STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 17, 2019

Opinion No. 19-16

Inmate Relations Coordinators and Correctional Officers Carrying Firearms Off-Duty

Question 1

May the Secretary of State issue identification cards as provided for in Tenn. Code Ann. § 39-17-1350(f) to qualified inmate relations coordinators and correctional officers employed by the Tennessee Department of Correction who have "completed the probationary period," or may the Secretary of State issue identification cards only to those qualified inmate relations coordinators and correctional officers who are "vested"?

Opinion 1

To comply with Tenn. Code Ann. § 39-17-1350(f), the Secretary of State may issue identification cards only to otherwise qualified inmate relations coordinators and correctional officers who are vested, not to those who have merely "completed the probationary period." "Vested" and "completed the probationary period" are not the same; they refer to different events and different employee status and they entail different time periods.

Question 2

May inmate relations coordinators and correctional officers who otherwise have qualified to carry firearms off-duty under Tenn. Code Ann. § 39-17-1350 and who have completed the probationary period but who are not vested carry firearms off-duty without having been issued an identification card under Tenn. Code Ann. § 39-17-1350(f)?

Opinion 2

Yes. The identification card is proof that the holder is authorized to carry a firearm, but it is not a necessary prerequisite to being authorized to carry a firearm off-duty.

Question 3

In 2002, the Attorney General opined that "vested" in Tenn. Code Ann. § 39-17-1350 refers to the employee's being vested in the state retirement system, which generally occurs only after five years or more of employment. Tenn. Op. Att'y Gen. No. 02-035 (Mar. 15, 2002). Does 2019 Tenn. Pub. Acts, ch. 92, § 1 alter the Attorney General's interpretation of "vested?"

Opinion 3

No.

ANALYSIS

With certain limited exceptions, Tenn. Code Ann. § 39-17-1350(a) authorizes properly trained "law enforcement officers" to "carry firearms at all times and in all places within Tennessee, on-duty or off-duty." Section 1350(d) defines the "law enforcement officers" to whom the statute applies. Between 2001 and 2019, the statutory definition of "law enforcement officer" included "a *vested* inmate relations coordinator employed by the department of corrections" and "a *vested* correctional officer employed by the department of correction." Tenn. Code Ann. § 39-17-1350(d)(2) (emphasis added).

Then, in 2019, the legislature amended § 39-17-1350(d)(2). Effective March 28, 2019, the definition of "law enforcement officer" no longer includes "a *vested* inmate relations coordinator" or "a *vested* correctional officer," but instead includes "an inmate relations coordinator who is employed by the department of correction and has *completed the probationary period*" and "a correctional officer who is employed by the department of correction and has *completed the probationary period.*" 2019 Tenn. Pub. Acts, ch. 92, § 1(emphasis added).

Since 2002, the statute has further provided that the Secretary of State shall, *upon request* from an "inmate relations coordinator or correctional officer who is *vested*," "issue a state identification card certifying that the inmate relations coordinator or correctional officer is authorized to carry a firearm." Tenn. Code Ann. 39-17-1350(f)(1) (emphasis added). If a qualified TDOC employee "desiring an identification card" requests and is issued a card, that officer "shall carry such a card at all times the officer is carrying a firearm." Tenn. Code Ann. § 39-17-1350(f)(2)-(4). "The card shall be sufficient proof that the inmate relations coordinator or correctional officer is authorized to carry a firearm pursuant to [§ 39-17-1350]." While the 2019 amendment replaced references to "vested" with references to "probationary period" in subsection (d)(2)—the definitional subsection—it did <u>not</u> similarly amend subsection (f)—the identification card subsection. Thus subsection (f) still refers only to "vested" employees.

1. The terms "vested" and "completed the probationary period" in § 39-17-1350 are not synonymous; they refer to different events and different employee status and they entail different time periods. "Probationary period" refers to the employee's "probationary period of employment," which is typically one year. Tenn. Code Ann. § 8-30-308(a) (the probationary period of employment shall "not [be] less than one (1) year"). "Vested" as used in Tenn. Code Ann. § 39-17-1350 refers to the employee's being vested in the state retirement system, which generally requires at least "five years of employment as a correctional officer with the Department of Correction." Tenn. Op. Att'y Gen. No. 02-035 (Mar. 15, 2002); *see* Tenn. Code Ann. § 8-36-906(e) ("vested" refers to the time it takes for TDOC employees to be "vested" in the state retirement system, which is five years).

The legislative history for the 2001, 2002, and 2019 amendments to Tenn. Code Ann. § 39-17-1350 shows that the legislature knows that "vested" and "completed the probationary period" have entirely different meanings. It has consistently understood "vested" to refer to the five years it takes a TDOC employee to vest in the state retirement system. *Debate on H.B. 1543*, 102nd

Gen. Assem. (Tn. Apr. 9, 2001) (statement of Rep. Windle that it takes "four or five years" for these TDOC employees to be vested); *Hearing on S.B. 1747 Before the S. Judiciary Comm.*, 102nd Gen. Assem. (Tn. Apr. 17, 2001) (statement of Sen. Jackson, Vice Chair, S. Jud. Comm., defining "vested" as "in the retirement system, five years or more"); *Debate on S.B. 1747*, 102nd Gen. Assem. (Tn. Apr. 26, 2001) (statement of Sen. Davis that, to be vested, the TDOC employees must "have worked at least five years" for the State). When amending the statute in 2002 to provide for the state identification cards at the request of "vested" TDOC employees, the legislature also understood "vested" to require five years of service. Representative Windle explained that the identification card would simplify encounters between law enforcement and off-duty TDOC employees by documenting that the TDOC employees had met the "five years of vested service" that gave them the right to carry firearms off-duty. *Debate on H.B. 2055*, 102nd Gen. Assem. (Tn. Mar. 11, 2002) (statement of Rep. Windle).

The legislative history particularly for the 2019 amendment shows that the legislature was well aware of the difference between the five-year vesting period and the one-year probationary period. Representative Windle explained that the 2019 change from "vested" to "probationary period" in the definition section would shorten the time that the TDOC employees must wait before being authorized to carry firearms off-duty from five years to one year. *Hearing on H.B. 0109 Before the Constitutional Protections & Sentencing Subcomm. of the H. Judiciary Comm.*, 111th Gen. Assem. (Tn. Feb. 13, 2019) (statement of Rep. Windle). Representative Curcio asked whether, under the amendment, these TDOC employees would receive their state identification cards from the Secretary of State after one year as opposed to "when they're vested, which is the five-year period." *Id.* (statement of Rep. Curcio, Member, Constitutional Protections & Sentencing Subcomm.). Representative Windle said he assumed the same card would be issued to TDOC employees who have worked "less than five years." *Id.* Senator Yager also discussed this amendment and reiterated that, by changing the "vested" requirement to a "completed-the-probationary-period" requirement, the amendment changed the "waiting period" from five years to one year. *Hearing on S.B. 1374 Before the S. Judiciary Comm.*, 111th Gen. Assem. (Tn. Mar. 5, 2019) (statement of Sen. Yager); *Debate on S.B. 1374*, 111th Gen. Assem. (Tn. Mar. 14, 2019) (statement of Sen. Yager).

In short, the legislative history shows that (1) the legislature understood the difference between "vested" and "probationary period," and (2) the legislature intended with the 2019 amendment to shorten from five years to one year the time that TDOC inmate relations coordinators and correctional officers must wait before being authorized to carry firearms off-duty. The 2019 change in the definition of "law enforcement officer" accomplishes that purpose: effective March 28, 2019, properly trained and qualified inmate relations coordinators and correctional officers who are employed by TDOC and who have completed the probationary period are "law enforcement officers" within the scope of § 39-17-1350 and, accordingly, may "carry firearms at all times and in all places within Tennessee, on-duty or off-duty."

However, although the 2019 amendment shortened the waiting period to one year, it did not alter or affect the time when these TDOC employees may request and be issued the state identification card provided for in § 39-17-1350(f). According to the plain language of § 39-17-1350(f), the Secretary of State may issue a card only to vested employees who request a card, and only vested employees may request a card. Tenn. Code Ann. § 39-17-1350(f)(1). Thus, an

otherwise qualified TDOC employee must still wait five years before requesting and being issued a card.

In short, since the legislature did not change "vested" in Tenn. Code Ann. § 39-17-1350(f), the identification card provided for in that subsection may only be issued to TDOC employees who are vested—i.e., have served for five years or more.

2. But this restriction on requesting and issuing cards does not have any bearing on the ability of qualified, properly trained TDOC employees to carry firearms off-duty after having completed a probationary period that is less than the vesting period. The card is not a prerequisite for carrying a firearm off-duty; it is merely "sufficient proof" that the bearer of the card is otherwise authorized to carry the firearm. *See* Tenn. Code Ann. § 39-17-1350(f)(4). The statute does not *require* a qualified employee to request an identification card or to have such a card; it provides only that an employee "desiring" a card may "request" one.[1] Tenn. Code Ann. § 39-17-1350(f)(1)-(3).

3. The 2019 amendment to § 39-17-1350(d)(2)—the definitional section—operates to reduce from five years to one year the waiting period before properly trained TDOC employees may carry firearms off-duty. But this change to § 39-17-1350(d)(2) does not change the Attorney General's interpretation of "vested." The legislature, understanding the difference between "vested" and "completed probationary period," did not choose to amend § 39-17-1350(f) to authorize the issuance of identification cards to employees who have completed their probationary periods. And since such cards are not a necessary prerequisite to meeting the definition of "law enforcement officer," there is no internal statutory conflict between § 39-17-1350(d)(2) and § 39-17-1350(f).

If the legislature wants identification cards to be available to TDOC employees who have completed their probationary periods as opposed to only those employees who have vested, it can and should amend § 39-17-1350(f) to say so. But a court will not rewrite the statute to reconstruct what the legislature may have intended but did not include. A court would, instead, apply the omitted-case canon of statutory construction, which posits that what a statutory text does not provide is simply unprovided. A court will not disregard what a statute plainly provides, and it is not the function of the courts to supply or correct a legislative oversight or omission. *See, e.g.*, *MacMillan v. Director, Div. of Taxation*,, 434 A.2d 620, 621 (N.J. Super. Ct. App. Div. 1981) (court may not supply a provision no matter how confident it is of what the legislature would have wanted). Here, the statute plainly provides identification cards only for vested employees. A court

[1] With respect to the issuance of the identification card, the statute contains only three requirements: (1) when a vested TDOC employee chooses to request a card, the TDOC commissioner is required to certify to the Secretary of State that the requestor is employed by TDOC and is vested; (2) upon receipt of certification, the Secretary of State is required to issue a card; and (3) and once the card is issued, the employee who chose to request the card must carry the card while carrying a firearm. Tenn. Code Ann. § 39-17-1350(f)(1)-(4). This statutory scheme is consistent with Representative Windle's explanation that the identification card is intended merely to simplify encounters between law enforcement and off-duty TDOC employees by providing proof that person carrying the firearm off-duty is a vested TDOC employee.

would not construe "vested" to mean "probationary period" even if the court is convinced that the legislature meant to changed "vested" to "probationary period."

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