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Opinion No. 10-111

Off-Duty Law Enforcement Officer Carrying Weapon to County School Board Meeting

QUESTION

May a county school board member who is employed as a law enforcement officer carry a weapon while attending a county school board meeting that is being held on school property?

OPINION

Unless otherwise prohibited by federal law, court order, or written directive of the employing agency, an off-duty law enforcement officer may carry a firearm at a county school board meeting held on school grounds. If the meeting is held on school grounds and during regular school hours, the officer must immediately inform the school principal that the officer is in possession of a firearm. However, the officer is not authorized to carry any weapon other than a firearm on school grounds.

ANALYSIS

Tenn. Code Ann. § 39-17-1309(b)(1) generally prohibits any person from possessing or carrying a weapon on school property.¹ Tenn. Code Ann. § 39-17-1350(a) (Supp. 2009) provides

¹ Tenn. Code Ann. § 39-17-1309(b)(1) states:

It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, used or operated by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

For the purposes of this opinion, the term “weapon” refers to a weapon that satisfies the definition in this statute.

an exception for off-duty law enforcement officers.² 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 the court or the written directives of the executive supervisor of the employing agency.³

Tenn. Code Ann. § 39-17-1350(c)(1) governs an off-duty law enforcement officer's authority to carry a firearm⁴ on school property. It states:

The authority conferred by this section shall not extend to a law enforcement officer: (1) Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office.

Tenn. Code Ann. § 39-17-1350 is plain and unambiguous. As a general rule, off-duty law enforcement officers are permitted to carry a firearm statewide, subject only to requirements of federal law, court orders, written directives of the head of the employing law enforcement agency, and the provisions governing the carrying of firearms that are set forth in Tenn. Code Ann. § 39-17-1350(c).

² The term "law enforcement officer" as used in Tenn. Code Ann. § 39-17-1350(c)(1) means:

[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, a vested inmate relations coordinator employed by the department of correction, or a vested correctional officer employed by the department of correction, or a commissioned reserve deputy sheriff as authorized in writing by the sheriff, or a commissioned reserve or auxiliary police officer as authorized in writing by the chief of police.

Tenn. Code Ann. § 39-17-1350(d). For the purposes of this opinion, the term "law enforcement officer" refers to a person who satisfies the definition in Tenn. Code Ann. § 39-17-1350(d).

³ This provision allows the law enforcement officer to carry firearms "in all places within Tennessee," and therefore its applicability is not limited to the jurisdiction within which the law enforcement officer serves. Accordingly, a law enforcement officer within one city or county is authorized by this statute to carry firearms in other cities or counties.

⁴ For the purposes of Title 39, Tennessee Code Annotated, "unless the context requires otherwise," a "firearm" is "any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use." Tenn. Code Ann. § 39-11-106(a)(11).

It should be noted that the authority of an off-duty law enforcement officer to carry a firearm statewide does not apply in two counties. Tenn. Code Ann. § 39-17-1350(e) limits the general authorization of Tenn. Code Ann. § 39-17-1350 for counties within a specified population band (currently applicable to Rutherford County and Bedford County). The authority for law enforcement officers to carry firearms within those two counties is extended only to members of a county or municipal law enforcement agency in those counties.

Under Tenn. Code Ann. § 39-17-1350(c), an off-duty law enforcement officer who carries a firearm onto school property during regular school hours must immediately inform the principal (or, if the principal is unavailable, an appropriate administrative staff person in the principal's office) of his presence. By its clear and unambiguous terms, the requirement to give notice applies during regular school hours only and has no effect at any other time.⁵

Unless prohibited by federal law, court order, or the written directives of the employing agency, an off-duty law enforcement officer may carry a firearm to a school board meeting that is held on school property. If, however, that meeting is held during regular school hours, the officer must also give appropriate notice of his presence on school property. Furthermore, the officer is not authorized to carry any weapon other than a firearm on school grounds.

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⁵ Under the rules of statutory construction, "the expression of one thing implies the exclusion of all things not mentioned." *State v. Adler*, 92 S.W.3d 397, 400 (Tenn. 2002). So long as the off-duty law enforcement officer complies with the other provisions of Tenn. Code Ann. § 39-17-1350, the armed officer does not need to notify school officials if on school property outside regular school hours.

Requested by:

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