

Tenn. Op. Atty. Gen. No. 99-024 (Tenn.A.G.), 1999 WL 98343

Office of the Attorney General

State of Tennessee
Opinion No. 99-024
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Ability of off duty law enforcement officer to carry a handgun during judicial proceedings, on school property, on recreational grounds, and on premises that sell or serve alcohol.

*1 Honorable Randy McNally
State Senator
5th Senatorial District
302 War Memorial Building
Nashville, TN 37243-0205

QUESTIONS

1. Can an off duty law enforcement officer carry a weapon on premises that sell or serve alcohol?
2. Can an off duty law enforcement officer carry a weapon during a judicial proceeding?
3. Can an off duty law enforcement officer carry a weapon on school property?
4. Can an off duty law enforcement officer carry a weapon on recreational grounds?

OPINIONS

1. No. An off duty law enforcement officer not actually discharging his or her official duties is not permitted to carry a weapon on premises that sell or serve alcohol.
2. No. An off duty law enforcement officer not actually discharging his or her official duties during a judicial proceeding or who has not been subpoenaed to be a witness in the judicial proceeding is not permitted to carry a weapon during that judicial proceeding.
3. No. An off duty law enforcement officer not discharging his or her official duties is not permitted to carry a weapon on school property.
4. No. An off duty law enforcement officer not discharging his or her official duties is not permitted to carry a weapon on recreational grounds.

ANALYSIS

I. By Tenn. Code Ann. § 39-17-1305, the legislature has limited the authority of off duty officers to carry weapons onto premises that sell or serve alcoholic beverages.

Tenn. Code Ann. § 39-17-1315(a)(1) provides that:

Any law enforcement officer, police officer, bonded and sworn deputy sheriff, director, commissioner or retired law enforcement officer who is bonded and who, at the time of receiving the written directive has successfully completed and continues to successfully complete on an annual basis a firearm training program of at least eight (8) hours duration, full-time employee of the Tennessee Emergency Management Agency in the performance of the employee's duty, or any other officer or person authorized to carry handguns by this, or any other law of this state, may carry such handguns at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed, regardless of the person's regular duty hours or assignments; however, a copy of the written directive shall be retained as a portion of the records of the particular law enforcement agency which shall issue the directive. Nothing herein shall prevent federal officers from carrying firearms as prescribed by federal law.

As interpreted in *Anderson v. State*, 535 S.W.2d 951 (Tenn. Crim. App. 1976), this provision allows off duty officers to carry their firearms at all times if pursuant to a written directive and is not limited by territorial jurisdiction of the law enforcement agency.¹

*2 The legislature has specifically prohibited possession of weapons on premises that sell or serve alcoholic beverages. Tenn. Code Ann. § 39-17-1305(a) provides that:

It is an offense for a person to possess a firearm on the premises of a place open to the public where alcoholic beverages are served or in the confines of a building where alcoholic beverages are sold.

Tenn. Code Ann. § 39-17-1305(c)(1) grants an exception to persons who are “in the actual discharge of official duties as a law enforcement officer....”² This exception does not generally permit off duty officers to carry weapon on such premises. Section 1305 specially deals with weapons on premises that sell or serve alcohol, whereas section 1315 is a general permit to carry weapons. “It is a basic principle of statutory construction that a specific statute on a particular subject will prevail over a more general statute”. *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995). Therefore, the provision limiting the ability of law enforcement officers to carry weapons on premises that sell or serve alcohol would prevail since it specifically deals with the contemplated situation.

II. By Tenn. Code Ann. § 39-17-1306, the legislature has limited the authority of off duty officers to carry weapons during judicial proceedings.

Tennessee Code Annotated § 39-17-1306(a) provides that:

No person shall intentionally, knowingly, or recklessly carry on or about the person while inside any room in which judicial proceedings are in progress any weapon prohibited by § 39-17-1302(a), for the purpose of going armed; provided, that if the weapon carried is a firearm, the person is in violation of this section regardless of whether such weapon is carried for the purpose of going armed.

The legislature in Tenn. Code Ann. § 39-17-1306(c) has specified, however, that the provisions of subsection (a) shall not apply to any person who:

- (1) Is a law enforcement officer, whether on duty or of off, and is required to appear in court as a witness;
- (2) Is in the actual discharge of official duties as a law enforcement officer,....

Again the legislature has specifically outlined an exception to the general grant of authority it has given law enforcement officers to carry weapons while off duty. *See Black* at 683. Therefore an off duty law enforcement officer may not carry a weapon during a judicial proceeding unless he or she has been subpoenaed or is otherwise discharging official duties.

III. By Tenn. Code Ann. § 39-17-1309, the legislature has limited the authority of off duty officers to carry weapons onto school property.

In Tenn. Code Ann. § 39-17-1309, the legislature has provided that the carrying of weapons on school property is an offense. The legislature has granted an exception to “officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties.” As previously stated, when interpreting a statute the provisions must be interpreted together. The legislature has specifically limited its grant of authority for off duty officers to carry weapons to prohibit them from carrying them onto school property. *See Black* at 683. Therefore an off duty law enforcement officer may not carry a weapon onto school property unless he or she is in the discharge of his or her official duties or another exception which is generally applicable to the public applies.

IV. By Tenn. Code Ann. § 39-17-1311, the legislature has limited the authority of off duty officers to carry weapons onto public parks, playgrounds, civic centers and other public recreation buildings and grounds.

*3 In Tenn. Code Ann. § 39-17-1311, the legislature has prohibited the possession or carrying of weapons on public recreational grounds. However the legislature has granted an exception to allow “officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, in the discharge of their official duties” to carry weapons on these areas. Under the above analysis the legislature again has limited its general grant of authority to carry weapons everywhere to not include permission for off duty law enforcement officers to carry weapons onto recreation areas. *See Black* at 683. Therefore an off duty law enforcement officer may not carry a weapon onto public parks, playgrounds, civic centers or other public recreation buildings and grounds unless he or she is in the discharge of his or her official duties or another exception which is available to the public applies.

Paul G. Summers
Attorney General & Reporter
Michael E. Moore
Solicitor General
William C. Bright
Assistant Attorney General

Footnotes

- 1 The pertinent legislation is the same in the present statute as in the statute the court was interpreting.
- 2 The pertinent inquiry is whether the officer is in the discharge of his or her duties when he or she is carrying the weapon. An officer not currently on duty who witnesses an incident where a crime occurs would normally be considered to be acting in the discharge of his or her duties in going on site to respond to the incident. However, there are a variety of situations which could arise where an off duty officer may or may not be in the discharge of his or her duties when he or she possesses a weapon in an area where weapons are generally prohibited. These situations are too numerous to discuss in this opinion. The important inquiry is whether the officer is in the discharge of his or her duties. If he or she is in the discharge of his or her duties, he or she can carry a weapon. If he or she is not in the discharge of his or her duties, he or she cannot carry a weapon in the relevant area unless another exception applicable to the general public applies.

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