(b)(1) provides two exceptions to the general prohibition. *First*, subsection (b)(1)(H) authorizes holders of valid handgun carry permits to possess handguns in parks and other specified outdoor recreational facilities and properties. *Second*, subsection (b)(1)(J) authorizes the possession of firearms for hunting, target and sport shooting, and while attending gun shows that are conducted with the approval of the facilities manager.

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Colonial Pipeline v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008). When the statutory language is clear and unambiguous, courts “apply the plain meaning without complicating the task.” *Id.* Moreover, under the rules of statutory construction, “[t]he mention of one subject signifies the exclusion of the other unmentioned subjects, and omissions are significant when statutes are express in certain categories but not others.” *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 739 (Tenn. 2011) (internal quotation marks omitted).

In plain and unambiguous terms, Tenn. Code Ann. § 39-11-1311(b)(1)(H) authorizes holders of valid handgun carry permits to possess a handgun in the places specifically identified in subsection (b)(1)(H)(i). The statute is silent regarding the possession of rifles or shotguns in those places. Thus, Tenn. Code Ann. § 39-17-1311(b)(1)(H) permits the holder of a valid handgun carry permit to possess only handguns in the areas, places, and facilities that are specifically described therein.

3. Tennessee Code Annotated § 39-17-1311(b)(1)(J) permits civilians to possess firearms if their conduct strictly conforms to the activities—e.g., hunting and sport or target shooting—within the limits specified under that subsection. Civilians may also lawfully possess firearms in their vehicles while “delivering or picking up passengers” as long as they do “not remove any weapon from the vehicle or utilize it in any manner.” Tenn. Code Ann. §§ 39-17-1311(b)(1)(J)(iv). Tennessee Code Annotated § 39-17-1311(b)(1)(J) does not require a valid handgun carry permit as a condition for lawful possession of a firearm for purposes of that subsection so long as the person's conduct strictly conforms to the statutorily permitted activity.

Accordingly, under Tenn. Code Ann. § 39-17-1311(b)(1)(J), civilians with or without a valid handgun carry permit may possess handguns, rifles, and shotguns on the grounds of a public park, playground, civic center, or other building facility, area or property owned, used, or operated by any state, county, or municipal government for recreational purposes, *but only* while the civilian is engaged in one of the specific activities set forth in that subsection and only as long as the civilian's conduct strictly conforms to the statutorily circumscribed activity.

4. The Tennessee Legislature has expressly “preempt[ed] the whole field of the regulation of firearms , . . .” including, but not limited to, the use, possession, transportation, and carrying of firearms, unless otherwise provided by state law.² Tenn. Code Ann. § 39-17-1314(a).

When the Legislature expressly preempts a particular field of regulation as it has done with respect to firearms and ammunition, a local regulation in the field may nevertheless be valid as long as there is no conflict between the state statute and a local regulation and the requirements of the local regulation are not unreasonable or discriminatory. *See, e.g., Capitol News Co., Inc. v. Metropolitan Gov't. of Nashville and Davidson County*, 562 S.W.2d 430, 434-35 (Tenn. 1978); *Southern Ry. Co. v. City of Knoxville*, 442 S.W.2d 619, 622 (Tenn. 1968). But a local government may not adopt regulations or laws that “infringe the spirit of a state law or are repugnant to the general policy of the state.” *Capitol News Co., Inc.*, 562 S.W.2d at 434.

In enacting Tenn. Code Ann. §§ 39-17-1311 and 1314, the Legislature has preempted the entire field of regulation of the possession and use of firearms, including the possession and use of firearms in public parks, playgrounds, civic centers, buildings, facilities, areas, and other facilities and property owned by any state, county, or municipal government, or instrumentality thereof for recreational purposes. Thus, counties and municipalities may not prohibit or otherwise regulate possession or use of firearms in or on those properties in any manner that conflicts with State law.

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² Tennessee Code Ann. § 39-17-1314 authorizes a local government to regulate firearms as follows:

(b) A city, county, town, municipality or metropolitan government is expressly authorized to regulate by ordinance, resolution, policy, rule or other enactment the following:

(1) The carrying of firearms by employees or independent contractors of the city, county, town, municipality or metropolitan government when acting in the course and scope of their employment or contract, except as otherwise provided in § 39-17-1313;

(2) The discharge of firearms within the boundaries of the applicable city, county, town, municipality or metropolitan government, except when and where the discharge of a firearm is expressly authorized or permitted by state law;

(3) The location of a sport shooting range, except as otherwise provided in §§ 39-17-316 and 13-3-412; and

(4) The enforcement of any state or federal law pertaining to firearms, ammunition, or components of firearms or ammunition, or combinations thereof.

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