

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 18, 2015

Opinion No. 15-67

Applicability of Tenn. Code Ann. § 39-17-1309 to Religious Institutions and Home Schooling

Question 1

If a church or other religious entity operates any form of school on church grounds or allows other entities to use church property for school purposes (*e.g.*, classrooms, gym and/or sporting fields), is the property “school property” for the purposes of Tenn. Code Ann. § 39-17-1309, which makes it a criminal offense to possess or carry weapons, including firearms, on school property?

Opinion 1

Yes, subject to the limitations and exceptions set forth in Tenn. Code Ann. § 39-17-1309, it is a criminal offense to possess or carry weapons, including firearms, on those portions of the property of a religious institution being used for school purposes.

Question 2

If the answer to Question 1 is yes, is it a criminal offense to possess or carry a firearm anywhere on the church property or only on those portions of the property being used for school purposes and, if only on those portions of the property being used for school purposes, how are those portions identified so that persons have adequate notice?

Opinion 2

The prohibition against carrying weapons applies only to those portions of the property of the religious institution being used for school purposes. What portions are being used for school purposes is a fact-dependent question and can only be answered on a case-by-case basis. Tennessee Code Annotated § 39-17-1309(d) places the obligation for proper notification on the school’s administrator.

Question 3

If the answer to Question 1 is yes, does Tenn. Code Ann. § 39-17-1309 apply at all times or only during those times when property is actively used for school purposes, and if it applies only while property is actively used for school purposes, how are those periods of time identified so that individuals have adequate notice?

Opinion 3

The prohibition against carrying a firearm on the property of a religious institution applies only while the property is being used or operated by the school. Tennessee Code Annotated § 39-17-1309(d) places the obligation for proper notification on the school's administrator.

Question 4

Does Tenn. Code Ann. § 39-17-1309 apply to private property on which home schooling activities are carried out?

Opinion 4

No, home schooling appears to fall outside the scope of Tenn. Code Ann. § 39-17-1309.

Question 5

Are the mandatory signage requirements contained in Tenn. Code Ann. § 39-17-1309(d) applicable to those properties that are "used" but not owned by a school?

Opinion 5

Yes, a school administrator should place signs compliant with the statute about the areas operated or used by the school while the areas are being operated or are in use by the school.

ANALYSIS

Tennessee Code Annotated § 39-17-1309(b)(1) currently sets forth the following Class E felony offense:

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, operated, or while in use 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.

Subsection (c)(1)(A) of the statute defines the following Class B misdemeanor, which omits the "intent to go armed" element of (b)(1)'s felony:

It is an offense for any person to possess or carry, whether openly or concealed, any firearm, 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, operated, or while in use 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.

The primary objective of statutory construction is to carry out the legislative intent without broadening or restricting the statute beyond its intended scope. *State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013). When the statute is clear, the court will apply the plain meaning of the statute in its normal and accepted use. *State v. McNack*, 356 S.W.3d 906, 909 (Tenn. 2011); *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). When the statutory language is silent to the issue at hand, the reviewing court may consider the objective and spirit of the legislation. *Id.*

1. Tenn. Code Ann. § 39-17-1309 Would Apply to the Property of a Religious Institution Operated or Used by a School.

Tennessee Code Annotated § 39-17-1309 would apply to possession of weapons, including firearms, on the property of a religious institution that is being operated by, or is in use by, a school, subject to the limitations and exceptions otherwise set forth in the statute. Subsections (b) and (c) state in relevant part that the weapon possession will constitute an offense “on . . . any other property . . . operated, or while in use by any . . . school” Tenn. Code Ann. § 39-17-1309(b)(1), (c)(1)(A). Under the plain meaning of this provision, the statute pertains to property being operated or while in use by any school. The statute does not exclude property of religious institutions or any particular type of school, including parochial schools, from its scope. Accordingly, the offenses set forth in Tenn. Code Ann. § 39-17-1309 would apply to the property of a religious institution, as would the limitations and exceptions set forth in the statute.

2. The Prohibition Against Carrying a Firearm on the Property of a Religious Institution Applies Only to Those Portions of the Property Being Used for School Purposes.

Subsections (b) and (c) of Tenn. Code Ann. § 39-17-1309 would limit the applicability of the statute to conduct occurring on those portions of the property of a religious institution being operated or used by a school. Under the plain meaning of the statute, firearm possession would be prohibited on property “operated, or while in use by any . . . school” Tenn. Code Ann. § 39-17-1309(b)(1), (c)(1)(A). That prohibition could cover the entire property or only portions of it, depending upon the nature of the school activity taking place and the configuration of the property. One cannot determine as a categorical matter the place or places in which a person would be prohibited from carrying a weapon on the property; rather, the question must be considered on a case-by-case basis. For example, if a private school were using church grounds to hold a festival encompassing the entire church property, gun possession would be prohibited on the entire grounds. However, if the school were using only a discrete and separate building on church grounds, other portions of the church’s property might not fall within the scope of Tenn. Code Ann. § 39-17-1309. This Office rendered the same opinion in connection with the applicability of Tenn. Code Ann. § 39-17-1309 to individuals in possession of firearms in parks when schools are only using portions of the parks. *See* Tenn. Att’y Gen. Op. 09-160, 2009 WL 3157481, at *1-2 (Sept. 8, 2009).

Regarding notice of the prohibition, please see the analysis below relating to Question 5.

3. Firearm Possession Would Be Prohibited Only While the Property Is Being Operated or Used by a School.

Under the plain meaning of the statute, firearm possession would be prohibited on the property “operated, or while in use by any . . . school” Tenn. Code Ann. § 39-17-1309(b)(1), (c)(1)(A). Therefore, while the property is not being operated or in use by a school, the property would not fall within the scope of the statute. *See* Tenn. Att’y Gen. Op. 09-160, 2009 WL 3157481, at *2.

Regarding notice of the prohibition, please see the analysis below relating to Question 5.

4. Home Schooling Appears to Fall Outside the Scope of Tenn. Code Ann. § 39-17-1309.

Home schooling does not appear to fall within the scope of Tenn. Code Ann. § 39-17-1309. The offenses set forth in the statute are limited to public or private school property or to “any other property owned, operated, or while in use 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.” Tenn. Code Ann. § 39-17-1309(b)(1), (c)(1)(A). Under its normal and accepted meaning, home schooling is not a school or board of education, much less a college or university board of trustees, regents, or directors for the administration of any public or private educational institutions. Rather, home schooling is normally considered to be an educational alternative to a school. Accordingly, private property being used for home schooling would not fall within the scope of the criminal statute.

5. Schools are Required to Place Signs About Property Operated or Used by the Schools Giving Notice that Weapons Possession on the Property is a Felony.

School administrators are required to place signs about property being operated or used for school purposes to provide notice that carrying weapons on that property is a felony. Tenn. Code Ann. § 39-17-1309(d) (capitals in original) directs as follows:

- (1) Each chief administrator of a public or private school shall display in prominent locations about the school a sign, at least six inches (6”) high and fourteen inches (14”) wide, stating:

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000) FOR CARRYING WEAPONS ON SCHOOL PROPERTY.

- (2) As used in this subsection (d), “prominent locations about a school” includes, but is not limited to, sports arenas, gymnasiums, stadiums and cafeterias.

While property is being operated or used by a school, the property is effectively functioning as part of the school for that time period. Subsection (d) requires that an administrator place signs in prominent locations about the school. The preposition “about” is defined in pertinent part as “in different parts of.” *Webster’s New Collegiate Dictionary* 3 (1981). Accordingly, if a school is operating or is using portions of the property of a religious institution for school purposes, the school’s administrator is responsible for posting the required signs in different parts of the areas being operated or being used and while the property is being operated or used to give notice of the weapons prohibition.

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