

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

June 18, 2019

Opinion No. 19-07

Prohibition on handguns in buildings in which judicial proceedings are in progress

Question 1

Is it an offense under Tenn. Code Ann. § 39-17-1306(a) for a person who has a handgun permit under Tenn. Code Ann. § 39-17-1351 to carry a handgun in a building in which judicial proceedings take place if no judicial proceedings are in progress at the time that the person is in the building?

Opinion 1

No. The statutory prohibition against carrying a handgun “inside any building in which judicial proceedings are in progress” would not apply during a time when no judicial proceedings are being carried out in the building.

Question 2

Is it an offense under Tenn. Code Ann. § 39-17-1306(a) for a person who has a handgun permit under Tenn. Code Ann. § 39-17-1351 to carry a handgun in a building in which judicial proceedings are in progress if that person has no notice that judicial proceedings are taking place in the building?

Opinion 2

Because an offense occurs under Tenn. Code Ann. § 39-17-1306(a) only if the person carrying a handgun in a building in which judicial proceedings are in progress acts “intentionally, knowingly or recklessly,” the answer to this question necessarily depends on the specific facts and circumstances in each case.

Question 3

What is the meaning and scope of the phrase “judicial proceedings are in progress” as used in Tenn. Code Ann. § 39-17-1306(a)? Does it, for example, include times when the clerk’s office is open even if the judicial officer is not in formal session? Does it include times when the judicial officer is in chambers but not necessarily conducting formal courtroom proceedings? Does it include times when the judicial officer is conducting business by conference call (such as hearing motions) but no litigants are physically present?

Opinion 3

The phrase “judicial proceedings are in progress” as used in Tenn. Code Ann. § 39-17-1306(a) refers broadly to any court proceeding that is currently underway or being carried out. Depending on the specific facts and circumstances in any given case, “judicial proceedings” are not limited to formal courtroom proceedings but may include proceedings that are carried out in a judge’s chambers or elsewhere in a building, whether in person with litigants or attorneys or by conference call or other electronic means.

Question 4

Is anyone required to post any type of notice under Tenn. Code Ann. § 39-17-1306(a) to indicate to the public that firearms are or may be prohibited during specific times?

Opinion 4

No. Tenn. Code Ann. § 39-17-1306 contains no such notice-posting requirement.

Question 5

If a building is a gun-free zone under Tenn. Code Ann. § 39-17-1306(a) because “judicial proceedings are in progress,” are other employees or government officials who work in or are assigned to the building and who are eligible to carry a handgun under Tenn. Code Ann. § 39-17-1351 (*e.g.*, a mayor or a member of a legislative body of a metropolitan government) subject to criminal prosecution if they possess the firearm in the building at the time that “judicial proceedings are in progress”?

Opinion 5

Yes, they may be subject to criminal prosecution for a violation of Tenn. Code Ann. § 39-17-1306(a) unless they come squarely within one of the exceptions specified in Tenn. Code Ann. § 39-17-1306(c).

ANALYSIS

The statute in question, Tenn. Code Ann. § 39-17-1306(a), makes it a Class E felony for a person to

intentionally, knowingly, or recklessly carry on or about their person while inside any building in which judicial proceedings are in progress any weapon prohibited by § 39-17-1302(a), for the purpose of going armed; provided, that if the weapon carried is a firearm, the person is in violation of this section regardless of whether the weapon is carried for the purpose of going armed.

1. In general, this prohibition against carrying a handgun inside a building in which judicial proceedings are in progress applies to a person who has a valid handgun carry permit

pursuant to Tenn. Code Ann. § 39-17-1351. (The limited and very specific exceptions to this general prohibition are discussed below in **5**.)

The phrase “judicial proceedings are in progress” is not specifically defined in the statute. The legislature itself has decreed that, “[a]s used in [the Tennessee Code], undefined words shall be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language, except where a contrary intention is clearly manifest.” Tenn. Code Ann. § 1-3-105(b). “In seeking to determine the ‘natural and ordinary meaning’ of statutory language, the usual and accepted source for such information is a dictionary.” *English Mtn. Spring Water v. Chumley*, 196 S.W.3d 144, 148 (Tenn.Ct.App.2005).

Black’s Law Dictionary (10th ed. 2014) defines a “proceeding” broadly as the “regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and entry of judgment,” “[any procedural means for seeking redress from a tribunal or agency,” and “an act or step that is part of a larger action.” (Emphasis added.) It defines “judicial proceeding” similarly broadly as “[any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity.” (Emphasis added.) The phrase “in progress” commonly means “in the course of being done or carried out.” *New Oxford American Dictionary* (3rd ed. 2010).

Thus, a “judicial proceeding in progress” refers to any court proceeding that is currently underway or being carried out anywhere in the building at issue. It follows that if and when no judicial proceeding is being carried out anywhere in a building, then the statutory prohibition against carrying a handgun “inside any building in which judicial proceedings are in progress” would not apply.

2. A violation of Tenn. Code Ann. § 39-17-1306(a) is a Class E felony. Tenn. Code Ann. § 39-17-1306(b). The statute does not require that any notice be posted or otherwise given regarding the proscribed acts. Moreover, all persons are conclusively presumed to know the law. For that reason, a criminal defendant may not raise as a defense that he did not know the act that he committed was a crime. *State ex rel. Lawrence County v. Hobbs*, 250 S.W.2d 549, 553 (1952). Thus, lack of a posted notice would not be a defense to a felony charge under subsection (a).

At the same time, because an intentional, knowing, or reckless act is an element of the crime under Tenn. Code Ann. § 39-17-1306(a), conviction will require proof that the person acted “intentionally, knowingly or recklessly” as those mental states are defined for purposes of title 39. *See* Tenn. Code Ann. §§ 39-11-106, 39-11-301(b) and 39-11-302 (defining these three mental states for purposes of title 39). But whether a person has acted intentionally, knowingly, or recklessly can only be determined on a case-by-case basis, since that determination depends on the specific facts and circumstances of each case.

3. As discussed above in **1.**, the phrase “judicial proceedings are in progress” as used in Tenn. Code Ann. § 39-17-1306(a) encompasses, broadly, any court proceeding that is currently underway or being carried out. And as its dictionary definition makes clear, a “judicial proceeding” includes much more than just formal trials and hearings conducted in a courtroom. The legislature has instructed—and longstanding principles of statutory construction dictate—that

statutory language not be construed in a way that limits its natural and ordinary meaning. Tenn. Code Ann. § 1-3-105(b). Thus, depending on the specific facts and circumstances in any given case, “judicial proceedings” are not limited to courtroom proceedings but may include proceedings that are carried out in a judge’s chambers or elsewhere in a building, whether in person with litigants or attorneys or by conference call or other electronic means.

4. See analysis in 2., above.

5. Tennessee Code Annotated § 39-17-1306(c) specifies certain limited exceptions to the general prohibition established in subsection (a). Subsection (c) provides exceptions for judges, county commissioners, as specifically defined in the statute, certain law enforcement officers, guards employed by penal institutions, and court officers. Each exception is carefully tailored and will apply only if all the statutory prerequisites for that exception are met. For instance, the exception for judges applies only to a person who (1) is engaged in the “actual discharge of official duties as a judge,” (2) has a valid handgun permit, (3) keeps the handgun concealed at all times when in the discharge of such duties, *and* (4) “is vested with judicial powers under § 16-1-101.”

Unless a person comes squarely within one of the specifically listed exceptions in Tenn. Code Ann. § 39-17-1306(c), that person is subject to criminal prosecution if he or she violates subsection (a). Whether a particular county commissioner, for example, is excepted from the general prohibition of subsection (a) will depend on the particular facts and circumstances of each case, i.e., whether that county commissioner satisfies all the prerequisites for exemption that are specified in subsection (c).

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