

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

May 24, 2018

Opinion No. 18-22

Authority of an Off-duty Law Enforcement Officer to Carry a Firearm on Public or Private Property

Question 1

To what extent is an off-duty law enforcement officer, including a commissioned reserve deputy sheriff or police officer, authorized to carry a firearm on public or private property upon which notice is posted in accordance with applicable law prohibiting firearms on the property?

Opinion 1

Pursuant to Tenn. Code Ann. § 39-17-1350 “any law enforcement officer may carry firearms at all times and in all places within Tennessee, on-duty or off-duty. . . .” A full-time police officer who has been certified by the police officer standards and training commission and a commissioned reserve deputy sheriff who has received written authorization from the sheriff are among those defined as “law enforcement officers” under the statute. Their authority to carry a firearm on public or private property within Tennessee is limited only by the enumerated exceptions in the statute itself. A posting prohibiting firearms on the property is not one of those exceptions. Unless one of the exceptions in the statute applies, law enforcement officers may carry firearms onto public or private property in Tennessee, even if there is a posted prohibition.

Question 2

To what extent is an off-duty law enforcement officer, including a commissioned reserve deputy sheriff or police officer, authorized to carry a firearm on public or private property upon which written notice is not posted in accordance with applicable law, but for which verbal notice is given by the owner, operator, manager, or agent of such person that firearms are prohibited on the premises?

Opinion 2

Tennessee Code Annotated § 39-17-1359 describes the circumstances and manner in which one who owns, operates, manages, or controls property may prohibit weapons on the property. That statute does not apply to law enforcement officers carrying firearms and, as discussed in Opinion 1, may not be used to prohibit them from carrying firearms onto public or private property in Tennessee. In addition, Tenn. Code Ann. § 39-17-1359 describes the precise manner in which prohibitions against weapons must be posted. Even if the statute did apply to law enforcement officers, verbal notice that firearms are prohibited on the property would not satisfy the statutory posting requirements.

ANALYSIS

1. The questions posed necessitate an analysis of the relationship between Tenn. Code Ann. § 39-17-1350, which governs the authority of law enforcement officers to carry firearms, and Tenn. Code Ann. § 39-17-1359, which describes when and how persons who own, operate, manage, or control property may prohibit weapons on the property.

Tennessee Code Annotated § 39-17-1350 defines in very broad terms the authority of law enforcement officers to carry firearms¹ on either public or private property:

- (a) Notwithstanding any law to the contrary, any law enforcement officer may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer's regular duty hours or assignment, except as provided by subsection (c), federal law, lawful orders of a court or the written directives of the executive supervisor of the employing agency.

So long as one meets the statutory definition of a "law enforcement officer," one's otherwise unfettered ability to carry firearms onto public or private property may be limited only by federal law, lawful orders of a court, the written directives of the appropriate person at the employing agency, or those limits set forth in § 39-17-1350(c).² A full-time police officer who has been certified by the police officer standards and training commission and a commissioned reserve deputy sheriff who has received written authorization from the sheriff are among those defined as "law enforcement officers" under the statute. Tenn. Code Ann. § 39-17-1350(d)(1).³

The referenced subsection (c) states that the authority in the statute will not be extended to law enforcement officers going on school grounds or in school buildings unless they immediately inform the principal, or to law enforcement officers consuming or under the influence of beer, alcohol, a controlled substance or a controlled substance analogue, or to law enforcement officers attending a judicial hearing, but not engaged in the discharge of actual duties.

Tennessee Code Annotated § 39-17-1350 expressly supersedes all other laws within Title 39, Chapter 17, Part 13, which might otherwise appear to limit the ability of law enforcement officers to carry firearms:

¹ Tennessee Code Annotated § 39-17-1350 authorizes law enforcement officers to carry "firearms." Tenn. Code Ann. § 39-11-106(a)(11) defines a "firearm," as used in Title 39, as "any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use."

² There is an additional limitation in Tenn. Code Ann. § 39-17-1350(e) which states that in counties with populations within a specified range the authority to carry firearms "shall only apply to law enforcement officers who are law enforcement officers for those counties or law enforcement officers for municipalities located therein." Considering the federal census data for 1990, 2000 and 2010, this limitation applies to Bedford and Rutherford Counties.

³ Tennessee Code Annotated §§ 39-17-1350(d)(1)-(4) list and define various persons considered "law enforcement officers" for purposes of that statute. They include certain corrections staff, constables, and persons in the offices of district attorneys general. The statute also describes the training requirements for each of these categories of persons to be considered "law enforcement officers."

- (b) The authority conferred by this section is expressly intended to and shall supersede restrictions placed upon law enforcement officers' authority to carry firearms by other sections within this part.

The language of Tenn. Code Ann. § 39-17-1350 granting law enforcement officers broad authority to carry firearms on public and private property, naming only a few specific exceptions, and expressly superseding other laws on the subject, is clear and unambiguous. It must be read and applied according to its plain meaning. *Arden v. Kozawa*, 466 S.W.3d 758, 764 (Tenn. 2015). A posting prohibiting firearms on the property pursuant to Tenn. Code Ann. § 39-17-1359 is not one of the exceptions listed in Tenn. Code Ann. § 39-17-1350, and therefore such a posting is ineffective as against law enforcement officers.

2. Tennessee Code Annotated § 39-17-1359 describes the circumstances and manner in which one who owns, operates, manages, or controls property may prohibit weapons on the property. That statute plainly states that any such prohibitions shall apply “to any person who is authorized to carry a firearm by authority of § 39-17-1351.” Tennessee Code Annotated § 39-17-1351 sets forth the procedure for private citizens to obtain handgun carry permits. Because of the superseding effect of Tenn. Code Ann. § 39-17-1350, discussed above, and the self-limiting language of Tenn. Code Ann. § 39-17-1359(a)(2), it is clear that law enforcement officers may not be prohibited from carrying firearms on public or private property, except as specified in Tenn. Code Ann. § 39-17-1350.

In addition, Tenn. Code Ann. § 39-17-1359 describes the precise manner in which prohibitions against weapons must be posted. The statute describes where the postings must be located and specifies that English must be used with an option to use additional languages. Tenn. Code Ann. §§ 39-17-1359(b)(1)-(2). It specifies the wording to be used, the graphics required, and the sizes of both the written and graphic postings. Tenn. Code Ann. §§ 39-17-1359(b)(3)-(4). The statute does not provide for verbal notice. Thus, even if the statute did apply to law enforcement officers, verbal notice that firearms are prohibited on the property would not satisfy the statutory posting requirements.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

DIANNA BAKER SHEW
Assistant Attorney General

Requested by:

The Honorable Dale Carr
State Representative
568 Cordell Hull Building
Nashville, Tennessee 37243