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March 25, 2016

ATTORNEY GENERAL OPINION NO. 2016-5

The Honorable Vicki Schmidt  
State Senator, 20<sup>th</sup> District  
State Capitol, Room 445-S  
300 S.W. 10<sup>th</sup> Ave.  
Topeka, KS 66612

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act; Employees Permitted to Carry

Synopsis: A public school district employee without a Kansas concealed carry license violates the Gun-Free School Zones Act by carrying a concealed handgun inside a school zone unless a federal statutory exception applies, notwithstanding the Kansas law that allows public school districts to permit concealed carry by school employees inside school buildings. Cited herein: K.S.A. 2015 Supp. 21-6301; 21-6302; 75-7c03; 75-7c05; K.S.A. 2012 Supp. 75-7c10; K.S.A. 2015 Supp. 75-7c10; 75-7c20.

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Dear Senator Schmidt:

As State Senator for the 20<sup>th</sup> District, you ask us to clarify the laws governing the ability of teachers and other employees of public K-12 schools to possess firearms while working on school property. In particular, you ask how federal law prohibitions on carrying firearms within a school zone affect the Kansas law allowing public school teachers and employees to carry concealed handguns at work.

For the purposes of this opinion, we assume that your question relates only to school employees such as teachers, administrators and support staff, who are not certified law enforcement officers. Our analysis therefore does not apply to school employees or

contractors who are certified law enforcement officers. We also assume that your question is limited to the ability of public school employees to carry concealed handguns at work, and we therefore do not specifically address open carry.

We begin with an overview of applicable state law.

### Kansas Law

Under current state law, a license is not required to lawfully carry a concealed handgun.<sup>1</sup> It is not a crime for a person to carry a concealed handgun on school property,<sup>2</sup> even if that person does not possess a valid concealed carry license, so long as that person is at least 21 years old and not prohibited from possessing a firearm under state or federal law.<sup>3</sup>

Generally, concealed carry is not permitted inside any public K-12 school building if the building is posted with signage in accordance with K.S.A. 2015 Supp. 75-7c10.<sup>4</sup> Other laws generally requiring public buildings to allow concealed carry do not apply to public school district buildings.<sup>5</sup>

During the 2013 legislative session, K.S.A. 2012 Supp. 75-7c10 was amended to allow the governing board of a public school district to permit any school employee with a valid concealed carry license to carry a concealed handgun inside school buildings.<sup>6</sup> A subsequent amendment to that statute removed the requirement that such school employees be licensed to carry a concealed handgun.<sup>7</sup> These amendments are now codified at K.S.A. 2015 Supp. 75-7c10(d)(1).

Presently, K.S.A. 2015 Supp. 75-7c10(d)(1) allows the governing board of a public school district to “permit any employee to carry a concealed handgun in any building of such institution, if the employee meets such institution’s own policy requirements regardless of whether such building is conspicuously posted [with signage approved by the Attorney General].” This means that a public school district may choose to allow its employees to carry a concealed handgun inside a school building even if the public is *not* permitted to carry a concealed handgun inside the building.

A public school district may adopt personnel policies to restrict or prohibit its employees from carrying a concealed handgun while on school property or while engaged in work

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<sup>1</sup> K.S.A. 2015 Supp. 75-7c03(a).

<sup>2</sup> For the purposes of this opinion, “school property” means the entire public K-12 school premises, including its buildings, grounds, and parking lots.

<sup>3</sup> K.S.A. 2015 Supp. 21-6301(a)(11) and (i)(5). Generally, a person under 21 years of age may not carry a concealed handgun unless that person is on their own land, in their own abode, or in their fixed place of business. K.S.A. 2015 Supp. 21-6302(a)(4).

<sup>4</sup> K.S.A. 2015 Supp. 75-7c10(a).

<sup>5</sup> K.S.A. 2015 Supp. 75-7c20(m)(2).

<sup>6</sup> L. 2013, Ch. 105, § 9(d).

<sup>7</sup> L. 2015, Ch. 16, § 11(d).

duties, but a district may *not* prohibit possession of a handgun in a private means of conveyance, even if parked on school property.<sup>8</sup>

Taken together, Kansas law generally allows a teacher or other public school employee to possess a concealed handgun on school grounds, but the employee may not carry the concealed handgun into a school building unless the local school board approves it. This is true regardless of whether the school employee is licensed to carry a concealed handgun.

### Federal Law

The federal law you reference in your request is the Gun-Free School Zones Act (GFSZA).<sup>9</sup> In Attorney General Opinion No. 2014-22, we provided an overview of the GFSZA as follows:

The GFSZA generally prohibits the knowing possession of a firearm within an area the person knows or has reason to know is a school zone. “School zone” means in or on the grounds of a public, parochial or private elementary or secondary school, or within 1,000 feet from the grounds of such a school.<sup>10</sup>

We presume that any possession of a firearm on school premises by an employee of that school is “knowing.” Therefore, the GFSZA would generally apply to public school employees who bring firearms onto school property.

However, there are certain exceptions to the GFSZA that may apply in a particular case. The general prohibition against the knowing possession of a firearm within a school zone does not apply in any of the following circumstances:

- if the individual possessing the firearm has a valid Kansas concealed carry license;<sup>11</sup>
- if the firearm is unloaded and stored in a locked container or locked firearms rack on a motor vehicle;
- if the individual possesses the firearm for use in a program approved by a school in the school zone;

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<sup>8</sup> K.S.A. 2015 Supp. 75-7c10(b)(1).

<sup>9</sup> 18 U.S.C. § 922(q).

<sup>10</sup> See 18 U.S.C. §§ 921(a)(25) and 922(q)(2)(A) (internal citations omitted).

<sup>11</sup> This exception to the GFSZA applies only “if the individual possessing the firearm is licensed to do so *by the State in which the school zone is located . . . and the law of the State . . . requires that, before an individual obtains such a license, the law enforcement authorities of the State . . . verify that the individual is qualified under law to receive the license.*” See 18 U.S.C. § 922(q)(2)(B)(ii) and K.S.A. 2015 Supp. 75-7c05(c) and (d) (emphasis added). This exception would not be available to a public school employee under the age of 21 because they are ineligible for a Kansas concealed carry license. K.S.A. 2015 Supp. 75-7c04(a)(3).

- if the individual possesses the firearm in accordance with a contract entered into between a school in the school zone and the individual or the individual's employer; or,
- if the individual in possession of a firearm is a law enforcement officer acting in his or her official capacity.<sup>12</sup>

Thus, a person does not violate the GFSZA if he or she knowingly possesses a firearm within a school zone in the above scenarios. For example, a public school employee who stores an unloaded firearm in a locked container in their vehicle in the school parking lot is not violating the GFSZA. A public school employee who has a valid Kansas concealed carry license may carry a firearm, concealed or unconcealed, while on school property. A contractor authorized by the school to provide a marksmanship program for public school students may possess a firearm on school grounds pursuant to his or her contract with the school.

### **Conclusion**

In light of the foregoing, it is our opinion that, notwithstanding the provisions of K.S.A. 2015 Supp. 75-7c10(d)(1), federal law would prohibit a public school employee from lawfully carrying a concealed handgun while at work on school premises, unless one of the exceptions to the GFSZA applies. A school employee without a Kansas concealed carry license may not lawfully carry any firearm on school property unless the employee is a law enforcement officer or the school has approved that person to carry a firearm as part of an approved program or contract.

This prohibition includes a public school employee who wishes to store a firearm in his or her vehicle. K.S.A. 2015 Supp. 75-7c10(b)(1) blocks a public school district from prohibiting its employees from possessing a handgun in a private means of conveyance, including vehicles parked on school premises. However, as noted above, it would be a violation of the GFSZA for a public school employee without a Kansas concealed carry license to possess any firearm in a private means of conveyance unless the firearm is unloaded and stored in a locked container or firearm rack.

A public school employee with a valid Kansas concealed carry license, who may lawfully carry a firearm within a school zone under the GFSZA, is still subject to restrictions under state law. Such employee would be subject to any policies that prohibit the concealed carry of handguns by employees inside school buildings and/or during the course of work duties. For example, it would be unlawful for a school employee to carry a concealed handgun into a school building that is posted as prohibiting concealed carry, unless the local school board has authorized its employees to carry concealed handguns inside school buildings pursuant to K.S.A. 2015 Supp. 75-7c10(d)(1).

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<sup>12</sup> 18 U.S.C. § 922(q)(2)(B)(ii) through (vi).

Lastly, we would note that the GFSZA applies to individuals, not to schools or other institutions.<sup>13</sup> Therefore, the duty to comply with the GFSZA lies with individual public school employees, not with the school itself.

Sincerely,

Derek Schmidt  
Attorney General

Sarah Fertig  
Assistant Attorney General

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<sup>13</sup> 18 U.S.C. § 922(q)(2)(A).