

STATE OF TENNESSEE

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Opinion No. 05-154

Civilian Handgun Permits

QUESTIONS

1. Does Tennessee law require that individuals who have been issued civilian handgun permits under Tenn. Code Ann. § 39-17-1351 carry the handgun(s) concealed?
2. If Tennessee law does not require concealment of a handgun by a civilian handgun permit holder, may a law enforcement officer legally arrest an individual for carrying a handgun openly in Tennessee if the individual is not carrying it in a prohibited location (e.g., courtroom)?
3. May a law enforcement officer legally seize a handgun carry permit from an individual when that individual is arrested or charged with a crime?

OPINIONS

1. No. Neither Tenn. Code Ann. § 39-17-1351, nor any other statute governing the carrying of firearms, requires the holder of a handgun carry permit to carry the handgun in a concealed manner.
2. Yes. A handgun carry permit holder may be arrested for carrying a handgun openly if he or she is using the handgun to commit a crime, or is otherwise engaged in criminal activity while carrying the handgun.
3. No. Tenn. Code Ann. § 39-17-1352(c) states that a law enforcement officer may only seize a handgun carry permit when directed to do so by the Department of Safety.

ANALYSIS

1. The primary objective of statutory construction is to ascertain legislative intent. If the language of the statute is clear and unambiguous, courts are supposed to ascertain that intent from the plain and ordinary meaning of the language. *Honsa v. Tombigbee Transport Corp.*, 141 S.W.3d 540 (Tenn. 2004).

The plain meaning of the statutes governing, or prohibiting, the carrying of handguns and other weapons indicates that, in situations where the legislature has permitted the carrying of

handguns, the legislature intended to authorize the carrying of handguns both openly and concealed. The statutes governing the wearing and carrying of firearms neither expressly prohibit the permit holder from carrying a handgun openly, nor expressly require the permit holder to carry the handgun concealed.¹

Reading Tenn. Code Ann. § 39-17-1351 *in pari materia* with §§ 39-17-1307 and 1308(a)(2) indicates that the legislature intended to allow carry permit holders to carry their handguns both openly and concealed. If the legislature had intended to require a permit holder to carry his or her handgun concealed, it would have done so by prohibiting the open carrying of a handgun and expressly requiring the concealed carry of a handgun.²

2. As set forth in part 1, above, the holder of a handgun carry permit may lawfully carry his or her handgun both openly and concealed.³ Therefore, a permit holder should not be subject to arrest solely because the handgun is being carried openly. There is nothing, however, in any of the statutes cited in part 1 that would prohibit the arrest of a handgun permit holder for other crimes.⁴

¹ Tenn. Code Ann. § 39-17-1351 sets forth the requirements that must be satisfied for the issuance of a carry permit to a citizen of this state. It also sets forth the requirements for honoring permits issued by other states on the basis of reciprocity. Tenn. Code Ann. § 39-17-1351(r). The grounds under which a police officer may hold and/or seize a handgun in the possession of a permit holder are listed in Tenn. Code Ann. § 39-17-1351(t). The statute, however, is silent on whether a permit holder may carry a handgun openly.

Other statutes which address the carrying of handguns and other firearms are also silent on the issue. Tenn. Code Ann. § 39-17-1307, which prohibits the carrying of weapons for purposes of going armed, makes no distinction between weapons carried openly and those which are carried concealed. Tenn. Code Ann. § 39-17-1308(a)(2) states that possession of a handgun carry permit is a defense to a charge of carrying a weapon for purposes of going armed, but does not specify whether the handgun must be concealed or carried openly.

² In the past, the General Assembly has imposed specific requirements concerning the carrying of firearms in public. The former statute prohibiting the carrying or possession of firearms, Tenn. Code Ann. § 39-6-1701 (repealed Acts 1989, c. 591 §1) stated, in pertinent part:

Any person who shall carry in any manner whatever, with the intent to go armed . . . any pistol or revolver of any kind whatever, except the army or navy pistol which shall be carried openly in the hand, or any other dangerous weapon, shall be guilty of a misdemeanor.

³ A permit holder may not carry a handgun, either openly or concealed, in areas where the legislature has expressly prohibited it, such as where alcoholic beverages are served (Tenn. Code Ann. § 39-17-1305), during judicial proceedings (Tenn. Code Ann. § 39-17-1306), on the grounds of any public or private school (Tenn. Code Ann. § 39-17-1309), in public parks, playgrounds, civic centers, and other public recreational buildings and grounds (Tenn. Code Ann. § 39-17-1311), or where an individual, corporation, business entity, or local, state, or federal government entity has prohibited the possession of a weapon under the provisions of Tenn. Code Ann. § 39-17-1359.

⁴ Under Tenn. Code Ann. § 39-17-1308(a)(2), possession of a handgun permit is a defense to the crime of carrying a weapon for the purpose of going armed.

3. Tenn. Code Ann. § 39-17-1352(c) is the only statute which authorizes law enforcement officers to seize handgun carry permits. It allows law enforcement officers to seize permits only at the direction of the Department of Safety, after a permit has been suspended or revoked. There are no statutes authorizing a law enforcement officer to seize a handgun carry permit under any other circumstances.

Under rules of statutory construction, the expression of one thing implies the exclusion of others. *State v. Adler*, 92 S.W.3d 397 (Tenn. 2002). The failure to authorize law enforcement officers to seize permits, except under the narrow grant of authority in Tenn. Code Ann. § 39-17-1352(c), indicates that the legislature did not intend to authorize law enforcement officers to seize handgun carry permits except at the direction of the Department of Safety, pursuant to Tenn. Code Ann. § 39-17-1352(c).

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