

STATE OF TENNESSEE

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Opinion No. 01-126

Correctional Officers Carrying Firearms While Off-Duty

QUESTION

Does Chapter 175 of the 2001 Public Acts of Tennessee, which authorizes vested correctional officers employed by the Department of Correction to carry firearms while off-duty pursuant to Tenn. Code Ann. § 39-17-1350(a), also authorize other security personnel employed by the Department of Correction to carry firearms while off-duty?

OPINION

No. Chapter 175 of the 2001 Public Acts of Tennessee authorizes the off-duty carrying of firearms only by correctional officers who are vested with law enforcement authority by virtue of designation by the Commissioner of Correction pursuant to , and consistent with the requirements of, Tenn. Code Ann. § 4-3-609.

ANALYSIS

Tenn. Code Ann. § 39-17-1350(a) authorizes the carrying of firearms by off-duty law enforcement officers. It states:

Notwithstanding any provision of 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 assignments, except as provided by subsection (c), federal law, lawful orders of court or the written directives of the executive supervisor of the employing agency.

The term “law enforcement officer” is defined in Tenn. Code Ann. § 39-17-1350(d). Before the enactment of Chapter 175, this section defined law enforcement officer as “a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission.”

Chapter 175 amended Tenn. Code Ann. § 39-17-1350(d) by deleting the period at the end of the section and inserting “, or a vested correctional officer employed by the department of correction.” Tenn. Pub. Acts 2001, ch. 175, §1. Thus the question posed by the request is what is meant by “vested correctional officer.”

When a statute is amended, it is presumed that the legislature intended to change the law. *Lavin v. Jordon*, 16 S.W.3d 362 (Tenn. 2000). The amendment, however, should not be construed more broadly than a statute expressly declares or fairly implies. *Winter v. Smith*, 914 S.W.2d 527 (Tenn. App. 1995). Chapter 175 added a new class of law enforcement personnel, vested correctional officers employed by the Department of Correction, to the group of law enforcement officers who may lawfully carry firearms while off-duty. Nowhere in Chapter 175 or the rest of Title 39 is the term “vested correctional officer” defined.

Definition of correctional officer

Formerly, the term “correctional officer” was defined in Title 39 at § 39-5-438. That definition was originally set forth by Chapter 825 of the 1976 Public Acts of Tennessee, which stated:

“Correctional officer” means any person employed full time by the Tennessee state department of correction or by any county or municipality in Tennessee whose primary responsibility is the guarding, custody, industry and treatment of a group of inmates at a state correctional institution or in a county, metropolitan or municipal jail, workhouse, lock-up or other detention facility.

That statute was repealed, however, by Chapter 591 of the 1989 Public Acts of Tennessee, as part of the 1989 revisions to the criminal code. Thus, there is currently no definition of the term in Title 39.

There does not appear to be any definition of the term “correctional officer” in any other part of the code, either. However, Title 41 contains references to the oath required of “officers and other persons so employed to control and manage the penitentiary,”¹ and to the qualifications required of correctional officers.² In addition, the Department of Personnel has, pursuant to statute and rule, adopted a

¹Tenn. Code Ann. § 41-1-103(prescribing oath for such officers and employees).

²Tenn. Code Ann. § 41-1-116 requires, among other things, that correctional officers have a high school diploma or equivalent, have fingerprints on file with the Tennessee Bureau of Investigation, be free from mental disorders and complete basic and recurrent training.

classification specification series for the position of “correctional officer.”³ These specifications were adopted pursuant to the statutory authority conferred on the Department of Personnel by Tenn. Code Ann. § 8-30-203, and the regulatory authority contained in rules duly promulgated by the Department. Rules and Regulations of the State of Tennessee, Department of Personnel Rules 1120-3-.03, and 1120-3-.02-.04.⁴ In these class specifications, the Department of Personnel has defined the class titles of correctional officer, and correctional corporal through correctional captain.⁵ The duties and responsibilities set forth in each of these class titles incorporate the following core security activities: “operates and utilizes a variety of equipment including two-way radios, firearms, mace, electronic gates, [and] television cameras, ensures the safety of residents through supervision of daily activities. . . breaks up fights or other potentially dangerous situations by persuasion or the use of physical force. . . [and] enforces policy and procedure for operations and functions.”⁶ The Department has established class titles for other correctional personnel,

³Department of Personnel Class Code 45741 dated December 1, 1986; 45742 dated April 1, 1985, 4573 dated April 1, 1993; 45744 dated May 1, 1993; 45745 dated May 1, 1993. Within the series of “correctional officer” is the entry level correctional officer; correctional corporal; correctional sergeant; correctional lieutenant; and the highest supervisory class, correctional captain.

⁴Rule 1120-3-.03 states the “classification plan established and maintained by the Commissioner is a compilation of the officially authorized positions for the State service.” It further states that the plan contains the classification specification for each classification in the career service. Rule 1120-3-.04 provides for the contents of classification specifications.

⁵Class Code 45741 dated December 1, 1986; 45742 dated April 1, 1985, 4573 dated April 1, 1993; 45744 dated May 1, 1993; 45745 dated May 1, 1993. Within the series of “correctional officer” is the entry level correctional officer; correctional corporal; correctional sergeant; correctional lieutenant; and the highest supervisory class, correctional captain.

⁶The classification specification for Department of Personnel Class Code 45741, “correctional officer” summarizes the classification as “the entry-working class in the Correctional Officer sub-series,” and describes the distinguishing features of the position as “perform[ing] correctional work at a state penal institution involving the custody, transport, and rehabilitation of inmates” The specification provides the following examples of duties and responsibilities of correctional officers:

Supervises inmate activities in housing units.... Inspects and patrols the grounds for contraband, unauthorized personnel, and other security risks. Checks in new inmates by assigning accommodations, searching for contraband, issuing clothing, and storing personal property. Observes inmates behavior; counsels with inmates and family about problems; evaluates inmates on room and personal hygiene, evaluation to the counseling department. Attends a variety of meetings.... Prepares a variety of reports.... Operates and utilizes a variety of equipment including...firearms. Ensures the safety of residents through the supervision of daily activity Breaks up fights or other potentially dangerous situation by persuasion or the use of physical force. Carries out and explains existing policies and procedures to others.

Three of the four other class titles within this series, correctional corporal, correctional sergeant, and correctional lieutenant, all expressly include in the examples of duties and responsibilities the following core security functions: “ensures the safety of residents... breaks up fights or other potentially dangerous situations by use of persuasion or physical force... [and] enforces policy and procedure for operations and functions.” While the specification for

such as “correctional clerical officer”⁷ and “inmate relations coordinator,”⁸ who also have some security functions. However, while these class titles have some duties similar to those of the correctional officer, they do not include the core security duties of operating and utilizing equipment such as firearms, ensuring resident safety through daily supervision, and breaking up fights or other potentially dangerous situations by persuasion or force, nor do they supervise those who do have these core security duties.⁹ From the language of the class specifications, it is clear that the Department of Personnel does not interpret “correctional officer” to include other employees with correctional functions, such as correctional clerical officer and inmate relations coordinator.

Class specifications represent the Department’s interpretation of the statute it is charged to administer. As such this interpretation is entitled to great deference unless that interpretation is palpably erroneous. *Williams v. Massachusetts Mutual Life Ins. Co.*, 221 Tenn. 508, 427 S.W.2d 845 (1967). *See also National Counsel on Comp. Ins. v. Gaddis*, 786 S.W.2d 240, 242 (Tenn. Ct. App. 1990) *p.t.a. denied*, (Tenn. 1990). The interpretation of correctional officer not to include correctional clerical officers, inmate relations coordinators, and other employees is not palpably erroneous.

Statutes related to the same subject matter shall be construed in *pari materia*. *State v. Blackstock*, 19 S.W.3d 200 (Tenn. 2000). When two or more statutes address the same subject matter, they should be construed together. If the language of one is doubtful or ambiguous, its interpretation may be aided by reference to the related statute. *Lyons v. Rasar*, 872 S.W.2d 895 (Tenn. 1994). The job description set forth in the Department of Personnel specifications is substantially similar to the repealed statutory definition, and fits within the framework established by the other statutory references to the term. Reading the job specifications together with Tenn. Code Ann. §§ 41-1-103 and 41-1-116, it appears that a correctional officer is someone who is employed to perform correctional work and certain security functions at a state penal institution involving the custody, transport and rehabilitation of inmates, who has taken the required oath, and who has completed the required academy training.

Definition of “vested”

correctional captain does not contain this express language, the specification expressly states that the captain “operates and maintains... firearms” and supervises those who exercise the other core security functions, thereby incorporating the duties and responsibilities of the Correctional officer, corporal, sergeant, and lieutenant.

⁷class code 45715 dated January 1, 1988

⁸class code 45716 dated January 1, 1988

⁹While it is true that both the correctional clerical officer and the inmate relations coordinator “ensure the safety of inmates,” and the inmate relations coordinator “enforces policy,” neither class title incorporates all of the core security duties most notably the duty and responsibility to operate firearms.

The term “vested” is not defined in Title 39 or 41. The term could be interpreted in different ways and is therefore ambiguous. *McCoy v. T.T.C. Illinois, Inc.*, 14 S.W.3d 734 (Tenn. 2000). Apparently the only place in the Code where the term is used in connection with correctional employees and firearms is at Tenn. Code Ann. § 4-3-609. That statute declares that certain employees designated by the commissioner of the department of correction “are vested with the powers and authority of peace officers.” This section states:

- (a) Those employees of the department of correction as the commissioner shall designate who have been trained in the use of firearms are vested with the powers and authority of peace officers, including the power to carry weapons, and shall exercise such powers and authority only:
 - (1) While on the grounds of the institutions under the supervision of the department;
 - (2) While transporting inmates between institutions;
 - (3) While pursuing escapees from such institutions; or
 - (4) While aiding local law enforcement officials in the search and apprehension of escapees.
- (b) The commissioner shall also establish internal procedures concerning appropriate exercise of the powers vested by this section.

Tenn. Code Ann. § 4-3-609 is not limited to corrections’ officers for the purposes there described. For the purpose of carrying weapons off-duty, however, Chapter 175 is limited to correctional officers. Reading Tenn. Code Ann. § 39-17-1350(d), as amended by Chapter 175, together with Tenn. Code Ann. §§ 39-17-1350(a) and 4-3-609, it is manifestly apparent that the legislature intended to expand the class of law enforcement officers who may carry weapons off-duty to include only those correctional officers employed by the Department of Correction who are vested with law enforcement authority pursuant to Tenn. Code Ann. § 4-3-609. Thus only “correctional officers” as defined in classification specification sub-series 45741 to 45745, who take the oath and meet the qualifications set forth in Tenn. Code Ann. §§ 41-1-103 and 41-1-116, and who are designated by the Commissioner of Correction after meeting the requirement of firearms training pursuant to Tenn. Code Ann. § 4-3-609, may carry weapons while off-duty pursuant to Tenn. Code Ann. § 39-17-1350(d) as amended by Public Chapter 175.

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