

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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February 9, 2004

Opinion No. 04-020

Possession of Firearms on Publicly Owned Property

QUESTIONS

1. Under what authority and to what extent may the State of Tennessee or local governments prohibit the possession of handguns on publicly owned property by handgun permit holders?
2. What legal standards, if any, limit the discretion of the State of Tennessee or local governments within Tennessee to prohibit the possession of long arms on publicly owned property?
3. If a governmental agency prohibits a handgun permit holder from possessing his or her handgun while on publicly owned property (including parks), to what extent would that permit holder have a claim (under the Governmental Tort Liability Act or otherwise) against the state or other governmental agency for damages sustained by the individual which possibly could have been prevented by the individual if armed?

OPINIONS

1. The State of Tennessee is granted the authority to regulate the possession of handguns on publicly owned property by handgun permit holders under Article I, §26 of the Tennessee Constitution. Local governments are prohibited from regulating in the area of firearms under the Tenn. Code Ann. § 39-17-1314 but may prohibit possession of firearms on property owned by the local government.
2. The General Assembly's authority to enact legislation prohibiting the possession of long arms on publicly owned property is limited by the language of Article I, § 26 of the Tennessee Constitution. Local governments are prohibited from regulating in the area of firearms under the Tenn. Code Ann. § 39-17-1314, but may prohibit possession of firearms on property owned by the local government.
3. There is no cause of action against the governmental agency under the circumstances described. Additionally, the State's liability is limited by Tenn. Code Ann. § 9-8-307, which does not give the Claims Commission jurisdiction over this type of claim. The extent of local governmental liability is defined by Tenn. Code Ann. §29-20-201. Under §29-20-201(a), except as otherwise provided in chapter 20 of Title 29, all governmental entities are immune from suit for any

injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary. Furthermore, local governments are immune from suits resulting from the exercise of discretionary functions, regardless of whether the discretion has been abused. Tenn. Code Ann. § 29-20-205(1).

ANALYSIS

1. Article I, § 26 of the Tennessee Constitution provides:

That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.

The Tennessee Supreme Court has recognized that the General Assembly has the authority, under this section of the Constitution, to enact legislation to regulate the wearing and carrying of arms in public. Any such enactment, however, "must be guided by, and restrained to this end, and bear some well defined relation to the prevention of crime, or else it is unauthorized by this clause of the Constitution." *Andrews v. State*, 50 Tenn. 165, 181 (1871).

The Legislature has acted upon this grant of authority and regulated the right to wear arms in various times and places. As this office has previously determined, Tenn. Code Ann. § 39-17-1359 authorizes local, state, or federal government entities to prohibit anyone, even persons with a valid handgun carrying permit, from carrying weapons otherwise authorized to be possessed under §§ 39-17-1351 - 39-17-1360 at meetings conducted by, or on property owned, operated, managed by the entity, or under its control. Op. Tenn. Atty. Gen. 00-161 (October 27, 2000) (copy attached). However, this prohibition does not extend to persons carrying weapons pursuant to their status as a law enforcement officer. *Id.* The Legislature has also prohibited the possession of firearms on school property.

"The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." *State v. Lyons*, 802 S.W.2d 590, 593 (Tenn. 1990). A "state or federal government entity or agent thereof is authorized to prohibit the possession of weapons by any person otherwise authorized by §§ 39-17-1351 - 39-17-1360 . . . on property owned, operated, or managed or under the control of such . . . government entity." Tenn. Code Ann. § 39-17-1359(a). Therefore, under both the Tennessee Code and the common law, the State has authority to prohibit or regulate the possession and use of firearms on property that it owns. It has been recognized that the State, like other property owners, has the right to control the use of its property for lawful nondiscriminatory purposes. See *Adderley v. Florida*, 385 U.S. 39, 87 S.Ct. 242 (1966). "The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose." *Adderley*, 385 U.S. at 47. States can regulate and control public grounds and buildings through their legislative bodies as long as this regulation and control is within constitutional limitations. *Walker v. City of Birmingham*, 388 U.S.

307 (1967). As a general rule, the state as a property owner has the right to set rules concerning the time and manner that its property may be used. *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37 (1983). The right of a State to regulate the use of its property applies to regulations concerning the carrying and use of firearms on state property. So long as the regulations are nondiscriminatory, there are no limits on the state's discretion.

Local government entities in Tennessee are prohibited from regulating the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms. Tenn. Code Ann. § 39-17-1314(a). However, under Tenn. Code Ann. § 39-17-1359(a), local governments have been granted the power to determine if they wish to allow weapons on their property.

2. The definitions of rifle or shotgun (long arms) in Tenn. Code Ann. § 39-17-1301 both refer to the weapon as a "firearm". Thus, they are also arms under Article I, Section 26 of the Tennessee Constitution, and the Legislature can only restrict the carrying of them with laws that are enacted with a view to prevent crime.

3. There is no such cause of action for the injury to a permit holder who was denied the right to carry his or her firearm, for the reasons outlined in the answers to questions one and two.

Further, the State of Tennessee is immune from suits unless the General Assembly has specifically waived the state's sovereign immunity. *See* Tenn. Const. Art. 1, § 17, ¹Tenn. Code Ann. § 20-13-102(a). The General Assembly has waived the state's sovereign immunity through the Claims Commission in certain circumstances. Tenn. Code Ann. § 9-8-307. If a claim against the State does not fall under one of these categories enumerated in Tenn. Code Ann. § 9-8-307(a)(1),² then the State is not amenable to the claim. No category under Tenn. Code Ann. § 9-8-307(a)(1) appears to apply to an injury to a permit holder as a result of the holder's being denied the ability to carry a firearm. As a result, the Claims Commission would not have jurisdiction to hear such a matter.

Local governments are immune from suit unless the General Assembly has specifically waived their immunity in the Tennessee Governmental Tort Liability Act. Tenn. Code

¹ Article 1, § 17 of the Tennessee constitution provides:

That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

² Tenn. Code Ann. § 9-8-307(a)(1) includes such categories as negligent operation or maintenance of motor vehicles; negligent care, custody, or control of persons; negligent operation of machinery or equipment; and dangerous conditions on state maintained highways.

Ann. § 29-20-101. The General Assembly has only waived sovereign immunity under the GLTA in limited cases, such as injuries resulting from the negligent operation of a motor vehicle,³ unsafe streets and highways,⁴ dangerous structures,⁵ or a negligent act or omission of a local government employee⁶. Furthermore, the decision to prohibit weapons under Tenn. Code Ann. § 39-17-1359(a) is a discretionary function of a local government. Tenn. Code An. § 29-20-205(1) makes local governments immune from suits arising out of “the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused.”

A victim of a criminal act may be eligible for compensation from the State if he or she qualifies under the Criminal Injuries Compensation Act, Tenn. Code Ann. §§ 29-13-101 — 29-13-411.

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³ Tenn. Code Ann. § 29-20-202.

⁴ Tenn. Code Ann. § 29-20-203.

⁵ Tenn Code Ann. § 29-20-204.

⁶ Tenn. Code Ann. § 29-20-205.