

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

March 14, 2022

Opinion No. 22-04

Scope of the phrase “inside any building in which judicial proceedings are in progress” in Tenn. Code Ann. § 39-17-1306

Question 1

Does the prohibition in Tenn. Code Ann. § 39-17-1306 against carrying weapons “inside any building in which judicial proceedings are in progress” apply only to the building in which the court’s chambers or courtroom exists, or does the prohibition extend to the private residence of a judge or to another similar building from which a judge participates in “judicial proceedings” by conference call or video conference?

Opinion 1

The prohibition in Tenn. Code Ann. § 39-17-1306 against carrying weapons in buildings in which judicial proceedings are in progress may be reasonably construed to apply only to those buildings in which a judge customarily conducts judicial proceedings, such as courthouses and criminal justice facilities. It does not appear that the General Assembly intended Tenn. Code Ann. § 39-17-1306 to apply to buildings from which a judge conducts a judicial proceeding remotely by conference call or videoconference, such as the judge’s private residence or another similar building.

Question 2

Does the prohibition in Tenn. Code Ann. § 39-17-1306 against carrying weapons “inside any building in which judicial proceedings are in progress” include buildings other than the building in which the judge is physically present, such as an attorney’s private residence or law office or similar buildings from which non-judicial participants take part in judicial proceedings remotely by conference call or video conference?

Opinion 2

The prohibition in Tenn. Code Ann. § 39-17-1306 against carrying weapons in buildings in which judicial proceedings are in progress may be reasonably construed to apply only to those buildings in which a judge customarily conducts judicial proceedings, such as courthouses and criminal justice facilities. It does not appear that the General Assembly intended Tenn. Code Ann. § 39-17-1306 to apply to other buildings such as private residences, business offices or other similar buildings from which non-judicial participants—e.g., attorneys or witnesses—might participate in judicial proceedings by conference call or videoconference.

ANALYSIS

Tennessee law makes it a felony for a person to carry weapons while that person is “inside any building in which judicial proceedings are in progress.” Tenn. Code Ann. § 39-17-1306(a) (emphasis added).¹ Law enforcement officers, bailiffs, marshals, and other court officers who have “responsibility for protecting persons or property or providing security” are exempt from this statutory ban on carrying weapons. Tenn. Code Ann. § 39-17-1306(c)(1). Also exempted are persons who have been directed by a court “to bring” a firearm for the purpose of providing evidence. *Id.* § 39-17-1306(c)(2).

Questions 1 and 2 are both essentially questions as to whether Tenn. Code Ann. § 39-17-1306(a) applies only to buildings such as courthouses and criminal justice facilities in which judicial proceedings are customarily conducted or whether it applies also to buildings from which persons are remotely participating in judicial proceedings by conference call or video conference. Both are questions of statutory construction—i.e., questions about the meaning and scope of the phrase “any building in which judicial proceedings are in progress.”

The most basic principle of statutory construction is to give effect to the legislative intent without unduly restricting or expanding the coverage of a statute beyond its intended scope. *State v. Frazier*, 558 S.W.3d 145, 152 (Tenn. 2018); *Westgate Smoky Mountains v. Phillips*, 426 S.W.3d 743, 747-48 (Tenn. 2013); *State v. Alford*, 970 S.W.2d 944, 947 (Tenn. 1998) (courts cannot expand the scope of a statute to create results not intended by the legislature). To fulfill this directive, courts must begin with the plain language of the statute and the words that the General Assembly has chosen. *Frazier*, 558 S.W.3d at 152; *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010).

And because words are known by the company they keep, courts must construe these words in the context in which they appear in the statute and in light of the general purpose of the statute. *Lee Med.*, 312 S.W.3d at 526-27. Accordingly, courts should avoid basing their interpretation on a single phrase or word. *Id.* at 527 (citing *Westinghouse Elec. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984)). Indeed, canons of statutory construction may lead to incorrect results if applied “without attention to context.” *In re Estate of Tanner*, 295 S.W.3d 610, 624 n.13 (Tenn. 2009). “[T]he language of a statute cannot be considered in a vacuum, but ‘should be construed, if practicable, so that its component parts are consistent and reasonable.’” *Id.* at 614 (quoting *Marsh v. Henderson*, 221 Tenn. 42, 48, 424 S.W.2d 193, 196 (1968)).

Courts will also construe a statute in a way that avoids placing its constitutionality in doubt. *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 522 (Tenn. 2005); *Davis-Kidd*

¹The full text of § 39-17-1306(a) is as follows:

No person shall intentionally, knowingly, or recklessly carry on or about the person while *inside* any building in which judicial proceedings are in progress any weapon prohibited by Tenn. Code Ann. § 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.

Booksellers, Inc. v. McWherter, 866 S.W.2d 520, 529-30 (Tenn. 1993). This principle of statutory construction is known as the “constitutional-doubt canon.”

When the language of a statute is clear and unambiguous, courts need not look beyond the four corners of the statute to ascertain its meaning. *Lee Med.*, 312 S.W.3d at 527; *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 309 (Tenn. 2008). On the other hand, when a statute “is susceptible [to] more than one reasonable interpretation,” *Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001), it is appropriate to discern legislative intent from sources other than the statutory language, such as the broader statutory scheme, the history and purpose of the legislation, public policy, historical facts preceding or contemporaneous with the enactment of the statute, earlier versions of the statute, the caption of the act, and the legislative history of the statute. *Womack v. Corrections Corp. of Am.*, 448 S.W.3d 362, 366 (Tenn. 2014); *Lee Med.*, 312 S.W.3d at 527-28. And in particular, the provisions in title 39 are to be “construed according to the fair import of [their] terms, including reference to judicial decisions and common law interpretations, to promote justice, and effect the objectives of the criminal code.” Tenn. Code Ann. § 39-11-104.

When the language of Tenn. Code Ann. § 39-17-1306 is considered in its entirety and in the appropriate context, one could reasonably conclude that the prohibition against carrying weapons “inside any building in which judicial proceedings are in progress” applies only to buildings in which judges customarily conduct judicial proceedings, such as courthouses and criminal justice facilities.

First, “[t]he obvious intent of [Tenn. Code Ann. § 39-17-1306] is to ensure the safety of judges, lawyers, court personnel, litigants, witnesses, and observers *present in the courtroom* and to assure the proper decorum and deportment during judicial proceedings.” *State v. Williams*, 854 S.W.2d 904, 907-908 (Tenn. Crim. App. 1993) (emphasis added). In other words, the intent is to protect people in courthouses—i.e., in buildings where their participation in judicial proceedings requires them to come into contact with others who may pose a risk if they are armed. But a lawyer or judge or witness participating in a judicial proceeding remotely from his or her own home or office does not face the risks associated with physical presence in courthouses, so there is no reason to extend the meaning of “building” to include buildings from which people are participating remotely. Doing so would be outside the scope of the legislative intent behind § 39-17-1306.

Second, the exemptions specified above evince a legislative intent to include only such buildings as courthouses and criminal justice facilities in which judicial proceedings are traditionally and customarily conducted, because those exemptions apply to officials and other persons who would only be in courthouses—namely, law enforcement officers, bailiffs, marshals, and other court officers who have “responsibility for protecting persons or property or providing security.” Tenn. Code Ann. § 39-17-1306(c)(1).

Third, when Tenn. Code Ann. § 39-17-1306 was enacted in 1989, the commercial internet had not been developed, *see Prodigy Servs. Corp., Inc. v. Johnson*, 125 S.W.3d 413, 416-17 (Tenn. Ct. App. 2003) (observation by court while examining a 1989 tax statute), and remote participation in judicial proceedings was by no means commonplace. Thus, it is unlikely that the legislature intended “buildings” to include buildings from which people participate remotely in judicial proceedings. Had that been the intent, the General Assembly could have and would have

implemented that intent by amending the statute as technology developed to allow remote participation. To the contrary, while the statute has been amended several times since 1989, none of the amendments evidence an intent to include buildings from which persons are remotely participating in judicial proceedings by conference call or video conference.²

Fourth, the constitutional-doubt canon would make a court disinclined to interpret the prohibition in Tenn. Code Ann. § 39-17-1306 broadly to encompass private residences, since firearm possession there is protected by the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570, 595, 635 (2008) (holding that the Second Amendment confers an individual right to possess a firearm and to use that firearm for traditionally lawful purposes, such as self-defense, within the home); *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms applies to the States by virtue of the Fourteenth Amendment). Construing Tenn. Code Ann. § 39-17-1306 as applying only to those buildings in which a judge customarily conducts judicial proceedings, such as courthouses and criminal justice facilities, avoids constitutional conflict and safeguards Second Amendment rights. *See Heller*, 554 U.S. at 626-27 (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms . . . in sensitive places such as schools and government buildings . . .”).

In sum, the prohibition in Tenn. Code Ann. § 39-17-1306 against carrying weapons in buildings in which judicial proceedings are in progress may be reasonably construed to apply only to those buildings in which a judge customarily conducts judicial proceedings, such as courthouses and criminal justice facilities. It does not appear that the General Assembly intended Tenn. Code Ann. § 39-17-1306 to apply to buildings from which a judge conducts a judicial proceeding remotely by conference call or videoconference, such as the judge’s private residence or another similar building. Nor does it appear that the General Assembly intended Tenn. Code Ann. § 39-17-1306 to apply to other buildings such as private residences, business offices or other similar buildings from which non-judicial participants—e.g., attorneys or witnesses—might participate in judicial proceedings by conference call or videoconference.

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² Amendments to Tenn. Code Ann. § 39-17-1306 since its enactment include additional exemptions provided to judges, elected local governmental officials, and county attorneys who meet specified requirements, *see* 2020 Tenn. Pub. Acts, ch. 681, §§ 1, 2; 2018 Tenn. Pub. Acts, ch. 880, § 1; 2014 Tenn. Pub. Acts, ch. 663, § 1; 2011 Tenn. Pub. Acts, ch. 469, § 1; 2000 Tenn. Pub. Acts, ch. 988, § 2; 1990 Tenn. Pub. Acts, ch. 1029, § 5, and an amendment in 2017 which deleted the word “room” in the phrase “inside any room in which judicial proceedings are in progress” in subsection (a) and replaced it with the word “building,” 2017 Tenn. Pub. Acts, ch. 467, § 5.

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