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January 28, 2015

ATTORNEY GENERAL OPINION NO. 2015- 3

The Honorable Forrest J. Knox  
State Senator, 14<sup>th</sup> District  
17120 Udall Rd.  
Altoona, KS 66710

Re: Cities and Municipalities–Miscellaneous Provisions–Firearms and  
Ammunition; Regulation by City or County, Limitations

State Departments; Public Officers and Employees–Firearms–Personal  
and Family Protection Act

Synopsis: The Personal and Family Protection Act (PFPA) allows state and municipal buildings, public schools, public postsecondary institutions, state or municipal-owned adult care homes, community mental health centers, indigent health care clinics, state or municipal-owned medical care facilities, the Kansas State School for the Deaf and the Kansas State School for the Blind to regulate, restrict or prohibit concealed carry *inside* those institutions' buildings.

The PFPA does not permit a city, county or other political subdivision to regulate, restrict or prohibit concealed carry *on the grounds* of public buildings.

A public employer may not prohibit an employee from storing a firearm in the employee's personal vehicle, even while the vehicle is on the employer's premises. K.S.A. 2014 Supp. 12-16,124(a) generally prohibits cities and counties from regulating the carrying or storage of firearms, but K.S.A. 2014 Supp. 12-16,124(d) allows a city or county to adopt an ordinance, resolution, regulation or personnel policy consistent with the PFPA.

The federal Gun-Free School Zones Act (GFSZA) prohibits a person without a valid concealed carry license from carrying a firearm inside a

school zone. A person with a valid Kansas concealed carry license may carry a firearm into a school zone without violating the GFSZA, but the PFFPA still allows public school districts to prohibit concealed carry by posting signage on a school district building.

The extent to which a person possesses a constitutional right to carry a firearm in public is unclear following the United States Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago*. Cited herein: K.S.A. 2012 Supp. 75-7c10; K.S.A. 2014 Supp. 12-16,124; 21-6301; 21-6309; 75-7c01; 75-7c10; 75-7c17; 75-7c20; 75-4514; 75-6102; K.A.R. 1-49-11; K.A.R. 16-11-7; Kan. Const., Bill of Rights, § 4; U.S. Const., Am. 2; 18 U.S.C. § 921; 18 U.S.C. § 922.

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Dear Senator Knox:

As State Senator for the 14<sup>th</sup> District, you ask for our opinion regarding the statutory authority for certain public institutions<sup>1</sup> to regulate the possession and storage of firearms on such institution's property. You further ask: "under what circumstances can governmental entities limit the 2<sup>nd</sup> Amendment rights of persons?"

Kansas law expressly allows each of the public institutions you reference in your letter to regulate the possession and carrying of firearms on such institution's property to some degree. "Kansas statutes are presumed constitutional, and all doubts must be resolved in favor of their validity."<sup>2</sup> In addition, federal law restricts the carrying of any firearm on certain property, and federal law enjoys a similar presumption of constitutionality.<sup>3</sup>

### ***Concealed Carry Inside Public Buildings***

Prior to July 1, 2013, concealed carry could be prohibited inside a public building simply by posting the building with specific signs at public entrances to indicate that concealed carry is not allowed inside.<sup>4</sup> In 2014, the Kansas Legislature enacted a statute, now codified at K.S.A. 2014 Supp. 75-7c20, that generally requires state and municipal

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<sup>1</sup> You ask about the following public institutions: state or municipal localities or properties; public preschools and K-12 schools; public postsecondary education institutions as defined in K.S.A. 74-3201b and their grounds; state or municipal-owned adult care homes as defined in K.S.A. 39-923; community mental health centers organized pursuant to K.S.A. 19-4001 *et seq.*; indigent health care clinics as defined by K.S.A. 65-7402; state or municipal-owned medical care facilities as defined by K.S.A. 65-425; the Kansas State School for the Deaf and its grounds; and the Kansas State School for the Blind and its grounds.

<sup>2</sup> *In re Weisgerber*, 285 Kan. 98, 102 (2007).

<sup>3</sup> See, e.g., *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993) ("A statute is presumed constitutional . . .").

<sup>4</sup> See K.S.A. 2012 Supp. 75-7c10(a).

buildings to allow persons licensed under the Personal and Family Protection Act<sup>5</sup> (PFPA) to carry a concealed handgun into such buildings.

The 2014 amendments have four exceptions to the new general rule that concealed carry is permitted inside state and municipal buildings. First, the provisions of K.S.A. 2014 Supp. 75-7c20 expressly do not apply to the Kansas State School for the Blind and the Kansas State School for the Deaf.<sup>6</sup> This means that those institutions are not required to permit concealed carry inside school buildings, and may prohibit concealed carry by posting signs at exterior entrances to the building in accordance with K.S.A. 2014 Supp. 75-7c10.<sup>7</sup>

Second, public school districts are expressly excluded from the definition of “municipality” for the purposes of K.S.A. 2014 Supp. 75-7c20,<sup>8</sup> and therefore the provisions of that statute do not apply to any public school district building. Public school districts are not required to allow concealed carry inside district buildings and may prohibit concealed carry by posting the building in accordance with K.S.A. 2014 Supp. 75-7c10.

Third, K.S.A. 2014 Supp. 75-7c20 allows state and local governments to exempt any or all of their buildings from the provisions of that statute for a specific period of time. The state or a municipality may exempt any of its buildings from the provisions of K.S.A. 2014 Supp. 75-7c20 until January 1, 2014, and thereafter for a period of four years.<sup>9</sup> Also, public postsecondary education institutions, state or municipal-owned adult care homes, community mental health centers, indigent health care clinics and state or municipal-owned medical care facilities may exempt any building of such institution from the provisions of K.S.A. 2014 Supp. 75-7c20 for a single period of four years.<sup>10</sup> An exempt building may prohibit concealed carry by posting the building in accordance with K.S.A. 2014 Supp. 75-7c10.

Fourth, concealed carry may be prohibited inside any building that is not exempt from the provisions of K.S.A. 2014 Supp. 75-7c20 if adequate security measures are provided and the building is posted as prohibiting concealed carry.<sup>11</sup>

We note that another statute, K.S.A. 2014 Supp. 12-16,124(a), generally prohibits a city or county from enacting any local rule governing the transportation of firearms.

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<sup>5</sup> K.S.A. 2014 Supp. 75-7c01 *et seq.*

<sup>6</sup> K.S.A. 2014 Supp. 75-7c20(k).

<sup>7</sup> See also K.A.R. 16-11-7, which prescribes the location, size and other characteristics of such signs.

<sup>8</sup> K.S.A. 2014 Supp. 75-7c20(l)(2) (“The terms ‘municipality’ and ‘municipal’ are interchangeable and have the same meaning as the term ‘municipality’ is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.”).

<sup>9</sup> K.S.A. 2014 Supp. 75-7c20(i).

<sup>10</sup> K.S.A. 2014 Supp. 75-7c20(j).

<sup>11</sup> K.S.A. 2014 Supp. 75-7c20(a). “Adequate security measures” is defined as “the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal 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.” K.S.A. 2014 Supp. 75-7c20(m)(1).

However, subsection (d)(2) of that statute expressly allows a city or county to adopt an ordinance, resolution or regulation pursuant to K.S.A. 2014 Supp. 75-7c20. This means that notwithstanding the general prohibition against local regulation of concealed carry, a city or county may exercise an exemption under K.S.A. 2014 Supp. 75-7c20.

### ***Concealed Carry on the Grounds of Public Buildings***

The PFPA prohibits a city, county or other political subdivision from regulating, restricting or prohibiting concealed carry except as provided in K.S.A. 2014 Supp. 21-6309(e), 75-7c10(b) and 75-7c20.<sup>12</sup> None of those statutes authorize a city, county or other political subdivision to regulate, restrict or prohibit concealed carry on the grounds of public buildings.<sup>13</sup> Therefore, a city, county or other political subdivision may not regulate, restrict or prohibit licensed concealed carry on the grounds of public buildings.

### ***Storage of Firearms on Public Property***

K.S.A. 2014 Supp. 12-16,124(a) prohibits a city or county from adopting or enforcing any local rule governing the storage of firearms.

In addition, the PFPA provides that a public employer may not adopt personnel policies that prohibit the possession of a handgun in a private means of conveyance, even if parked on the employer's premises.<sup>14</sup> This means that a public employer cannot ban an employee from transporting a handgun in the employee's personal vehicle and storing the handgun inside that vehicle in the public employer's parking lot.

### ***Open Carry***

As we noted in Attorney General Opinion No. 2014-14, "[t]here is no state statute that prohibits the open carry of legal firearms, including rifles or shotguns, by persons who are otherwise legally allowed to possess firearms." We refer you to that opinion for discussion regarding the current ability of state agencies and municipalities to limit or prohibit open carry inside public buildings.

### ***State Government Buildings***

With respect to state-owned and leased buildings, it is a crime for a person who does not possess a valid concealed carry license to possess a firearm within a "capitol complex" building, which includes the Docking, Landon, Curtis and Eisenhower state office buildings, Memorial Hall, the Kansas Judicial Center and the State Capitol building.<sup>15</sup> Concealed carry licensees may carry a *concealed* handgun into those

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<sup>12</sup> K.S.A. 2014 Supp. 75-7c17(a).

<sup>13</sup> See Attorney General Opinion No. 2014-06 ("A community college may not ban the carrying of concealed handguns by persons licensed to do so on the grounds of a community college").

<sup>14</sup> K.S.A. 2014 Supp. 75-7c10(b)(1).

<sup>15</sup> K.S.A. 2014 Supp. 21-6309(a)(1) and (e). See also K.S.A. 2014 Supp. 75-4514.

buildings unless the building is exempt or has adequate security measures and is posted as described above.<sup>16</sup>

A concealed carry licensee may not *openly* carry a handgun into a capitol complex building because licensees are only permitted to “possess a handgun as authorized under the personal and family protection act” inside those buildings.<sup>17</sup> The PFPA pertains only to concealed carry and does not confer upon licensees the authority to openly carry a handgun into public buildings.

In addition, K.S.A. 2014 Supp. 21-6309(a)(4) allows the Secretary of Administration to designate by rules and regulations any other state-owned or leased building in which it is unlawful to possess a firearm. Currently, that regulation states that firearms are prohibited inside “all state-owned or leased buildings in which the agency or agencies occupying the building have conspicuously placed signs clearly stating that firearms are prohibited within that building.”<sup>18</sup> However, a concealed carry licensee *may* carry a concealed firearm into state-owned or leased building as authorized under the PFPA.<sup>19</sup>

### ***Gun-Free School Zones Act***

The federal Gun-Free School Zones Act (GFSZA) generally prohibits knowingly possessing any firearm in a school zone.<sup>20</sup> “School zone” is defined as in or on the ground of a public, parochial or private primary or secondary school, or within a distance of 1,000 feet from the grounds of such a school, although the law does not apply to private property not part of the school grounds.<sup>21</sup>

There are two exceptions to the GFSZA that are relevant to your inquiry. First, it is not a violation of the GFSZA for a person licensed by the State of Kansas to carry a firearm to possess a firearm in a school zone.<sup>22</sup> This means that Kansas concealed carry licensee may carry a firearm in a school zone without violating the GFSZA. In addition, Kansas law excepts concealed carry licensees from the general prohibition against possessing a firearm on school grounds.<sup>23</sup>

However, it is important to remember that the PFPA expressly excludes public school district buildings from the provisions that generally require public buildings to allow concealed carry. Thus, even if a concealed carry licensee may carry a firearm inside a school zone without violating *federal* law, *Kansas* law allows public school districts to exclude concealed carry from any or all of the district’s buildings simply by posting the

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<sup>16</sup> Even if adequate security measures are provided and the building is posted, it is not a violation of the PFPA for a person who has authority to enter the building through a restricted access entrance to carry a concealed handgun into the building. K.S.A. 2014 Supp. 75-7c20(d).

<sup>17</sup> K.S.A. 2014 Supp. 21-6309(e).

<sup>18</sup> K.A.R. 1-49-11.

<sup>19</sup> K.S.A. 2014 Supp. 21-6309(e).

<sup>20</sup> 18 U.S.C. § 922(q)(2).

<sup>21</sup> 18 U.S.A. § 921(a)(25) and (26).

<sup>22</sup> See 18 U.S.C. § 922(q)(2)(B)(ii).

<sup>23</sup> K.S.A. 2014 Supp. 21-6301(i)(5).

building as prohibiting concealed carry. A concealed carry licensee violates the PFFA by carrying a firearm into a public school building posted as prohibiting concealed carry.

The second exception to the GFSZA is the possession of a firearm in a school zone when that firearm is not loaded and in a locked container or locked firearms rack in a motor vehicle. Any person who may lawfully possess a firearm, even a person without a concealed carry license, may carry a locked, unloaded firearm in a vehicle in a school zone without violating the GFSZA.

### ***Constitutional Issues***

Turning to constitutional concerns,<sup>24</sup> the courts have yet to determine the extent to which a person possesses a constitutional right to carry a firearm in public. In *District of Columbia v. Heller*,<sup>25</sup> the United States Supreme Court held that the Second Amendment confers an individual right to keep and bear arms for the purpose of self-defense, noting that “the inherent right of self-defense has been central to the Second Amendment right.”<sup>26</sup>

The law at issue in *Heller* banned handgun possession and required District of Columbia residents to keep lawfully-owned firearms in an inoperable condition. The Court held that this law violated the Second Amendment because it “ban[s] from the home the most preferred firearm in the nation to keep and use for protection of one’s home and family”<sup>27</sup> and “makes it impossible for citizens to use [firearms] for the core lawful purpose of self-defense.”<sup>28</sup> The Court noted that the “need for the defense of self, family, and property is most acute” in the home.<sup>29</sup>

However, the Court added that the right to keep and bear arms “was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>30</sup> The Court stated that “the right secured by the Second Amendment is not unlimited,” and acknowledged “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . .”<sup>31</sup> The Court characterized such prohibitions as “presumptively lawful.”<sup>32</sup>

Following *Heller*, the United States Supreme Court in *McDonald v. City of Chicago*<sup>33</sup> held that the Second Amendment is “fully applicable to the States,”<sup>34</sup> meaning that

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<sup>24</sup> See U.S. Const., Am. 2; Kan. Const., B. of R., § 4.

<sup>25</sup> 554 U.S. 570 (2008).

<sup>26</sup> *Id.* at 628.

<sup>27</sup> *Id.* at 628-29 (internal quotations omitted).

<sup>28</sup> *Id.* at 630.

<sup>29</sup> *Id.* at 628.

<sup>30</sup> *Id.* at 626.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 637 n. 26.

<sup>33</sup> 130 S. Ct. 3020 (2010).

<sup>34</sup> *Id.* at 3026.

states, cities and other political subdivisions are subject to the Second Amendment's limitations on regulating the possession and carrying of firearms. Since *Heller* and *McDonald*, a number of state and federal courts have attempted to apply the Supreme Court's reasoning to a variety of laws restricting the ability of law-abiding citizens to possess or carry firearms.

Although *Heller* makes it clear that the government cannot eliminate the ability of law-abiding citizens to keep operable firearms at home for self-defense, the Court also acknowledged the presumed validity of "longstanding prohibitions" on the possession and carrying of firearms. Courts across the country have struggled to correctly interpret and apply *Heller*.

"[T]here may or may not be a Second Amendment right in some places beyond the home, but we have no idea what those places are, what the criteria for selecting them should be, what sliding scales of scrutiny might apply to them, or any one of a number of other questions."<sup>35</sup>

The 10<sup>th</sup> Circuit Court of Appeals, whose jurisdiction includes Kansas, has provided some guidance on how to evaluate Second Amendment challenges to firearms laws post-*Heller* and *McDonald*. The Court applies a two-part test to Second Amendment cases: first, the court determines "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee."<sup>36</sup> If the law does not impose a burden, or if the conduct in question is not within the scope of the Second Amendment, the law is constitutional. If the challenged law *does* impose a burden on conduct protected by the Second Amendment, the court "must apply some level of heightened scrutiny" to the law.<sup>37</sup> The level of scrutiny required depends upon "the type of law challenged and the type of [Second Amendment restriction] at issue."<sup>38</sup>

Since *Heller*, the 10<sup>th</sup> Circuit has consistently upheld provisions of 18 U.S.C. § 922(g) that prohibit the possession of *any* firearm by certain classes of persons:

Section 922(g), a part of the amended Gun Control Act of 1968, forbids gun possession by nine classes of individuals: felons, fugitives, addicts or users of controlled substances, the mentally ill, illegal and non-immigrant aliens, the dishonorably discharged, renouncers of their citizenship, those subject to court orders for harassing, stalking, or threatening intimate partners or their children, and those convicted for misdemeanor domestic violence. No Second Amendment challenge since *Heller* to any of these provisions has succeeded.<sup>39</sup>

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<sup>35</sup> *United States v. Masciandaro*, 638 F.3d 458, 475 (4<sup>th</sup> Cir. 2011).

<sup>36</sup> *United States v. Reese*, 627 F.3d 792, 800 (10<sup>th</sup> Cir. 2010).

<sup>37</sup> *Id.* at 801.

<sup>38</sup> *Id.* (quoting *United States v. Marzarella*, 614 F.3d 85, 97 (3<sup>rd</sup> Cir. 2010)).

<sup>39</sup> *United States v. Huitron-Guizar*, 678 F.3d 1164, 1166 (10<sup>th</sup> Cir. 2012) (holding that 18 U.S.C. § 922(g)(5), which prohibits the possession of firearms by illegal aliens, does not violate the Second Amendment).

Given this pattern, we anticipate that the 10<sup>th</sup> Circuit will continue to uphold § 922(g) against Second Amendment challenges absent further guidance to the contrary by the United States Supreme Court.

The 10<sup>th</sup> Circuit Court of Appeals has considered only one post-*Heller* case involving restrictions on the carrying of firearms by law-abiding citizens. *Peterson v. Martinez*<sup>40</sup> examined whether a Colorado law prohibiting the issuance of state concealed carry licenses to nonresidents violates the Second Amendment. Applying the two-part test described above, the Court held that “the Second Amendment does not confer a right to carry concealed weapons.”<sup>41</sup> Based on this recent decision, it is likely that a Second Amendment challenge to current state or local restrictions on concealed carry would be unsuccessful in the 10<sup>th</sup> Circuit.

With respect to Kansas courts, since *Heller*, *McDonald*, and *Peterson*, the Kansas Supreme Court has not considered any cases that examine the extent to which the State of Kansas or its political subdivisions may limit the right of law-abiding citizens to carry firearms. Thus, we cannot predict how the Kansas Supreme Court would view state or local restrictions on the carrying of firearms in light of those holdings.

Unfortunately, given the paucity of controlling legal authority, we are presently unable to clearly define the extent to which state and local governments can restrict the possession or carrying of firearms outside the home. However, unless and until the 10<sup>th</sup> Circuit reverses its holding that the Second Amendment does not confer a right to concealed carry, federal district courts in Kansas will be bound by that holding. If the Kansas Supreme Court has occasion to examine state or local restrictions on the carrying of firearms, it is bound to follow *Heller* and *McDonald*, but not the 10<sup>th</sup> Circuit’s reasoning in *Peterson*.

Sincerely,

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<sup>40</sup> 707 F.3d 1197 (10<sup>th</sup> Cir. 2014).

<sup>41</sup> *Id.* at 1211.