

From: [Nicole Armstrong](#)
To: [John Harris](#)
Subject: RE: Child Care Centers // Inquiry
Date: Friday, August 12, 2022 12:08:09 PM
Attachments: [image001.png](#)
[image002.png](#)

Good afternoon, John—I relayed your question and received the response that DHS will not be requesting an AG opinion on this subject, as the department has not identified a basis for doing so. The provision re firearms has been in CACL rules for many years, the most recent update of which went into effect 6/2022. Under the Uniform Administrative Procedures Act, the rulemaking process requires both approval from the Attorney General’s Office and review by the TN General Assembly’s Government Operations Committee (Tenn. Code Ann. § 4-5-201 et seq., Tenn. Comp. R. & Regs. 1360-01).

Nicole

From: John Harris <jharris@slblawfirm.com>
Sent: Thursday, August 11, 2022 2:57 PM
To: Nicole Armstrong <Nicole.Armstrong@tn.gov>
Subject: [EXTERNAL] RE: Child Care Centers // Inquiry

Would DHS be willing to request an AG opinion relative to the application of TCA 39-17-1314 to its regs relative to regulating or prohibiting firearms and/or the option to use private security in licensed child care facilities that are not owned or operated by a public entity?

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From: Nicole Armstrong [<mailto:Nicole.Armstrong@tn.gov>]

Sent: Thursday, August 11, 2022 2:30 PM

To: John Harris <jharris@slblawfirm.com>

Subject: RE: Child Care Centers // Inquiry

Good afternoon, John—CACL has reviewed your client’s questions, and can only refer back to the applicable child care licensing law/rules:

1. Tenn. Comp. R. & Regs. 1240-04-01-.12((14)(d) prohibits firearms on the premises of a child care agency. The part of or entirety of the premises that is licensed by DHS as a child care agency will be specific to each property (see, Tenn. Comp. R. & Regs. 1240-04-01-.16 Physical Facilities). Child care agencies may only operate within the

scope of their license and must operate in compliance with all child care rules/laws (Tenn. Comp. R. & Regs. 1240-04-01.03(2)).

2. Tenn. Comp. R. & Regs. 1240-04-01-.12(14)(d)(2) provides that the firearms prohibition does not apply to law enforcement personnel. DHS child care law/rules do not address security organizations under Title 62.
3. See above rule citation. DHS law/rules do not address volunteer security teams.
4. DHS has not requested an AG opinion on the applicability of Tenn. Code Ann. § 39-17-1314.

I hope this information is helpful to you, please let me know if I can be of any further assistance.

Nicole

From: John Harris <jharris@slblawfirm.com>
Sent: Monday, August 8, 2022 8:49 AM
To: Nicole Armstrong <Nicole.Armstrong@tn.gov>
Subject: [EXTERNAL] RE: Child Care Centers // Inquiry

Nicole

Thank you. Please let me know what develops because this is the last step in our review of this matter for this client.

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From: Nicole Armstrong [<mailto:Nicole.Armstrong@tn.gov>]
Sent: Friday, August 05, 2022 4:49 PM
To: John Harris <jharris@slblawfirm.com>
Subject: RE: Child Care Centers // Inquiry

Good afternoon, John—I am scheduled to meet with CACL next Wednesday afternoon to discuss further, and will be back in touch afterwards.

Thanks

Nicole

From: John Harris <jharris@slblawfirm.com>

Sent: Monday, August 1, 2022 3:37 PM
To: Nicole Armstrong <Nicole.Armstrong@tn.gov>
Subject: [EXTERNAL] RE: Child Care Centers // Inquiry

Thank you.

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From: Nicole Armstrong [<mailto:Nicole.Armstrong@tn.gov>]

Sent: Monday, August 01, 2022 3:35 PM

To: John Harris <jharris@slblawfirm.com>

Subject: RE: Child Care Centers // Inquiry

Hi, John—thanks for checking in. I am finishing my review of your questions, and need to confer with Child and Adult Care Licensing before responding. I will update you before the end of this week.

Nicole



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From: John Harris <jharris@slblawfirm.com>

Sent: Monday, August 1, 2022 1:01 PM
To: Nicole Armstrong <Nicole.Armstrong@tn.gov>
Subject: [EXTERNAL] RE: Child Care Centers // Inquiry

Nicole

I am following up on this matter since I do not recall receiving a reply.

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From: John Harris
Sent: Tuesday, July 19, 2022 3:05 PM
To: Nicole Armstrong <Nicole.Armstrong@tn.gov>
Subject: RE: Child Care Centers // Inquiry

Thank you Nicole.

I am working on an opinion letter for a client that is a religious institution. A portion of the property is used during the week as a child care facility. It does not hold a license from the state of Tennessee as a school. During times when the facility operates, there are other employees/members/volunteers of the religious institution which are on the property but are not involved in the child care management or services.

Our research indicates that, unlike schools, there is no state statute which addresses firearms on child care center properties. So, the questions we are looking at are as follows:

- 1) Are firearms prohibited on the religious institution's property (assuming it is not posted under TCA 39-17-1359 and assuming it is not licensed as a school under the Department of Education) and if so pursuant to which statute(s) or validly enacted regulations. That is, does the fact that a child care center is operating under the ownership of the church and on church property render all possession of firearms on the church property a violation of the child care center's license?
 - a) If there is a prohibition, does it only apply in that portion of the property where the child care center operates?
 - b) Do the regulations apply when the child care center is "closed", that is, after hours or on weekends?
- 2) If the church operates and is licensed as a proprietary security organization under Title 62, are firearms prohibited relative to those individuals who have state issued armed guard certifications under or related to that proprietary license?
- 3) If the church has volunteer members who operate informally and without compensation as a volunteer security team (there is an AG opinion on this) would that violate the child care center's license?
- 4) Has the Department of Human Services obtained an AG opinion as to whether its regulations are in violation of the state

pre-emption statute TCA 39-17-1314 relative to the regulation of firearms in the state?

There may be additional questions.

Obviously, this same issue came up relative to religious organizations that operated schools.
<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2015/op15-67.pdf>

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From: Nicole Armstrong [<mailto:Nicole.Armstrong@tn.gov>]

Sent: Tuesday, July 19, 2022 2:49 PM

To: John Harris <jharris@slblawfirm.com>

Cc: Nicole Armstrong <Nicole.Armstrong@tn.gov>

Subject: RE: Child Care Centers // Inquiry

Good afternoon, Mr. Harris—General Counsel Hodges has asked me to contact you regarding your email below. Please feel free to email me your specific questions; in the meantime, I can refer you to relevant sections of the rules governing child care agencies licensed by DHS (which can be found at www.tn.gov/sos under “Publications”).

Tenn. Comp. R. & Regs. 1240-04-01-.12 HEALTH AND SAFETY

(14) Prohibited Practices and Products.

(d) Firearms shall not be permitted on the premises of a child care agency, in any vehicle used to transport children or in the presence of a child.

1. In a private residence, firearms, other deadly weapons, and potentially hazardous items, such as power tools, are permitted on the premises, but shall be kept locked, out of sight, and inaccessible to children at all times.

2. The provisions of this subparagraph (d) are not applicable to law enforcement officers.

Tenn. Comp. R. & Regs. 1240-04-01-.17 TRANSPORTATION

(3) Prior to providing child care transportation services of any type, directly or by contract, all new and existing child care agencies shall provide a written statement to the Department that includes:

(d) Policies, procedures, and staff training plans to ensure that all transportation staff properly performs all duties related to the following requirements:

6. Carrying, possessing, or storing firearms or other weapons in vehicles is prohibited;

Tenn. Comp. R. & Regs. 1240-04-05.04 VIOLATIONS OF LICENSING REGULATIONS

(3) Civil Penalties.

(b) Civil Penalties Schedule.

1. Major Violations

(iv) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Four Hundred Dollars (\$400.00) for the third and any subsequent such violation:

(XIII) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of the child care agency or its staff, substitutes, or other persons permitted access to the children; or failure to prevent exposure of children in the child care agency's care to firearms which are under the control of the child care agency or its staff, substitutes, or other persons who have been permitted by the child care agency to have access to the children.

Tenn. Comp. R. & Regs. 1240-04-01-.05 OWNERSHIP, ORGANIZATION AND OWNERSHIP

(10) Notifying Parents/Guardians

(a) The child care agency shall post the following in a clearly visible location and obtain parents'/guardians' signatures indicating they have read the document:

1. A formal notice of a critical licensing violation that put a child at imminent risk of harm or resulted in actual harm;

(i) Critical violations include but are not limited to the following:

(VII) Failure to properly remove or secure firearms;

Sincerely,
Nicole Armstrong



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From: John Harris <jharris@slblawfirm.com>
Sent: Friday, July 15, 2022 12:43 PM
To: Krisann Hodges <Krisann.Hodges@tn.gov>
Subject: [EXTERNAL] Child Care Centers // Inquiry

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Ms. Hodges,

I am an attorney in Nashville and represent a church which also is licensed as a child care center. I have been asked to advise the church regarding matters of church security including issues such as private possession of firearms on church property, church security team operations, etc. As part of that inquiry, I have examined state statutes and attorney general opinions relative to firearms possession on church property, on private school properties and I am now reviewing the laws, AG opinions and regulations pertaining to child care facilities.

I have some questions regarding the application and interpretation by the Department of its regulations relative to firearms possession on private religious properties that may also be licensed as a childcare facility but which also has full time staff at the church property for non-childcare related activities.

I would like to speak with someone on this issue.

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