

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 1, 2013

Scott Cantrell
Superintendent of Education
Monroe County School District
P.O. Box 209
Amory, MS 38821

Re: Concealed Weapon on a Public School Campus

Dear Superintendent Cantrell:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

Issues Presented

Your questions are:

1. Does Mississippi law allow an individual with an "enhanced conceal/carry permit" to carry a concealed weapon on a Mississippi public school campus?

Yes, but the school may restrict individuals to parts of the campus generally open to the public. See MS AG Op., Bounds (Jan. 5, 2012) and MS AG Op., Johnson (Aug. 31, 2011). We note initially that the concealed carry of weapons, as opposed to the open carry of weapons, enjoys no constitutional protections. See *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) ("the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."); and *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897). The Mississippi Constitution of 1890 specifically provides that "... the legislature may regulate or forbid carrying concealed weapons." See *Wilson v. State*, 81 Miss. 404, 33 So. 171 (Miss. 1903). Therefore, questions regarding concealed carry of weapons must be answered solely by referring to statutory law.

Mississippi has had a statutory prohibition against the concealed carry of weapons since at least 1878. See *Tipler v. State*, 57 Miss. 685 (1880). This statute as well as section 12 of the 1890 Constitution were likely adopted to address the problems reported to the governor of Mississippi by Attorney General Morris:

There remains, however, several very effective and very certain agencies and aids to crime and bloodshed. I refer now, on the one hand, to the practice among a large proportion of our male inhabitants of carrying concealed lethal weapons, and, on the other hand, to the universal and ever-present Drinking-Houses. These are the causes of at least nine-tenths of the rowdyism, violence, and crime in the state, and upon them the laws have, as yet, imposed no restraint. [Etc.]

Annual Report of the Attorney General, Jan. 1, 1872. Historically it was considered a cowardly act to carry a weapon concealed rather than openly¹, and the use of a concealed weapon in a fight constituted attempted murder at common law. *Price v. State*, 7 George 531, 5 So. 99 (Miss. 1858).

Currently, Section 97-37-1 of the Mississippi Code (Supp. 2013) makes it a crime to carry certain concealed weapons, including handguns, but provides an exception for persons who obtain a license (sometimes called a "permit") from the Department of Public Safety pursuant to Section 45-9-101. Subsection (13) of the latter statute lists a number of places in which persons holding a standard license are prohibited from carrying concealed handguns. Therefore, it is a violation of Section 45-9-101 (13) and of 97-37-1 for persons with a standard concealed weapon license to carry a pistol or revolver at those places.

Section 97-37-7 (2) was amended in 2011 to create a second category of concealed carry license, commonly called an "enhanced license." This authorizes the enhanced licensee to carry a concealed pistol or revolver even in the places named in Section 45-9-101 (13). In other words, the person holding an *enhanced license* may carry concealed handguns in the listed locations without violating the concealed weapons law (Section 97-37-1), whereas the carrying of a concealed handgun in those locations with a *standard license* does violate that law.

¹"The policy underlying the prohibition against concealed weapons is based on the protection of those persons who may come into contact with a weapon bearer, compelling persons who carry weapons to so wear them about their persons that others who come in contact with them might see that they are armed and dangerous persons to be avoided in consequence. If a weapon is not concealed, one may take notice of the weapon and its owner and govern oneself accordingly, but no such opportunity for cautious behavior or self-preservation exists for one encountering the bearer of a concealed weapon." 94 C.J.S. Weapons, section 48 (2013).

Two of the listed locations are "any elementary or secondary school facility" as well as "any school, college or professional athletic event not related to firearms." Therefore, the holder of an *enhanced license* does not violate the concealed weapon statute, 97-37-1, by carrying a firearm into a public school facility or non-firearm related athletic event. Further, as we stated in our opinion to Bounds, dated January 5, 2012, it is our opinion that the enhanced permit law is an exception to Section 97-37-17, which otherwise makes it a felony to possess a firearm on educational property.²

2. If Mississippi law does not prohibit an individual with an enhanced conceal/carry permit from carrying a concealed weapon on a Mississippi public school campus, may the local School Board establish a policy that prohibits the carrying of concealed weapons on campus by school district employees or outside individuals with enhanced conceal/carry certification?

The school board may establish employment policies and enter employment contracts which prohibit the carrying of concealed weapons by employees, even with enhanced carry certification. MS AG Op., Pennington (March 1, 2013).

The answer to the second part of your question, whether the district can prohibit the carrying of concealed weapons by outside individuals with enhanced permits, is problematic. It is problematic due to the legislative language of Section 97-37-7 (2), adopted in 2012 by way of a floor amendment, referring back to but not amending the prohibitory language of Section 45-9-101 (13) for the kinds of conduct that would be permitted by the enhanced permit. This legislative construct, if read literally, leads to several results that we do not think the legislature intended.

For example:

Section 97-37-7 (2) states that an enhanced permit holder "shall also be authorized to carry weapons in . . . any location listed in subsection (13) of Section 45-9-101" which includes "any place where the carrying of firearms is prohibited by federal law." No citation of authority is needed to know that our state statute cannot authorize the concealed carry of weapons where prohibited by federal law.

Further, the same combination of statutes could be read as authorizing enhanced permit holders to carry weapons on private property where the owner or proprietor has posted a sign forbidding the same. We do not believe such a reading is reasonable since it would result in the violation of a person's private property rights. Further, the result would be that enhanced permit holders could legally carry at a business where a sign using the exact statutory language ("carrying of a pistol or revolver is prohibited") was posted, but could not carry where signage using some other language was posted

²Section 97-37-17 contains other exceptions, including the possession of firearms in a motor vehicle by non-students.

or where the permit holder was verbally or otherwise forbidden to enter the property with a weapon. In other words, the next-to-last sentence of subsection 13 containing the sign language would be negated by a literal reading of the enhanced permit statute. We do not believe this was the intent of the legislature.

In addition, the same combination of statutes would authorize enhanced permit holders to carry concealed weapons at "any school, college or professional athletic event not related to firearms." (Emphasis added). Read literally, the school or college could not prohibit the enhanced permit holder from attending the school or college athletic event not related to firearms, but could prohibit the enhanced permit holder from attending a school athletic event which is related to firearms.

As noted, to read the statute as written in this manner requires that the statute be read to be in direct conflict with federal law. Given the Supremacy Clause of the United States Constitution and the requirement that state law yield to federal law, this reading logically leads one to conclude that the Section 97-37-7 is unconstitutional under the federal constitution. However, the rules of statutory interpretation require that "[i]f possible, courts should construe statutes so as to render them constitutional rather than unconstitutional" *City of Jackson v. Rebuild America, Inc.*, 77 So.3d 1105, 1119 (Miss. App. 2011). Courts will not impute to the legislature an absurd result. *Teche Lines, Inc. v. Danforth*, 195 Miss. 226, 12 So.2d 784 (Miss. 1943).

Following this principle, and reading Sections 97-37-1, 45-9-101 and 97-37-7 *in pari materia*, we conclude that the legislature intended, at most, that enhanced permit holders not be subject to prosecution for violating the state concealed weapons statute (97-37-1) when firearms are possessed in places prohibited by federal law – not that licensees are granted an absolute right of entry to those places by virtue of holding the enhanced permit.

This analysis also applies to private property owners or custodians. An enhanced permit cannot constitutionally take away the rights of property owners to exclude persons from their property if that is their wish. As stated by the Mississippi Supreme Court in *Biglane v. Under the Hill Corporation*, 949 So.2d 9, at 16 (Miss. 2007):

It is a basic tenet of property law that a landowner or tenant may use the premises they control in whatever fashion they desire, so long as the law is obeyed. This leads to the logical conclusion that a landowner or valid tenant may forbid any other persons from using their property. This ideal is protected in our law to the point that there are both civil and criminal prohibitions against trespassing.

See also, *Georgia Carry.Org v. Georgia*, 687 F.3d 1244 (11th Cir. 2012)(2nd amendment right to bear arms is limited by equally fundamental rights of private property owners to control their property). See generally our discussion of same in MS AG Op., Lance (June 13, 2013). Therefore, private property owners, including but not limited to owners or custodians of those types of property listed in section 45-9-101

(13)(e.g., bars, churches, restaurants serving alcohol, private schools, professional athletic event property) may exclude from their premises persons carrying weapons pursuant to an enhanced permit. They may do this by posting a sign³ as described in 45-9-101 (13), by giving verbal notice or through notice by other means. The enhanced permit holder would not violate the concealed weapon law (97-37-1) by disregarding such an exclusion; but, depending on the facts, disregard of a private property owner's prohibition of weapons could constitute a violation of Section 97-17-97 (trespass after warning), Section 97-17-93 (entry without permission) or other statute.⁴

Of course, your question is whether the public School District may prohibit enhanced permit holders from carrying weapons onto school property. The same argument as above could be made that the Legislature did not intend to take away the duty and authority of school districts to hold, control and manage school property in the public interest, but merely intended that enhanced permit holders would not violate the concealed carry law by carrying on school property. However, the property rights of state and local governmental entities are purely statutory, not constitutional. Therefore, the constitutional considerations discussed above with regard to federal or private property are not present when applying a literal reading of the statute to public school property.

As shown from all of the above discussion, the amendment to Section 97-37-7 (2), adopted in 2012 by way of a floor amendment, referring back to but not amending the prohibitory language of Section 45-9-101 (13) for the kinds of conduct that would be permitted by the enhanced permit, has resulted in a confused state of law containing conflicting provisions. The intent of the legislature regarding the authority of property owners, including government property owners, to control and manage access to property is unclear and clarification of these statutes is needed. Nevertheless, the legislature has expressly stated in section 97-37-7 (2) that an enhanced permit holder "shall also be authorized to carry weapons in . . . any location listed in subsection (13) of

³Section 45-9-101 (13) prescribes the form of a sign by which persons or entities exercising control over property may disallow the carrying of a concealed pistol or revolver (namely, "carrying of a pistol or revolver is prohibited."). Posting of such a sign, readable from 10 feet, constitutes statutorily sufficient notice to persons, the violation of which would constitute a trespass. Posting of a differently worded sign could also be sufficient but actual notice might have to be proved.

⁴It is our opinion that posting the sign described in 45-9-101 (13) conclusively asserts the property owner's right to exclude persons with pistols or revolvers (with either a regular permit or enhanced permit) but does not trigger criminal penalties for concealed weapon under 97-37-1. Our prior opinions to Johnson dated August 21, 2011 and to Bounds dated January 5, 2012 assumed that property owners could trigger criminal penalties under 97-37-1 for regular permit holders by posting the statutory sign. Those opinions are hereby modified in accordance with this opinion.

section 45-9-101," including "any elementary or secondary school facility" and "any school ... athletic event...." In light of this language, our conclusion is that the school district may not bar enhanced permit holders with concealed pistols and revolvers from entry into a school facility or school athletic event to which the general public is otherwise normally permitted.

We discussed with you on the phone a potential situation where an armed parent and enhanced license holder wishes to meet with a teacher or administrator about what the parent feels is unfair discipline or grades given to the parent's child; the teacher or administrator does not wish to meet with the parent while armed. Although an enhanced licensee may carry into the public areas of a school facility, the enhanced license does not authorize him to enter onto parts of property where the public is not generally allowed. As we have stated in previous opinions, even persons carrying a weapon with an enhanced permit may be barred from parts of a government-owned property listed in section 45-9-101 (13) to which the public is normally not allowed. See MS AG Op., Bounds (Jan. 5, 2012) and MS AG Op., Johnson (Aug. 31, 2011). In that regard, we note that unlike a public street or sidewalk, an elementary or secondary school is not considered to be open to the general public, although it may be made so for school plays, concerts, athletic events and the like. See *Digiacinto v. Rector and Visitors of George Mason University*, 704 S.E. 2d 365, 370 (Va. 2011) (A university, unlike a public street or park, is not traditionally open to the public). In fact, since the 1997 school shooting in Pearl, MS, public schools in Mississippi and across the nation have adopted security measures severely limiting public access to school buildings. In Mississippi, controlled visitor access procedures are required for accreditation. Dept. of Education, *Mississippi School Safety Manual*, rev'd, 2008; Miss. Code Ann Section 37-3-83(2). Therefore, the school may, in its discretion, refuse access to an armed, enhanced license holder for a meeting with a teacher or administrator in a non-public area of the school.

3. If Mississippi law allows school district employees with an "enhanced conceal/carry permit" to carry a concealed weapon on a Mississippi public school campus, may the local school board, for campus security purposes, allow MAEP expenditures for district employees to attend enhanced conceal/carry certification courses and to be carried on the campus by these employees after the enhanced conceal/carry training has been successfully completed?

Yes. Miss. Code Ann. Section 37-7-301.1, the "home rule" statute, provides that a school board may adopt any order, resolution or ordinance with respect to district affairs, property and finances which is not inconsistent with some other state law. Our research indicates there is no constitutional or statutory prohibition on using district funds as you described. Previous opinions by this office have emphasized the discretion local school boards have in making expenditures for security and safety-related purposes. MS AG Op., Taylor (July 7, 2003). See also MS AG Op., Higginbottom (September 11, 1991). Further, school districts have the authority to make expenditures with MAEP funds for items which are part of the MAEP formula as

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well as items which are not components of the formula. MS AG Op., Chaney (June 18, 2004).

You may also wish to review Senate Bill 2659 of the 2013 regular session of the Legislature, which provides that the school board of a district that is financially unable to participate in the MCOPS program may develop a school security plan (which must be approved by the State Board of Education and the Mississippi Department of Public Safety) and may apply for grants under the MCOPS program for training of security personnel employed by the school district.

CONCLUSION

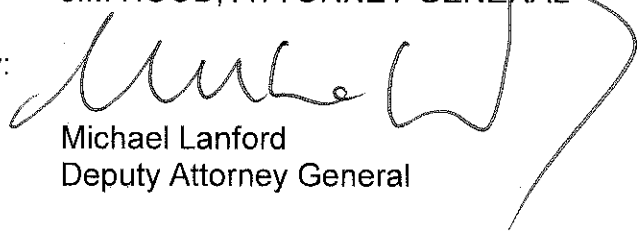
A school district may, in its discretion, prohibit its employees who hold enhanced carry licenses from possessing weapons at the school. In the alternative, a school district may, in its discretion, allow its employees with enhanced carry licenses to carry weapons and may expend funds for those employees to be trained for such purpose.

Other persons with enhanced carry licenses may enter onto school facilities without violating the concealed weapons statutes; and may enter onto the public areas of those schools without being subject to a possible charge of trespass. School districts may bar persons, including persons with enhanced carry permits, from areas of the school to which the general public is not allowed.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read "Michael Lanford", with a long, sweeping horizontal stroke extending to the right.

Michael Lanford
Deputy Attorney General