

OAG 96-45

December 20, 1996

Subject: Authority of executive branch of state government to prohibit the carrying of concealed deadly weapons on state property.

Written by: Kent T. Young, Assistant Attorney General

Requested by: Hon. Karen A. Powell, General Counsel, Kentucky Finance and Administration Cabinet

Syllabus: KRS 56.463 and KRS 237.115(1) operate together to authorize the executive branch, acting through the Kentucky Finance and Administration Cabinet, to promulgate a reasonable administrative regulation to prohibit those persons licensed to carry concealed deadly weapons from carrying concealed deadly weapons in those portions of buildings which fall within the scope of KRS 56.463 and which are actually owned, leased or occupied by the executive branch of government. Any regulation promulgated pursuant to KRS 237.115(1) should comply with the applicable requirements of KRS 237.115(2).

No regulation is necessary to prohibit unlicensed persons, except those exempted by the exceptions set forth in KRS 527.020, from carrying concealed deadly weapons on state property. KRS 527.020 already prohibits the carrying of concealed deadly weapons by most persons who do not hold licenses to carry concealed.

Statutes Construed: KRS 13A.010(1); 13A.010(2); 13A.100; 56.463(4)(a); 56.463(8); 237.115(1); 237.115(2); 527.020

Opinion of the Attorney General

The Office of the Attorney General has been asked to render an Opinion addressing the following questions posed by General Counsel for the Kentucky Finance and Administration Cabinet:

1. May the Executive Branch of state government, through the Finance and Administration Cabinet, prohibit concealed deadly weapons on property owned, leased or controlled by the Executive Branch?
2. If so, what is the method by which such prohibition should take effect?

The Attorney General provides this Opinion pursuant to KRS 15.025(1).

General Counsel for the Finance and Administration Cabinet indicates this Opinion has been sought in part to determine whether our responses in OAG 96-39 and OAG 96-40 suggest that only the Kentucky General Assembly may prohibit those licensed to carry concealed deadly weapons from carrying concealed deadly weapons on state property. Neither Opinion states or implies this.

In OAG 96-39, this Office addressed the means by which a *county* may generally prohibit the carrying of concealed deadly weapons by licensees in portions of buildings owned, leased, occupied or controlled by the county. The analysis in OAG 96-39 was circumscribed by the general prohibition against *local* firearms control ordinances set forth in KRS 65.870. This Office therefore noted that before a county may take action which otherwise would contravene the prohibition of KRS 65.870, the county must find authority for such action in an *express* statutory delegation of power from the Kentucky General Assembly. This Office found the language of KRS 237.115(1) insufficient to constitute an express delegation by the Kentucky General Assembly of authority to a county judge/executive to issue an executive order in contravention of the prohibition contained in KRS 65.870. The language of KRS 237.115(2), however, expressly recognizes an exception to KRS 65.870 and sets forth a means by which a county may act to “prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or controlled” by the county. KRS 237.115(2) authorizes action by the “legislative body” of a county. Hence, in OAG 96-39 this Office concluded the legislative body of a county, not the county judge/executive, may by ordinance prohibit the carrying of concealed deadly weapons by licensees in portions of buildings owned, leased or controlled by the county.

The prohibition of KRS 65.870 does not apply to the executive branch of state government. An analysis of the relevant authority of the executive branch of state government therefore necessarily diverges from the analysis set forth in OAG 96-39.

OAG 96-40 addressed the question of whether a policy adopted by the University of Louisville Board of Trustees banning possession or storage of a deadly weapon or destructive device on any University of Louisville campus or in any facility owned, leased or operated by the University violated the constitutional right to bear arms which is set forth in the Kentucky Constitution. As part of our analysis of that question, we noted there was statutory authority for the Board of Trustees to act. We addressed no question of executive authority vis-a-vis legislative authority.

House Bill 40, Section 1 of which authorizes the issuance of licenses to individuals (licensees) to carry concealed deadly weapons, was enacted in the 1996 regular session of the Kentucky General Assembly. Section 5 of House Bill 40 has been codified as KRS 237.115. In KRS 237.115(1), the legislature has recognized that “[n]othing contained in” Section 1 of House Bill 40 “shall be construed to limit, restrict, or prohibit in any manner . . . the right of a unit of state, city, county, urban-county, or charter county government to prohibit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or occupied by that unit of government.” KRS 237.115(1) does not set forth the means by which the “right” may be effectuated, however.

KRS 237.115(2) recognizes the right of the Kentucky General Assembly to prohibit or limit by statute the carrying of concealed deadly weapons by licensees in portions of buildings owned, leased or controlled by state government. KRS 237.115(2) does not state that *only* the Kentucky General Assembly may act to prohibit the carrying of concealed deadly weapons by licensees in state buildings.

The executive branch of state government constitutes a unit of state government within the ordinary meaning of the term “unit” as that term is used in KRS 237.115(1). No applicable definition of the term “unit” is contained in the Kentucky Revised Statutes. The term, therefore,

is to be given its ordinary meaning. *See, e.g., Lynch v. Commonwealth, Ky.*, 902 S.W.2d 813, 814 (1995).

The means by which the executive branch of state government may act to prohibit the carrying of concealed deadly weapons in portions of buildings actually owned, leased, or occupied by the executive branch of state government is provided in KRS 56.463. That statute grants powers to the Kentucky Finance and Administration Cabinet in relevant part as follows:

The cabinet shall have the power and duty:

...

(4)(a) To control the use of any real property owned or otherwise held by the Commonwealth, or any state agency, and to determine for what periods of time and for what purposes any state agency may use the same, including the agency for whose use it was initially acquired or improved, and to determine what appropriate uses shall be made of such real property during periods that the cabinet finds the same is not required for the purposes of any particular state agency

...

(8) To adopt rules and regulations as may be necessary to govern the acquisition, control, and disposition of the real property to which this section is applicable.

KRS 56.463 and KRS 237.115(1) operate together to authorize the executive branch, acting through the Kentucky Finance and Administration Cabinet, to promulgate a regulation to prohibit those licensed to carry concealed deadly weapons from carrying concealed deadly weapons in those portions of buildings which fall within the scope of KRS 56.463 and which are actually owned, leased or occupied by the executive branch of state government. The conclusion that the control of the use of state property granted in KRS 56.463 includes the power to impose a reasonable restriction on access to portions of many state buildings is buttressed by the obligation KRS 56.010 imposes on the Finance and Administration Cabinet to “institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control.”

KRS 237.115(2) sets forth certain requirements for statutes, ordinances, and administrative regulations which prohibit the carrying of concealed deadly weapons by licensees in government buildings. Any regulation promulgated by the Kentucky Finance and Administration Cabinet pursuant to KRS 237.115(1) should comply with the applicable requirements.

Our analysis concerning executive branch authority to regulate the carrying of concealed deadly weapons by licensed individuals on state property is constrained by the literal language of KRS 237.115(1). That provision limits the exercise of such authority by a unit of state government to “that portion of a building actually owned, leased, or *occupied* by that unit of government.” (Emphasis added.) The limiting nature of this language is borne out by comparison with similar provisions of KRS 237.115. Juxtaposed in KRS 237.115(1) is language recognizing the right of a college, university, or any postsecondary education facility to control the possession of deadly weapons “on any property owned or *controlled* by them.” (Emphasis added.) KRS 237.115(2)

authorizes action by the legislative body of a state, city, county or urban county government to prohibit the carrying of concealed deadly weapons by licensees in portions of buildings “owned, leased, or *controlled* by that unit of government.” (Emphasis added.) If the Kentucky General Assembly had intended in KRS 237.115(1) to authorize the adoption by “a unit” of state government of a prohibition extending to state property *controlled* by that unit of government, it would have so stated. Instead, the legislature chose in KRS 237.115(1) to limit “a unit” of state government to regulating with respect to portions of buildings “actually owned, leased, or *occupied* by that unit of government.” (Emphasis added.)

KRS 237.115(1) specifically addresses the authority of a unit of state government to prohibit the carrying of concealed deadly weapons by licensees on state property. KRS 56.463 is more general in nature. KRS 237.115(1) was enacted more recently than KRS 56.463. The legislature is presumed to have known of the existence of KRS 56.463 when it enacted KRS 237.115(1). It is only logical to conclude, therefore, that the language of KRS 237.115(1) operates as a limitation on the general authority conferred on the Kentucky Finance and Administration Cabinet in KRS 56.463.

It currently is a criminal offense for unlicensed persons, except those exempted by the exceptions set forth in KRS 527.020, to carry a concealed deadly weapon. KRS 527.020. No regulation is necessary, therefore, to prohibit the carrying of concealed deadly weapons on state property by most persons who do not hold licenses to carry concealed.

The Kentucky Finance and Administration Cabinet is an administrative body. KRS 13A.010(1). Hence, an administrative regulation is required for the executive branch to take the action about which it has inquired. KRS 13A.100 states in relevant in relevant part as follows:

Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations shall, by administrative regulation prescribe, consistent with applicable statutes:

(1) Each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public . . .

The term “administrative regulation” also includes emergency administrative regulations. KRS13A.010(2).

“The adoption and use of administrative regulations are important tools in the operation of modern government.” *Legislative Research Commission v. Brown*, Ky., 664 S.W.2d 907, 919 (1984). In recognition of this, the Kentucky General Assembly has established in KRS Chapter 13A a comprehensive scheme for the adoption of administrative regulations. Moreover, the Kentucky courts generally recognize as valid those regulations which are “within the limits contemplated by” the relevant statutes and which are “reasonable.” *Lavern v. Brown*, Ky., 390 S.W.2d 448, 449 (1965).

Our succinct responses to the questions posed by General Counsel for the Finance and Administration Cabinet, therefore, are as follows:

Question 1. May the Executive Branch of state government, through the Finance and Administration Cabinet, prohibit concealed deadly weapons on property owned, leased or controlled by the Executive Branch?

Answer: KRS 56.463 and KRS 237.115 (1) operate together to authorize the executive branch, acting through the Kentucky Finance and Administration Cabinet, to promulgate a reasonable regulation to prohibit those persons licensed to carry concealed deadly weapons from carrying concealed deadly weapons in those portions of buildings which fall within the scope of KRS 56.463 and which are actually owned, leased or occupied by the executive branch of government. Any regulation promulgated pursuant to KRS 237.115(1) should comply with the applicable requirements of KRS 237.115(2).

No regulation is necessary to prohibit unlicensed persons, except those exempted by the exceptions set forth in KRS 527.020, from carrying concealed deadly weapons on state property. KRS 527.020 already prohibits the carrying of concealed deadly weapons by most persons who do not hold licenses to carry concealed.

Question 2. If so, what is the method by which such prohibition should take effect?

Answer: An administrative regulation is required. KRS 13A.100; KRS 56.463(8).

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