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December 11, 2013

ATTORNEY GENERAL OPINION NO. 2013- 21

Sarah Shipman, Chief Counsel
Kansas Department of Administration
100 SW Jackson St., Suite 500
Topeka, KS 66603

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

Synopsis: An office leased by the state or a municipality in a privately-owned multi-tenant office building *is not* a “state or municipal building” for the purposes of the Personal and Family Protection Act (PFPA). An office in a strip shopping center, as described herein, that is leased by the state or a municipality *is* a “state or municipal building” for the purposes of the PFPA. Cited herein: K.S.A. 2013 Supp. 75-7c01; K.S.A. 2012 Supp. 75-7c10; K.S.A. 2013 Supp. 75-7c10; 75-7c20; K.A.R. 16-11-7.

* * *

Dear Ms. Shipman:

As Chief Counsel for the Kansas Department of Administration, you ask whether an office space leased by the state or a municipality in a multi-tenant office building or strip shopping center is considered a “state or municipal building” for the purposes of the Personal and Family Protection Act (PFPA).¹

The PFPA generally prohibits the concealed carry of handguns into any building that is conspicuously posted as prohibiting concealed carry.² However, effective July 1, 2013, K.S.A. 2013 Supp. 75-7c20 requires a “state or municipal building” to allow persons licensed to carry concealed handguns to carry such handguns into the building unless

¹ K.S.A. 2013 Supp. 75-7c01 *et seq.*

² K.S.A. 2013 Supp. 75-7c10(a).

adequate security measures³ are provided and the building is posted as prohibiting concealed carry. “State or municipal building” is defined as:

[A] building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.⁴

The term “building” itself is not defined in the PFPA. In Attorney General Opinion No. 2013-14, we opined that “building” should be construed according to its ordinary meaning, which is “a structure with a roof and walls, such as a house or factory.”⁵ Another ordinary definition is “a relatively permanent enclosed construction over a plot of land, having a roof and usually windows and often more than one level, used for any of a wide variety of activities, as living, entertaining, or manufacturing.”⁶ Based upon these definitions, we opined that the ordinary meaning of “building” includes the entire structure, including all floors within the building.

To answer your question, we build upon the analysis presented in Attorney General Opinion No. 2013-14.

Multi-Tenant Office Buildings

As you observe in your letter, multi-tenant office buildings include a common area or hallway which leads to individual office suites. The public entrances to such buildings typically open to the common area, and each office suite is accessible via a common hallway, staircase or elevator. A person visiting an office suite must therefore pass through a common area before reaching the entrance to a particular tenant’s office.

Starting with our opinion that a “state or municipal building” refers to the entire structure, a multi-tenant office building would not qualify as a “state or municipal building” unless the entire structure was owned or leased by such public entity. Therefore, the private owner of a multi-tenant office building would not be subject to the provisions of K.S.A. 2013 Supp. 75-7c20 simply because a public entity leases a portion of the building. Even if a public entity leases a portion of a privately-owned multi-tenant building, the owner of the building may prohibit concealed carry by posting the building in accordance with K.S.A. 2013 Supp. 75-7c10(a).⁷

³ “Adequate security measures” is defined in K.S.A. 2013 Supp. 75-7c20(l)(1).

⁴ K.S.A. 2013 Supp. 75-7c20(l)(5)(A). “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.” K.S.A. 2013 Supp. 75-7c20(l)(2).

⁵ Building.” Oxford Dictionaries. Oxford University Press.

<http://oxforddictionaries.com/definition/english/building> (accessed on August 21, 2013).

⁶ “Building.” Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc.
<http://dictionary.reference.com/browse/building> (accessed on August 21, 2013).

⁷ See also K.A.R. 16-11-7.

Likewise, a state or municipal entity leasing a portion of a privately-owned multi-tenant office building would not be subject to the provisions of K.S.A. 2013 Supp. 75-7c20 because an office suite inside an office building is not a “state or municipal building” for the purposes of the PFPA.

Strip Shopping Centers

Typically, strip shopping centers feature a series of individual office spaces with separate exterior doors and no common indoor areas. A person visiting several businesses in a strip shopping center must enter each business by that business’ separate exterior door. Our analysis applies to strip shopping centers that are designed in this fashion.

Arguably, an office space in a strip shopping center does not qualify as a “building” because it is not a freestanding structure. However, it could also be argued that an office space in a strip shopping center fits the ordinary definition of “building” because it has its own walls, roof and exterior entrance. In our opinion, the statutory definition of “state or municipal building” is vague with respect to strip shopping centers because it is susceptible to two plausible interpretations. We therefore turn to the rules of statutory construction in order to answer your question.

Should a statute's meaning not be evident from its plain language, we move from interpretation to construction, employing study of legislative history, application of canons of statutory construction, and appraisal of other background constructions. Further when examining statutes to determine legislative intent, we must consider various provisions of an act in *pari materia* with a view toward reconciling and bringing them into harmony if possible.⁸

The legislative history of the PFPA provides evidence that the 2013 amendments to the act⁹ were intended to expand concealed carry rights. Prior to the 2013 legislative session, K.S.A. 2012 Supp. 75-7c10(a) provided that as long as the building was posted as prohibiting concealed carry, no license issued under the PFPA authorized the licensee to carry a concealed handgun into certain public buildings such as courthouses and state office buildings. In addition, K.S.A. 2012 Supp. 75-7c10(b) authorized a city, county or political subdivision to restrict or prohibit concealed carry inside the buildings of such entity.

Following the 2013 amendments to the PFPA, the ability of the state or a municipality to prohibit concealed carry inside buildings of such entity is now subject to the provisions of K.S.A. 2013 Supp. 75-7c20. When read in *pari materia*, the various provisions of the PFPA reflect legislative intent to maximize the ability of concealed carry licensees to carry concealed handguns into public buildings. K.S.A. 2013 Supp. 75-7c20(a) establishes the general rule that no state or municipal building may prohibit the carrying

⁸ *State v. Raschke*, 289 Kan. 911, 914 (2009) (internal citations omitted).

⁹ L. 2013, Ch. 105.

a concealed handgun into the building by a person licensed under the PFPA. Concealed carry may be prohibited inside a state or municipal building *only if* the building is exempt from the provisions of K.S.A. 2013 Supp. 75-7c20 as described below, or if the building provides adequate security measures and posts the building in accordance with K.S.A. 2013 Supp. 75-7c10. “We presume that a change in the language of a statute results from the legislative purpose to change its effect.”¹⁰ Thus, as of July 1, 2013, a concealed carry licensee may carry a concealed handgun into any state or municipal building, as defined by the PFPA, unless the state or municipality takes action to prohibit it.

The governing body or chief administrative officer, if no governing body exists, of a state or municipal building may exempt the building from the provisions of K.S.A. 2013 Supp. 75-7c20 until January 1, 2014, and thereafter for a single four-year period.¹¹ Certain public institutions may exempt any building of such institution for a single four-year period.¹² Such exemption periods are optional and may not be renewed; at the expiration of an exemption period, the provisions of K.S.A. 2013 Supp. 75-7c20 begin to apply to the building.

The only state or municipal buildings that are automatically, indefinitely exempt from the provisions of K.S.A. 2013 Supp. 75-7c20 are buildings located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.¹³ Unless the PFPA is amended, it is likely that many public buildings that have always prohibited concealed carry will begin to allow it. We presume this effect is intentional.

In our opinion, the statutory scheme of the PFPA indicates that the legislature intended concealed carry in public buildings to become the rule rather than the exception. Although the legislature has provided for temporary exemptions to the provisions of K.S.A. 2013 Supp. 75-7c20, those exemptions will eventually expire. At that time, a state or municipal building may prohibit concealed carry only by providing adequate security measures and posting the building as prohibiting concealed carry.

Returning to the question of whether an office space in a strip shopping center leased by the state or a municipality is a “state or municipal building” for the purposes of the PFPA, we again note that plausible arguments exist for either interpretation. However, we believe that there is compelling evidence of legislative intent to expand the ability of concealed carry licensees to lawfully carry concealed handguns into as many public buildings as possible. “The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.”¹⁴ Accordingly, it is our opinion that a “state or municipal building” under the PFPA includes an office space in a strip shopping center, as described herein, that is leased by the state or a municipality.

¹⁰ *Osborn v. Electric Corp. of Kansas City*, 23 Kan. App. 2d 868, 871 (1997).

¹¹ K.S.A. 2013 Supp. 75-7c20(i).

¹² K.S.A. 2013 Supp. 75-7c20(j). State or municipal-owned medical care facilities or adult care homes, community mental health centers, indigent health care clinics and postsecondary educational institutions fall within this optional exemption category.

¹³ K.S.A. 2013 Supp. 75-7c20(k).

¹⁴ *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 607 (2009).

In summary, it is our opinion that an office suite leased by the state or a municipality in a privately-owned multi-tenant office building is not a “state or municipal building” for the purposes of the PFPA, and therefore neither the office building nor the portion of the building leased to a public entity is subject to the provisions of K.S.A. 2013 Supp. 75-7c20. Concealed carry may be prohibited in such building by posting the building in accordance with K.S.A. 2013 Supp. 75-7c10.

Reading the various provisions of the PFPA in pari materia, we find strong evidence of legislative intent to expand lawful concealed carry into as many public buildings as possible. Although an office suite in a strip shopping center may not be considered a “building” in the traditional sense, it falls within the ordinary definition of “building.” In our opinion, construing “state or municipal building” to include an office suite in a strip shopping center, as described herein, gives effect to legislative intent and is consistent with the ordinary definition of “building.” Therefore, we opine that an office suite in a strip shopping center that is leased by the state or a municipality and may be accessed by the public only through its own exterior door is a “state or municipal building” for the purposes of the PFPA.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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