

Tenn. Op. Atty. Gen. No. 22-02 (Tenn.A.G.), 2022 WL 507714

Office of the Attorney General

State of Tennessee
Opinion No. 22-02
February 1, 2022

Storing and Transporting Firearms in Vehicles on School Property

*1 The Honorable Terri Lynn Weaver
State Representative
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Question 1

May a person who may legally carry or transport a handgun in Tennessee lawfully store that handgun in a vehicle in accordance with [Tenn. Code Ann. § 39-17-1313](#) or other law, even if the vehicle is parked on school property without potentially violating [Tenn. Code Ann. § 39-17-1309](#)?

Opinion 1

Persons who meet the requirements of [Tenn. Code Ann. § 39-17-1313](#) may store or transport a handgun in their vehicles “while on or utilizing any public or private parking area” of a school without violating [Tenn. Code Ann. § 39-17-1309](#).

Question 2

If a person who may legally carry or transport a handgun under Tennessee law, either with or without a permit, relies on [Tenn. Code Ann. § 39-17-1313](#) to store a handgun in a vehicle parked on school property, can that person be prosecuted under the federal Gun-Free School Zones Act?

Opinion 2

Persons who carry a handgun pursuant to [Tenn. Code Ann. § 39-17-1351](#), the enhanced handgun carry permit statute, or [Tenn. Code Ann. § 39-17-1366](#), the concealed handgun carry permit statute, are specifically excepted from application of the federal Gun-Free School Zones Act. A person who carries a handgun without a permit pursuant to [Tenn. Code Ann. § 39-17-1307\(g\)](#) and stores a handgun in a vehicle on the grounds of a school covered by the federal Gun-Free School Zones Act risks prosecution unless that person qualifies for an exception. [Tennessee Code Annotated § 39-17-1313](#) affords no protection when the transportation or storage of a firearm is prohibited by federal law.

Question 3

If a person who may legally carry or transport a handgun without a permit under [Tenn. Code Ann. § 39-17-1307\(g\)](#) or [Tenn. Code Ann. § 39-17-1307\(e\)](#) carries or transports a handgun on or near school property, can that person be prosecuted under the federal Gun-Free School Zones Act?

Opinion 3

A person who carries or transports a handgun without a permit pursuant to [Tenn. Code Ann. § 39-17-1307\(g\)](#) or [Tenn. Code Ann. § 39-17-1307\(e\)](#) “on or near school property” of a school covered by the federal Gun-Free School Zones Act risks

prosecution unless an exception of the Act allows the person to possess a firearm “on the grounds of” the school or “within a distance of 1000 feet” from such grounds.

Question 4

May a student, a person who resides on school property, or an employee of a school rely on [Tenn. Code Ann. § 39-17-1313](#) to lawfully store a handgun in a vehicle parked on school property, assuming the person may legally carry or transport a handgun under Tennessee law, either with or without a permit?

Opinion 4

*2 Persons who meet the requirements of [Tenn. Code Ann. § 39-17-1313](#) may legally store or transport a firearm in a vehicle “while on or utilizing any public or private parking area” of a school. Persons covered by [Tenn. Code Ann. § 39-17-1313](#) include employees and students of a school, as well as persons who reside on school property, because “parking area” is defined as “any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles.”

Question 5

If so, may a school take any adverse action against any such person including, but not limited to, termination, expulsion, or cancellation of housing privileges?

Opinion 5

Statutory provisions—e.g., [Tenn. Code Ann. § 49-7-163](#), [Tenn. Code Ann. § 50-1-312](#), and [Tenn. Code Ann. § 39-17-1314\(g\)](#)—prohibit schools from taking adverse action against students, persons who reside on school property, and employees of schools who have stored handguns in vehicles in parking areas of schools in accordance with the requirements of [Tenn. Code Ann. § 39-17-1313](#). Depending on the facts and circumstances involved, other statutory or common law remedies could also afford protection to a student, a person who resides on school property, or an employee of a school who has stored a handgun in a vehicle in a parking area of school in accordance with the requirements of [§ 39-17-1313](#).

ANALYSIS

1. Under Tennessee law, one is generally prohibited from possessing or carrying a firearm on school property. Specifically, it is a criminal offense to possess or carry a firearm, whether openly or concealed, “in any public or private school building or bus, or 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.” [Tenn. Code Ann. §§ 39-17-1309\(b\)\(1\), \(c\)\(1\)\(A\)](#). Historically, exceptions to this law have been primarily limited to persons such as private police and registered security guards. *See id.* [§ 39-17-1309\(e\)](#).

As of 2013, there is an additional exception to the general prohibition against possessing or carrying a firearm on school property: [Tenn. Code Ann. § 39-17-1313](#) allows persons holding valid handgun carry permits to transport and store firearms in the permit holder’s vehicle “while on or utilizing any public or private parking area.” *See* 2013 Tenn. Pub. Acts, ch. 16, § 1; *Tenn. Att’y Gen. Op.* 13-15 (Feb. 22, 2013) (reasoning that the 2013 legislation did not modify or amend the exceptions in [§ 39-17-1309](#) but merely added another exception); *see also* *Tenn. Att’y Gen. Op.* 13-41 (May 28, 2013) (same).

*3 As explained in *Tenn. Att’y Gen. Op.* 16-29, the additional exception created by [Tenn. Code Ann. § 39-17-1313](#) “operates and is effective in spite of [§ 39-17-1309](#) and ... take[s] priority over [§ 39-17-1309](#) to the extent the two sections are in conflict” because [Tenn. Code Ann. § 39-17-1313](#) expressly provides that its provisions apply “notwithstanding” any law. *See* *Tenn. Att’y Gen. Op.* 16-29 (July 27, 2016) (citing *Webster’s New Collegiate Dictionary* 779 (1981) which defines “notwithstanding” as meaning “in spite of”).¹

Tennessee Code Annotated § 39-17-1313 was amended in 2021 to also allow persons who do not have handgun carry permits to transport and store firearms in their vehicles in public or private parking areas. This amendment corresponded with the enactment of Tenn. Code Ann. § 39-17-1307(g), which allows a person to now carry a handgun—openly or concealed—without a permit under specified conditions.

Currently, Tenn. Code Ann. § 39-17-1313(a) provides:

Notwithstanding any law ... a person who has a valid enhanced handgun carry permit or concealed handgun carry permit or who lawfully carries a handgun pursuant to § 39-17-1307(g) may, unless expressly prohibited by federal law, transport and store a firearm or firearm ammunition in the person’s motor vehicle,² as defined in § 55-1-103, while on or utilizing any public or private parking area³ if:

(1) The person’s motor vehicle is parked in a location where the motor vehicle is permitted to be; and

(2) The firearm or ammunition being transported or stored in the motor vehicle:

(A) Is kept from ordinary observation if the person is in the motor vehicle; or

(B) Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person’s motor vehicle or a container securely affixed to the motor vehicle if the person is not in the motor vehicle.

In sum, Tenn. Code Ann. § 39-17-1313 now allows persons who have a valid enhanced handgun carry permit or concealed handgun carry permit or who lawfully carry a handgun pursuant to § 39-17-1307(g) to transport and store a firearm or firearm ammunition in their motor vehicle in public and private parking areas under the conditions specified in the statute—unless expressly prohibited by federal law. And because Tenn. Code Ann. § 39-17-1313 applies “notwithstanding” any law, it continues to “operate[] and is effective in spite of § 39-17-1309 and ... take[s] priority over § 39-17-1309.”⁴ Accordingly, persons who meet the requirements of Tenn. Code Ann. § 39-17-1313 may transport and store a handgun in their motor vehicle “while on or utilizing any public or private parking area” of a school without violating Tenn. Code Ann. § 39-17-1309.

2. But persons who lawfully carry a handgun without a permit pursuant to § 39-17-1307(g) and otherwise satisfy the state law requirements of Tenn. Code Ann. § 39-17-1313 nevertheless will be deprived of the protection afforded under the statute if they store a handgun in a parked vehicle on school property in contravention of the federal Gun-Free School Zones Act of 1990 (“GFSZA”); Tenn. Code Ann. § 39-17-1313 affords no protection when the storage or transportation of a firearm is “expressly prohibited by federal law.”

*4 The GFSZA generally prohibits firearms possession “at a place that the individual knows, or has reasonable cause to believe, is a school zone.” 18 U.S.C. § 922(q)(2)(A). It defines a “school zone” as “on the grounds of” or “within a distance of 1,000 feet from the grounds of a public, parochial or private school.” *Id.* § 921(a)(25). But only those schools “which provide[] elementary or secondary education, as determined under State law” are covered by the GFSZA. *Id.* § 921(a)(26). Postsecondary institutions, for example, are excluded. *See id.*

Thus, possession of a firearm in a school zone covered by the GFSZA is unlawful unless an exception applies. And the GFSZA excepts from its coverage a person who is licensed to possess a firearm by the State in which the school zone is located, provided the State has verified that the person is qualified under the law to receive a license. *See id.* § 922(q)(2)(B)(ii). A person who holds a valid enhanced handgun carry permit pursuant to Tenn. Code Ann. § 39-17-1351 or a concealed handgun carry permit pursuant to Tenn. Code Ann. § 39-17-1366 falls within this exception because an applicant under either statute must submit to a fingerprint-based criminal history check to determine whether the applicant is disqualified from possessing a firearm. *See Tenn. Code Ann. §§ 39-17-1351(h), -1366(c).* Accordingly, persons who hold a valid enhanced handgun carry permit or a concealed handgun carry permit under Tennessee law may, without federal criminal repercussion, store a handgun in their vehicle while parked on the property of schools covered by the GFSZA.

The GFSZA also has exceptions that may apply to persons carrying a handgun *without* a permit pursuant to Tenn. Code Ann. § 39-17-1307(g) and that would allow them to store a handgun in a vehicle on the property of a school covered by the

GFSZA. Persons carrying a handgun without a permit are excepted if any of the following conditions applies:

- (1) the possession of the firearm is on private property not part of school grounds;
- (2) the firearm is unloaded and stored in a locked container or locked firearms rack on a motor vehicle;
- (3) the individual possesses the firearm for use in a program approved by a school in a school zone;
- (4) the individual possesses the firearm in accordance with a contract between a school in a school zone and an individual or the individual's employer;
- (5) the possession of the firearm is by a law enforcement officer acting in his or her official capacity; or
- (6) the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

18 U.S.C. § 922(q)(2)(B)(i), (iii) through (vii). Put another way, a person who carries a handgun without a permit pursuant to [Tenn. Code Ann. § 39-17-1307\(g\)](#) and who stores the handgun in a vehicle on the grounds of a school covered by the GFSZA risks prosecution under the GFSZA unless one of the above conditions is met, e.g., the handgun is stored—unloaded—in a locked container or locked firearms rack on the person's motor vehicle.

*5 In sum, persons who carry a handgun pursuant to [Tenn. Code Ann. § 39-17-1351](#), the enhanced handgun carry permit statute, or [Tenn. Code Ann. § 39-17-1366](#), the concealed handgun carry permit statute, are specifically excepted from application of the federal Gun-Free School Zones Act. But a person who carries a handgun without a permit pursuant to [Tenn. Code Ann. § 39-17-1307\(g\)](#) and stores a handgun in a vehicle on the grounds of a school covered by the federal Gun-Free School Zones Act risks prosecution unless that person qualifies for an exception.

3. Similarly, a person who is carrying or transporting a handgun without a permit pursuant to [Tenn. Code Ann. § 39-17-1307\(g\)](#) or [Tenn. Code Ann. § 39-17-1307\(e\)](#)⁵ “on or near school property” of a school covered by the GFSZA risks prosecution unless an exception allows the person to possess a firearm “on the grounds of” the school or “within a distance of 1000 feet” from such grounds.

4. Assuming a person satisfies an exception to the GFSZA or a particular school is not covered by the GFSZA, that person may legally store or transport a firearm in a vehicle “while on or utilizing any public or private parking area” of a school if that person satisfies the conditions in [Tenn. Code Ann. § 39-17-1313](#). Persons covered by [Tenn. Code Ann. § 39-17-1313](#) include employees and students of any school, as well as persons who reside on school property, who are “on or utilizing any public or private parking area” because “parking area” is defined as “*any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles.*” [Tenn. Code Ann. § 39-17-1313\(c\)\(2\)\(A\)](#) (emphasis added).

5. Certain statutory provisions prohibit schools from taking adverse action against a student, a person who resides on school property, or an employee of a school who has stored a handgun in a vehicle in a parking area of a school in accordance with the requirements of [Tenn. Code Ann. § 39-17-1313](#). For instance, [Tenn. Code Ann. § 49-7-163](#) prohibits public postsecondary educational institutions from taking “any adverse action against an employee or student of the postsecondary institution solely for such person’s transportation of a firearm or firearm ammunition in compliance with § 39-17-1313 while on or using a parking area located on property owned, used or operated by the postsecondary institution.” And [Tenn. Code Ann. § 50-1-312](#) provides a cause of action for an employee against a private employer when the employer “discharge[s] or take[s] any adverse employment action against an employee solely for transporting or storing a firearm or firearm ammunition in an employer parking area in a manner consistent with § 39-17-1313.”⁶

*6 Additionally, [Tenn. Code Ann. § 39-17-1314\(g\)](#) could provide a cause of action to an employee, student, or other person who is adversely affected by a local governmental regulation or policy that prohibits the storage and transportation of a firearm or firearm ammunition in accordance with [§ 39-17-1313](#). As explained in [Tenn. Att’y Gen. Op. 21-13](#) (Aug. 31, 2021), local governmental entities have authority to regulate the field of firearms only when specifically authorized by the

General Assembly, and no state law gives local governmental entities the authority to override § 39-17-1313.

Other statutory provisions as well as common law remedies could also afford protection to a student, a person who resides on school property, or an employee of a school who has stored a handgun in a vehicle in a parking area of a school in accordance with the requirements of § 39-17-1313, depending on the facts and circumstances.

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Footnotes

- ¹ As originally enacted, [Tenn. Code Ann. § 39-17-1313](#) applied “[n]otwithstanding § 39-17-1309, § 39-17-1311, or § 39-17-1359.” 2013 Tenn. Pub. Acts, ch. 16, § 1. In 2014, this portion of the statute was repealed and replaced with “[n]otwithstanding any provision of law or any ordinance or resolution adopted by the governing body of a city, county, or metropolitan government, including any ordinance or resolution enacted before April 8, 1986, that prohibits or regulates the possession, transportation or storage of a firearm or firearm ammunition by a handgun carry permit holder.” 2014 Tenn. Pub. Acts, ch. 768, § 1. The 2016 Opinion observes that the 2014 amendment to [Tenn. Code Ann. § 39-17-1313](#) did not change its relationship to §§ 39-17-1309, -1311, and -1359; rather, the amendment broadened the “notwithstanding” prepositional phrase to refer not just to the three enumerated Code sections but to any law.
- ² “‘Motor vehicle’ means any motor vehicle as defined in § 55-1-103, which is in the lawful possession of the person, but does not include any motor vehicle which is owned or leased by a governmental or business entity and that is provided by such entity to an employee for use during the course of employment if the entity has adopted a written policy prohibiting firearms or ammunition not required for employment within the entity’s motor vehicles[.]” [Tenn. Code Ann. § 39-17-1313\(c\)\(1\)](#).
- ³ “‘Parking area’ means any property provided by a business entity, public or private employer, or the owner, manager or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles.” [Tenn. Code Ann. § 39-17-1313\(c\)\(2\)\(A\)](#). “‘Parking area’ does not include the grounds or property of an owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence.” *Id.* § 39-17-1313(c)(2)(B).
- ⁴ See note 1, *supra*, and accompanying text.
- ⁵ [Tennessee Code Annotated § 39-17-1307\(a\)](#) makes it a criminal offense to carry a firearm with the intent to go armed unless an exception or defense applies. In addition to [Tenn. Code Ann. § 39-17-1307\(g\)](#), subsection (e) of [Tenn. Code Ann. § 39-17-1307\(a\)](#) provides that “[i]t is an exception to the application of subsection (a) that a person is carrying or possessing a firearm, loaded firearm, or firearm ammunition in a motor vehicle or boat if the person: (A) Is not prohibited from possessing or receiving a firearm by 18 U.S.C. § 922(g) or purchasing a firearm by § 39-17-1316; and (B) Is in lawful possession of the motor vehicle or boat.”
- ⁶ This statute does not apply to public employers because [Tenn. Code Ann. § 50-1-312\(a\)\(2\)](#) defines “employer” as “a person, association, or legal or commercial entity receiving services from an employee and in, return, giving compensation of any kind to the employee.” A waiver of sovereign immunity of a public employer must be expressly stated. See *Northland Ins. Co. v. State*, 33

S.W.3d 727, 729 (Tenn. 2000). Compare Tenn. Code Ann. § 50-1-312(a)(2) with Tenn. Code Ann. § 50-1-304 (providing a cause of action to an employee who is discharged for refusing to remain silent about illegal activities and expressly defining “employer” in Tenn. Code Ann. § 50-1-304(a)(2) as including the

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