

From the moment that Governor McAuliffe issued Executive Order 50 to ban guns in state agency buildings back in December 2015, I began to research the legality of the Governor creating such a ban.

Subsequently, I have spoken to a plethora of prosecutors, defense attorneys, Delegates, and Senators. I asked each person the same question: what law would I be breaking and what would be the penalty if I ignored the “No guns” signs at state agencies and carried anyhow?

Here is what I found out.

STATE AGENCY GUN BAN - WHERE'S THE AUTHORITY?

A 2002 Attorney General's opinion (02-074) by Jerry Kilgore noted that "A person's privilege to carry a concealed handgun is considered universal within the Commonwealth subject to limited circumstances. The General Assembly has specifically set out those places where the carrying of a concealed handgun is prohibited...."

Basically what that says is that the Governor would need specific statutory authority granted to him by the General Assembly in order to be able to ban concealed handguns in state agencies with the force of law.

In 2008, Attorney General McDonnell made a similar statement in an Attorney General opinion (08-043) dealing with open carry in state parks: "I find no specific statutory authority granting the Department the authority to prohibit the open carrying of firearms in state parks. A person's right to carry a firearm openly is considered universal within the Commonwealth, subject to definite and limited restrictions upon certain locations and classifications of individual..."

Based on that opinion, the Governor would need statutory authority from the General Assembly to ban open carry with the force of law, too.

Since the Governor does NOT have statutory authority from the General Assembly for either ban, all he can do is to make a POLICY banning open or concealed carry of firearms in state agencies. And that is what he has done. (In fact, without a regulation backing up that “no guns” policy, he could NOT have a policy banning concealed carry at all. So he got an emergency regulation put in place back in December. The open carry ban did not require a regulation to back up that policy.)

SO AM I BREAKING THE LAW IF I CARRY CONCEALED IN A STATE AGENCY?

From everything I have learned, the answer appears to be a solid “no.” Ignoring the signs at a state agency is apparently NOT a criminal act. You would be breaking a POLICY and NOT breaking a LAW.

If you are caught breaking the “no guns” policy, you will be asked to remove the gun from the building. If you refuse to do that, THEN you are committing a crime - the crime of trespass - which is a Class 1 misdemeanor, punishable by a fine of up to a \$2,500 and/or up to twelve months in jail.

This is, in essence, the same policy that state universities and colleges have in place. If it is found that you are carrying in a state university or college building, they will ask you to leave and will charge you with trespass if you don't.

Of course, if you are employed by the state, you could be fired, too. If you are student at a state university or college and carry there, you could be expelled if caught.

THIS IS NOT LEGAL ADVICE

I'm not an attorney and the above is not legal advice to you. Could there be some kind of legal "gotcha!" hiding somewhere? Sure, but it must be doing a darned good job of staying out of sight. ;-)

Do with the above information what you will. I felt it was important to share the information so that you and other gun owners could make an educated decision when it comes to your personal security.

LINKS

Concealed carry ban (1VAC30-105):

<http://register.dls.virginia.gov/details.aspx?id=5363>

Open carry ban in Executive Order 50:

<https://governor.virginia.gov/media/4685/eo-50-on-gun-violence-final.pdf>

VA-ALERT is a project of the Virginia Citizens Defense League, Inc. (VCDL). VCDL is an all-volunteer, non-partisan grassroots organization dedicated to defending the human rights of all Virginians. The Right to Keep and Bear Arms is a fundamental human right.

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