

METROPOLITAN GOVERNMENT NASHVILLE AND DAVIDSON COUNTY



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Legal Opinion 2009-03

To: Honorable Karl F. Dean
Mayor of Metropolitan Government
100 Metropolitan Courthouse
Nashville, Tennessee 37201

Date: July 22, 2009

You have requested a legal analysis of the following issue:

QUESTION

Is the Metropolitan Government required by the new state law, Public Acts of 2009, Public Chapter 428, to allow guns in its parks in the absence of a new ordinance or resolution being adopted?

ANSWER

No, it is the opinion of the Department of Law that the ordinance adopted in 1966 prohibiting the possession or discharge of any firearm in any park in the Metropolitan park system is still effective. The preemption provision in state law related to the regulation of firearms contains an exception for ordinances adopted before 1986. The 1966 ordinance of the Metropolitan Government is, therefore, not preempted and remains effective.

ANALYSIS

This year, the Tennessee General Assembly adopted an amendment to the criminal code that authorizes possession of handguns in parks by a person with a handgun permit.¹ The bill also provides that counties and municipalities may prohibit handguns by adopting a resolution. The new state law amends T.C.A. §§ 39-17-1311, 39-17-1314, and 39-17-1359.

¹ 2009 Public Acts, Pub. Chap. 428. (Attached)

One of these, T.C.A. § 39-17-1314, contains the State's preemption provision for the field of handgun control. Local governments are generally not permitted to regulate "the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof."² The preemption provision contained an exception, however, for local legislation adopted prior to April 8, 1986. The 2009 revision to that section deleted and then reenacted the exception. Public Chapter 428 provides:

SECTION 3. Tennessee Code Annotated, Section 39-17-1314, is amended by deleting the first sentence of subsection (a) and substituting instead the following:

Except as provided in § 39-17-1311(d), which allows counties and municipalities to prohibit the possession of handguns while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof, no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; *provided, that the provisions of this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.*

(emphasis added- exception provision). The fact that the General Assembly reenacted the existing exception removes the concern that the General Assembly intended to require additional action by the local legislative body to prevent the newly adopted provision allowing handguns in parks from becoming effective.

The reenactment of a statute in substantially the same words effects no change in the law, but merely continues the original law in force. Furthermore, no change in the meaning of a statute is effected by its subsequent repeal and reenactment, even though the circumstances have changed.

73 Am. Jur. 2d *Statutes* § 221 (2009 Update).³

² T.C.A. § 39-17-1314(a)(2006)

³ Where a statute is repealed by a new statute which relates to the same subject matter, and which re-enacts substantially the provisions of the earlier statute, and the repeal and re-enactment occur simultaneously, the provisions of the original statute which are re-enacted in the new statute are not interrupted in their operation by the so-called repeal; they are regarded as having been continuously in force from the date they were originally enacted.

77 A.L.R.2d 336, *Effect of Simultaneous Repeal and Re-enactment of All, or Part, of Legislative Act.*

In 1966, the Metropolitan Government did adopt an ordinance prohibiting all firearms in its parks.⁴ That ordinance - now codified at *Metro. Nashville Code* § 13.24.470 - provides:

It is unlawful for any person, other than an official park policeman on duty or other law enforcing officer, to carry or discharge a firearm of any description or any BB gun or air rifle within any of the parks of the metropolitan park system, which are under the jurisdiction of the board of park commissioners.

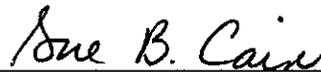
Metro. Nashville Code § 13.24.470 (B). "Park" is defined broadly.

"Park." Unless specifically limited, "park" means and shall be deemed to include all parks, parkways, playgrounds, athletic fields, tennis courts, golf courses, swimming pools, beaches and other recreation areas, museums, zoological and botanical gardens, places, squares, circles, spurs, open places, boulevards, roads, waters and lands under water, and also entrances and approaches thereto, docks and piers, channels and bridges, in, leading to or connecting such park or parts thereof under the supervision and control of the board and such other rights and appurtenances as the board shall utilize, whether the same is now or shall hereafter be owned or acquired by the metropolitan government in fee or otherwise, including all land under and space above the surface of the ground.

Metro. Nashville Code § 13.24.010.

Based upon this exception to the State's preemption and the ordinance adopted in 1966, it is my opinion that the Metropolitan Government's ordinance will still prohibit the carrying or discharge of a firearm of any description in Metropolitan parks notwithstanding the State law. No new ordinance or resolution is necessary to prohibit guns in parks.

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY



Sue B. Cain
Director of Law

cc: Vice Mayor Diane Neighbors
Members of the Metropolitan Council

⁴ Bill No. 66-928, §60 ¶2, codified at *Metro. Nashville Code* § 13.24.470.

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 428

HOUSE BILL NO. 716

By Representatives Niceley, Fincher, Watson, Curtis Johnson, Dean, Rich, Jim Cobb, Evans, Carr, Hill, Todd, Faulkner, Lollar, Campfield, Bell, Kelsey, Swafford, Hensley, Bass, McCormick, Weaver

Substituted for: Senate Bill No. 976

By Senators Beavers, Faulk, Crowe, Gresham

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13 and Title 70, relative to firearms.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1311(b)(1), is amended by adding the following new subdivisions thereto:

(I) Persons possessing a handgun, who are authorized to carry such handgun pursuant to § 39-17-1351, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof, except as otherwise provided in subsection (d);

(J) Persons possessing a handgun, who are authorized to carry such handgun pursuant to § 39-17-1351, while within or on property designated by the federal government as a national park, forest, preserve, historic park, military park, trail, or recreation area, to the extent permitted by federal law.

SECTION 2. Tennessee Code Annotated, Section 39-17-1311, is amended by deleting subsection (d) in its entirety and substituting instead the following new subsections:

(d) Notwithstanding the provisions of subdivision (b)(1)(I), any municipality or county may prohibit, by resolution adopted by a majority vote of its legislative body, persons authorized to carry a handgun pursuant to § 39-17-1351, from possessing such handgun while within or on a public park that is owned or operated by a county, a municipality or instrumentality thereof. If a legislative body elects to prohibit the possession of handguns within a park, the prohibition shall apply to the entire park, notwithstanding the provisions of § 39-17-1311(b)(1)(I). If such area is jointly owned or operated by municipalities or counties, then a resolution adopted by a majority vote of all affected legislative bodies, voting individually, is necessary for such municipalities or counties to prohibit persons authorized to carry a handgun pursuant to § 39-17-1351, from possessing such handgun while within such park.

(e)

(1) Because signage prohibiting the possessing of firearms while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, or instrumentality thereof, and posted pursuant to § 39-17-1311, prior to July 1, 2009, remains necessary for visitors who are not authorized to carry a firearm pursuant to subsection (b), the department shall not replace or change any existing signs that prohibit firearms or erect any new signs at existing state areas relative to firearms. However, the department may replace or repair signs that have been damaged or are scheduled for replacement in accordance with the park's regular replacement schedule.

(2) If a municipality or county elects to prohibit persons authorized to carry a handgun pursuant to § 39-17-1351, from possessing such handgun while within or on a public park, it shall display in prominent locations the sign authorized by § 39-17-1311(c)(1), to give notice that handguns are not permitted in the park.

(f) A violation of subsection (a) is a Class A misdemeanor.

SECTION 3. Tennessee Code Annotated, Section 39-17-1314, is amended by deleting the first sentence of subsection (a) and substituting instead the following:

Except as provided in § 39-17-1311(d), which allows counties and municipalities to prohibit the possession of handguns while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof, no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; provided, that the provisions of this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.

SECTION 4. Tennessee Code Annotated, Section 39-17-1359, is amended by adding the following language as a new, appropriately designated subsection:

(e) The provisions of this section shall not apply to the grounds of any public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by the state, a county, a municipality or instrumentality thereof. The carrying of firearms in such areas shall be governed by § 39-17-1311.

SECTION 5.

(a) For purposes of permitting municipalities or counties to elect to prohibit the carrying of handguns in parks pursuant to § 39-17-1311(d), this act shall take effect upon becoming a law, the public welfare requiring it.

(b) For purposes of it being lawful for persons authorized to carry a handgun pursuant to § 39-17-1351, to carry in places owned or operated by the state or federal government that are designated in Section 1 of this act, this act shall take effect upon becoming a law, the public welfare requiring it.

(c) For purposes of it being lawful for persons authorized to carry a handgun pursuant to § 39-17-1351, to carry in places owned or operated by municipalities or counties that are designated in Section 1 of this act, this act shall take effect on September 1, 2009.

PASSED: May 26, 2009


KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 12th day of June 2009


PHIL BREDESEN, GOVERNOR