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October 19, 2015

ATTORNEY GENERAL OPINION NO. 2015- 17

Jennifer L. Magaña
City Attorney and Director of Law
City Hall
455 N. Main St.
Wichita, KS 67202-1635

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act; Restrictions on Carrying a Concealed Handgun; Concealed Handguns in Public Buildings

Synopsis: The Personal and Family Protection Act (PFPA) does not authorize a city to adopt a “prescreen” process whereby certain members of the public may apply to be approved to bypass security measures at the public entrances to the city hall. Cited herein: K.S.A. 2015 Supp. 21-6309; 75-7c01; K.S.A. 2012 Supp. 75-7c10; K.S.A. 2015 Supp. 75-7c10; 75-7c17; 75-7c20; 75-6102.

* * *

Dear Ms. Magaña:

As the Wichita City Attorney, you ask our opinion whether the Personal and Family Protection Act¹ (PFPA) would allow a city to establish a screening process to allow certain pre-approved members of the public to bypass adequate security measures in place at the public entrance to the city hall.

In the scenario you describe, a person who is not a city employee could apply to receive a “prescreen pass” that would allow that person to enter the city hall through the city employee entrance, without being subject to screening by a metal detector or security staff at the public entrance. You indicate that applicants for a prescreen pass would be

¹ K.S.A. 2015 Supp. 75-7c01 *et seq.*

required to submit to a criminal background check; be approved by the mayor or city council members; and sign an affidavit acknowledging that certain items are prohibited inside the building.²

Your question involves several provisions of the PFPA, which is commonly known as the Kansas concealed carry law.

The PFPA expressly limits the ability of cities to regulate the concealed carry of handguns:

No city, county or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by individuals except as provided in K.S.A. 2014 Supp. 21-6301, 21-6302, 21-6304, 21-6309, 75-7c10 or 75-7c20, and amendments thereto, or K.S.A. 21-4218(f), prior to its repeal.³

Thus, a city rule regulating, restricting or prohibiting concealed carry must be authorized by the provisions of one of the specific statutes listed above. Any existing or future local rule or law that attempts to regulate concealed carry except as provided by those statutes is void.⁴ Of those enumerated statutes, only K.S.A. 2015 Supp. 75-7c10 and 75-7c20 are relevant to your question; the other statutes are part of the Kansas criminal code and do not apply here.⁵

K.S.A. 2015 Supp. 75-7c10(a) establishes the general rule that concealed carry may be prohibited inside a building by posting certain signage at all exterior entrances to the building. However, state or municipal buildings are also “[s]ubject to the provisions of K.S.A. 75-7c20, and amendments thereto.”⁶

K.S.A. 2015 Supp. 75-7c20 generally prohibits a city from banning concealed carry inside city buildings,⁷ but also provides two exceptions to that rule. One exception allows a city to exempt a city building, such as the city hall, from the requirements of K.S.A. 2015 Supp. 75-7c20 for a period of four years,⁸ thereby allowing the city to prohibit concealed carry in that building by posting signage in accordance with K.S.A. 2015 Supp. 75-7c10. This exception is inapplicable to your question because you state

² Although you do not expressly state it in your letter, we assume for the purposes of this opinion that firearms are among the list of prohibited items.

³ K.S.A. 2015 Supp. 75-7c17(a).

⁴ *Id.*

⁵ Under K.S.A. 2015 Supp. 21-6309 it is a crime to carry a firearm within certain state government buildings, and within a county courthouse unless authorized by the county commission. This statute does not apply to city buildings, however.

⁶ K.S.A. 2015 Supp. 75-7c10. City-owned or leased buildings are considered municipal buildings for the purposes of the PFPA. K.S.A. 2015 Supp. 75-7c20(m)(5)(a). See *also* K.S.A. 2015 Supp. 75-7c20(m)(2) and 75-6102(b).

⁷ K.S.A. 2015 Supp. 75-7c20(a).

⁸ K.S.A. 2015 Supp. 75-7c20(i) and (j).

that adequate security measures are in place in the city hall. Thus, we examine your question in light of the second exception.

The second exception to the general rule that concealed carry must be allowed in state or municipal buildings is found in K.S.A. 2015 Supp. 75-7c20. That statute, originally enacted in 2013,⁹ is a departure from the previous rule, which allowed concealed carry to be prohibited inside any building, whether public or private, simply by posting the building with certain signage.¹⁰ Under current law, unless a state or municipal building is temporarily exempt from the provisions of K.S.A. 2015 Supp. 75-7c20, “adequate security measures” also must be provided “*to ensure that no weapons are permitted to be carried into the building.*”¹¹ In other words, it is no longer sufficient to rely on the public to comply with signs prohibiting concealed carry; the non-exempt state or municipal building must have measures in place to *ensure* that no weapons are permitted to be carried into the building.

To answer your question, we first consider what “adequate security measures” means within the context of the PFFA. K.S.A. 2015 Supp. 75-7c20(b) states: “[a]ny state or municipal building which contains both public access and restricted access entrances shall provide adequate security measures at the public access entrances *in order to prohibit the carrying of any weapons into such building.*”¹² The PFFA defines adequate security measures as follows:

[T]he use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes *to ensure that weapons are not permitted to be carried into such building by members of the public.*¹³

Reading together the above statutory provisions, particularly the italicized language, it is apparent that the security measures in place must be designed to ensure that no weapons are carried into the building by the public in order to qualify as adequate security measures for the purposes of the PFFA. Such measures must include, at a minimum, security personnel and electronic equipment. The prescreen program that you describe would not require all members of the public to pass through screening by security personnel and electronic equipment, but it would essentially become part of the building’s overall security measures.

We do not believe the legislature intended a mere promise by members of the public not to carry firearms into a public building to suffice; if that were so, then the previous system of posting signage and relying upon voluntary compliance by members of the public to exclude firearms from the building would have been sufficient. But that is

⁹ L. 2013, Ch. 105, § 2.

¹⁰ K.S.A. 2012 Supp. 75-7c10(a).

¹¹ K.S.A. 2015 Supp. 75-7c20(a) (emphasis added).

¹² Emphasis added.

¹³ K.S.A. 2015 Supp. 75-7c20(m)(1) (emphasis added).

precisely the sort of system the legislature replaced when it enacted the 2013 legislation that put into place the current, heightened process of adequate security measures in order to keep weapons out of a state or municipal building. In our opinion, it would defeat the purpose of K.S.A. 2015 Supp. 75-7c20(a) and (b) to allow certain members of the public to bypass security measures based on a promise not to carry weapons into the building. We therefore opine that such a system would not be considered adequate security measures for the purposes of the PFPA.

We also believe that security measures that allow non-employees to enter the city hall through an employee-only entrance would be inconsistent with the PFPA. A city is not required to provide adequate security measures at each “restricted access entrance,” only at public entrances.¹⁴ A restricted access entrance is “an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to *authorized personnel*.”¹⁵

Even if adequate security measures are in place in a city building, a city employee does not violate the PFPA by carrying a concealed handgun into the building if the employee carries the handgun through a restricted access entrance. K.S.A. 2015 Supp. 75-7c20(d) states:

It shall not be a violation of the personal and family protection act for a person to carry a concealed handgun into a state or municipal building so long as that person has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2014 Supp. 75–7c10, and amendments thereto.

We acknowledge that K.S.A. 2015 Supp. 75-7c20(d) refers to a “person” who has authority to enter through a restricted access entrance, not an “employee,” and thus it could be argued that the PFPA allows a city to grant employee-only access privileges to non-employees. However, because the definition of restricted access entrance refers only to “authorized personnel,” we believe K.S.A. 2015 Supp. 75-7c20(d) is meant to apply to employees only, not the general public. “[E]ven when various statutory provisions are unambiguous, we may still construe them in *pari materia* with a view of reconciling and bringing the provisions into workable harmony.”¹⁶ Therefore, we do not believe the PFPA authorizes a city to allow non-employees to enter the building through a restricted access entrance as part of its adequate security measures.

To summarize, the purpose of adequate security measures is to ensure that no weapons are carried into the building “by members of the public.” We believe that the PFPA does not authorize the use of a pre-screening program such as you describe because the resulting system would not meet the statutory definition of adequate security measures. In addition, the PFPA provides special rules for city employees, but

¹⁴ K.S.A. 2015 Supp. 75-7c20(b). See also K.S.A. 2015 Supp. 75-7c10(b).

¹⁵ K.S.A. 2015 Supp. 75-7c20(m)(3) (emphasis added).

¹⁶ *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 919 (2015).

it does not authorize a city to apply those rules to a member of the public. Because the program you describe is not an authorized method of regulating concealed carry under any of the enumerated statutes in K.S.A. 2015 Supp. 75-7c17(a), the program would run afoul of that statute and would be deemed void.

Furthermore, it is possible that a city pre-screening program that included a criminal background check and required approval by the mayor or city council members could, as applied, violate the legislative intent of the PFPA, which is “to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person’s rights.”¹⁷ However, we could not offer an opinion on that topic without reviewing a list of disqualifying criminal history events or the standards by which the mayor or city council would determine whether to approve an application, none of which was supplied to us. But because we believe a pre-screening program such as you describe is preempted by state law, the issue is moot.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb

¹⁷ K.S.A. 2015 Supp. 75-7c17(a).