

Tenn. Op. Atty. Gen. No. 99-189 (Tenn.A.G.), 1999 WL 1012883

Office of the Attorney General

State of Tennessee  
Opinion No. 99-189  
September 28, 1999

**Ability of an Armed Security Guard to Carry a Weapon on Breaks and During Off Duty Hours**

\*1 Honorable Ben West, Jr.  
State Representative 60th Legislative District  
Suite 37, Legislative Plaza  
Nashville, Tennessee 37243-0160

**QUESTIONS**

1. May an armed security guard or officer carry his/her duty weapon while taking a lunch, dinner, or other type of break?
2. May an armed security guard or officer carry his/her duty weapon at all times if required to do so by his/her employer as part of his/her "on call" duty?
3. May the chief law enforcement officer responsible for authorizing the carrying of a handgun by an armed security guard place any restrictions on a written directive that is issued pursuant to Tenn. Code Ann. § 62-35-101?
4. Is a written directive under Tenn. Code Ann. § 62-35-131 the same as a written directive issued under Tenn. Code Ann. § 39-17-1315?

**OPINIONS**

1. Yes. If an armed security guard or officer is authorized in accordance with Tenn. Code Ann. § 62-35-131 and the appropriate written directive to carry a firearm as his/her duty weapon, then he/she may carry that weapon on a break occurring during otherwise uninterrupted work hours.
2. No. An armed security guard or officer may not carry his/her duty weapon at all times if required to do so by his/her employer as part of "on call" duty pursuant to the provisions of Tenn. Code Ann. § 62-35-131. However, an armed security guard authorized to carry a duty weapon during working hours would not be prohibited from carrying a handgun in off duty hours pursuant to a handgun carrying permit issued pursuant to Tenn. Code Ann. § 39-17-1351.
3. No. A chief law enforcement officer responsible for authorizing the carrying of a handgun by an armed security guard may not place his/her own restrictions on a written directive that is issued pursuant to Tenn. Code Ann. § 62-35-131.
4. No. A written directive issued pursuant to Tenn. Code Ann. § 39-17-1315 deals only with law enforcement officers, whereas a written directive issued pursuant to Tenn. Code Ann. § 62-35-131 deals only with security guards.

**ANALYSIS**

1. An armed security guard or officer who has been authorized to carry a handgun as his/her duty weapon pursuant to Tenn. Code Ann. § 62-35-131 and a written directive may take the handgun on a work break with him/her during the course of an otherwise uninterrupted work day.

\*2 Pursuant to Tenn. Code Ann. § 62-35-131 an armed security guard can be issued a written directive to carry a firearm. The directive authorizes the individual “to carry a firearm for the purpose of employment only.” Tenn. Code Ann. § 62-35-131(e). The directive is valid in all jurisdictions of the state while the security guard is performing his/her official duties for a specific employer. Tenn. Code Ann. § 62-35-13(e). While in counties other than the one which issued the permit, a security guard may carry the firearm to and from work and while performing his/her duties at the job site. Tenn. Code Ann. § 62-35-131(b).

The parts of a statute must be interpreted in *pari materia*, and one section should not be interpreted in such a manner as to void another section. *Wilson v. Johnson Co.*, 879 S.W.2d 807, 809 (Tenn. 1994). The statute clearly allows a security guard who has a written directive to carry a firearm to and from work and during the course of his/her workday for employment purposes. Tenn. Code Ann. § 62-35-131. A clear reading of the language would allow a security guard to take his/her handgun with him/her during any break taken which does not involve going off duty.

Even if a security guard took a break away from his/her job site for a lunch or dinner, he/she would be returning to the job site with the expectation of performing his/her duties. Taking such a lunch or dinner break with the intention of resuming one's duties immediately after the meal would be in the course of his/her “employment” for the purposes of this statute. A security guard or officer would be authorized to take his/her duty weapon with him/her during a break off post, provided that the guard or officer expects to return to duty immediately upon the conclusion of the break to resume work.

2. An armed security guard is not authorized to carry a firearm while “on call” pursuant to Tenn. Code Ann. §§ 62-35-101 through 62-35-131 or Tenn. Code Ann. § 39-17-1315. However, he/she may carry a firearm in off duty hours pursuant to a handgun permit as a private citizen.

Tenn. Code Ann. See 62-35-131(e) specifies that:

Upon compliance with the provisions of [Tenn. Code Ann. § 62-35-101 *et seq.*], the chief law enforcement officer shall issue a written directive authorizing such individual to carry a firearm for the purpose of employment only. Such directive shall be valid in all jurisdictions of the state while the security guard/officer is performing such officer's official duties for a specific employer.

\*3 Further in Tenn. Code Ann. § 62-35-131(b) it is specified that when a security guard “is traveling to or from a job site and while performing duties while at the job site, or while any representative of the security company, supervisor or officer is traveling to or from job sites, or operating as a street patrol service” he/she may carry his/her duty weapon. Parts of a statute should be interpreted in *pari materia*, and one section should not be interpreted in such a manner to void another section. *Wilson* at 809. A court's role in construing a statute is to determine and to “give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). A court must determine the legislative intent from the plain language of the statute, “read in context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *State v. Davis*, 940 S.W.2d 558, 561 (Tenn. 1997). A court must further interpret a statute assuming that the legislature used each word in the statute purposely and that the use of these words conveyed some intent and had a meaning and purpose. *Anderson Fish & Oyster Company v. Olds*, 197 Tenn. 604, 277 S.W.2d 344 (1955). When read together and giving all the words of Tenn. Code Ann. §§ 62-35-131, *et seq.*, their plain and ordinary meaning, a security guard is only allowed to carry a firearm to and from a work assignment and during the course of the work assignment under this statute. The legislature could have included language to the effect that a security guard could carry a weapon at all times regardless of his/her working hours. However, it did not. Such an exception is made for law enforcement officers. Tenn. Code Ann. § 39-17-1315. The absence of such an exception for security guards must be viewed as intentional. *See State v. Harkins*, 811

S.W.2d 79, 82 (Tenn. 1992). Therefore, in the absence of specific statutory language to allow the carrying of handguns by security guards/officers during off duty hours while “on call,” Tenn. Code Ann. §§ 62-35-131, *et seq.* may not be read to authorize security guards to carry their handguns in off duty “on call” hours.

Tenn. Code Ann. § 39-17-1315 does not provide authority to a security guard to carry a firearm while “on call.” While Tenn. Code Ann. § 39-17-1315 does provide that certain individuals who are authorized to carry a firearm pursuant to state law may through a written directive carry the weapon while on call, this provision is a general statute. The sections dealing with security guards are specific statutes. As a matter of statutory construction, a specific statutory provision will control over a more general statutory provision. *Matter of Harris*, 849 S.W.2d 334, 337 (Tenn. 1993). Therefore, since Tenn. Code Ann. § 62-35-131(b) deals specifically with the security guards, its provisions would control. Further this office has previously opined that the provisions of Tenn. Code Ann. § 39-17-1315 deal only with the authority of law enforcement officers to carry a firearm in their off duty hours. Op. Tenn. Atty. Gen. 92-18 (February 28, 1992), p. 6.

\*4 Therefore, the only authority by which a security guard could carry a firearm during off duty hours would be as a private citizen with a handgun carrying permit issued pursuant to the provisions of Tenn. Code Ann. § 39-17-1351.<sup>1</sup>

3. A chief law enforcement officer responsible for authorizing the carrying of a handgun by an armed security guard is not authorized to place his own restrictions on a written directive that is being issued pursuant to Tenn. Code Ann. § 62-35-131.

The provisions of Tenn. Code Ann. §§ 62-35-101 through 62-35-131 do not provide that the chief law enforcement officer shall have discretion as to what provisions to place on a written directive for a security guard to carry a firearm. The plain language of the statute provides that if certain eligibility criteria are met then the chief law enforcement officer shall issue a written directive. Tenn. Code Ann. § 62-35-131. Tenn. Code Ann. § 62-35-131(a)(1) provides that a security guard shall not be required to obtain “any authorization, permit, or license from or to pay any other fee or post a bond in any municipality, county, or other political subdivision of this state” except to pay a bona fide business tax and to obtain a written directive to carry a handgun under the statutory criteria. “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Owens* at 926. “When the words of a statute are plain and unambiguous, the assumption is ‘that the legislature intended what it wrote and meant what it said.’ The pertinent language must be [applied] ‘without any forced or subtle construction extending its import.’” *McClain v. Henry I. Siegel Co.*, 834 S.W.2d 295, 296 (Tenn. 1992).

The plain language of Tenn. Code Ann. § 62-35-131(a) provides that the only local control a municipality, county or other political subdivision may have over the arming of a security guard is that they can collect a bona fide business tax, regulate street patrols, or issue a written directive to carry a handgun, assuming the chief law enforcement officer determines that the person meets certain statutory criteria. The statute limits the chief law enforcement officer’s discretion to deny a handgun permit to those criteria prescribed in the statute. The chief law enforcement officer does not have the authority to create his/her own rules or regulations in regards to the carrying of a firearm by a security guard. *See* Tenn. Code Ann. § 62-35-131(a)(1). Therefore, a chief law enforcement officer cannot place his/her own restrictions upon a security guard’s directive to carry a handgun independent of the provisions of the statute.

\*5 4. As noted in the answer to Question 2 of this opinion, the written directive referenced in Tenn. Code Ann. § 62-35-131(b) is not the same written directive referenced in Tenn. Code Ann. § 39-17-1315.

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Footnotes

- 1 It should be noted that while a security guard may carry a handgun during off duty hours pursuant to a handgun carrying permit issued under Tenn. Code Ann. § 39-17-1351, this would not authorize a security guard to carry a handgun during working hours on the job unless the provisions of Tenn. Code Ann. §§ 62-35-101, *et seq.* are met.  
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