

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

December 2, 2013

Wendell H. Trapp, Jr., Esq.  
Mitchell, McNutt & Sams, P.A.  
Post Office Box 1200  
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**Re: *City Ordinance Prohibiting the Carrying of Firearms***

Dear Mr. Trapp:

Attorney General Jim Hood has received your request for an official opinion and assigned it to me for research and response. An Attorney General's opinion can neither validate nor invalidate past action of a municipality. Therefore, this opinion is given on a prospective basis only.

**Factual Background**

Your letter states that the City of Corinth (the "City") prohibits the possession of firearms, with no distinction between concealed or openly carried weapons,<sup>1</sup> in the following areas:

1. A public park or at a public meeting of a municipality or other governmental body;
2. A non-firearm related political rally, parade or public meeting;
3. A non-firearm related school, college or professional event including, but not limited to, an athletic event, concert, or other group assembly;
4. In or upon the premises of any financial institution;
5. In or upon the premises of any establishment which permits on-premises consumption of beer, wine or alcoholic beverages; or in or upon any city, county or other governmental owned building or property.

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<sup>1</sup> The discussion of open carrying of firearms would relate to pistols, revolvers, handguns, rifles or shotguns. Under Mississippi's concealed weapons permitting statutes, permits are available only for stun guns or "concealed pistols or revolvers."

In a subsequent telephone conversation, you confirmed that Corinth's ordinance imposes misdemeanor penalties.

### Issues Presented

Your letter notes the prohibitions found in Section 45-9-101(13)<sup>2</sup> and asks the following questions: Does Subsection (13) apply to "openly carried firearms" or apply only to "concealed" weapons? You also question whether the City can use signage as authorized under Section 45-9-101(13). You next ask whether, assuming that Subsection (13) does not prohibit open carry in those places enumerated in the City's ordinance, is the City nonetheless entitled to enforce its ordinance relating to open and concealed carry with regard to such places. To restate your questions we understand them to be (1) whether, and if so how, Section 45-9-101(13) applies to open carry of weapons, (2) can the City use the signage authorized by Section 45-9-101(13) to prevent carrying of firearms on certain property and (3) whether the City's ordinance as written is enforceable.

### Response and Legal Analysis

In response to your first question, Section 45-9-101 does not apply to open carrying of weapons. This statute is devoted in its entirety and facially applies only to licensing issues and authority to carry "stun guns<sup>3</sup>, concealed pistols or revolvers." Therefore, it is the opinion of this office that the licensing and other requirements set forth in Subsection (13) do not apply to or restrict in any manner the open carry of any firearm.<sup>4</sup>

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<sup>2</sup> Section 45-9-101(13) states in relevant part: "In addition to the places enumerated in this subsection, *the carrying of a stun gun, concealed pistol or revolver may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the 'carrying of a pistol or revolver is prohibited.'*" No license issued pursuant to this section shall authorize the participants in a parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver."

<sup>3</sup> The statute's reference to "stun guns, concealed pistols or revolvers" without placing "concealed" before stun guns leaves some question as to whether the licensing applies to open or concealed carry stun guns. However the recent amendment by H.B. 2 to Section 45-9-101(14) now clarifies that the licensing applies only to "concealed" stun guns. This recent amendment stated: "The licensing requirements of this section do not apply to the carrying . . . of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed as defined in Section 97-37-1." Thus we conclude that the licenses granted by Sections 45-9-101 and 97-37-7(2) are to carry a concealed stun gun and no license is needed to openly carry a stun gun.

<sup>4</sup> Section 45-9-101(13) expressly states that "in addition to the places enumerated in this subsection, the carrying of a stun gun, concealed pistol or revolver may be disallowed . . . by the posting of a written notice . . ." There is no language in Section 45-9-101 that attempts to make the law applicable to open carry, and indeed, subsection (14) was amended by H.B. 2 to state "[t]he licensing requirements of this section do not apply to the carrying by any person of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed . . ." Notably, this amendment discussed the applicability of the "section" as opposed to any one subsection.

In response to your second question and with regard to the use of signage by a municipality, the opinion of this office depends on whether the person is carrying concealed with a permit, carrying concealed with an enhanced permit or carrying openly. As to regular concealed permit holders, it is the opinion of this office that a municipality can prohibit regular permit holders from entry into **property owned or controlled by the municipality** by posting the signage set out in Section 45-9-101(13).

With regard to enhanced permit holders a municipality **has limited** authority to prohibit enhanced permits holders from entry **into property owned or controlled by the municipality** by posting the signage set out in Section 45-9-101(13). This authority is limited because enhanced permit holders are specifically authorized by Section 97-37-7(2) to carry "weapons" as follows:

A person licensed under Section 45-9-101 to carry a concealed pistol [and who has also obtained an enhanced permit endorsement on his license] shall also be authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding, and any location listed in subsection (13) of Section 45-9-101, except any place of nuisance as defined in Section 95-3-1, any police, sheriff or highway patrol station or any detention facility, prison or jail.

Reading Section 97-37-7(2) in conjunction with Section 45-9-101(13), it is the opinion of this office that an enhanced permit holder can carry a stun gun or a concealed pistol or revolver (even where governmental entities have posted signage) in the following locations found in Section 45-9-101(13):

1. Any polling place. – (Other than the Section 45-9-101(13) prohibiting regular permit holders from carrying in polling places, Mississippi Code Sections 23-15-895 (relating to armed candidates) and 97-13-29 (military officer keeping armed troops within one mile of an election) are the only other state law restrictions regarding firearms in polling places.)
2. Any meeting place of the governing body of any governmental entity. – (It is the opinion of this office that the phrase meeting place means the room in which a meeting transpires as opposed to the entire building. Thus, although an enhanced permit holder would be entitled to carry a concealed pistol or revolver into a meeting place, that individual would not have unfettered gun carrying access to places within the building that are not generally open to the general public. See MS AG Op. Cantrell (Oct. 1, 2013)).
3. Any meeting of the Legislature or a committee thereof. – (Notwithstanding this language, it is the understanding of this office that the House and the Senate have each passed rules or regulations restricting the right of individuals to carry weapons at meetings of the Legislature or its committees.)

4. Any school, college or professional athletic event not related to firearms. -- (This provision authorizes an enhanced permit holder to carry a stun gun, concealed pistol or revolver into non-firearm related events even if signage is posted pursuant to Section 45-9-101(13). However, if signage were posted relating to a **firearm related** school, college or professional event, enhanced permit holders would not be authorized to carry their weapons.)
5. Any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages. -- (This provision would only have applicability to governmental entities to the extent that such entities owned an establishment that was primarily devoted to consuming alcoholic beverages.)
6. Any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose. -- (This provision would only have applicability to governmental entities to the extent that such entities owned an establishment that was primarily devoted to consuming beer or light wine.)
7. Any elementary or secondary school facility. -- (See MS AG Op. Cantrell (Oct. 1, 2013)).
8. Any junior college, community college, college or university facility.
9. Inside the passenger terminal of any airport. -- (Any person may bring a weapon into a passenger terminal if brought in for the purposes of properly lawfully checking or shipping such weapon. An enhanced permit holder could of course still be arrested under federal law for possessing a weapon in areas prohibited by federal law.)
10. Any church or other place of worship. (Practically speaking this provision would not apply to public entities who do not own or control places of worship. This provision has little practical value because private land owners can generally always allow or disallow anyone from carrying a weapon on their private property regardless of whether the state has granted a license. -- See MS AG Op. Cantrell (Oct. 1, 2013)).
11. Any place where the carrying of firearms is prohibited by federal law. -- (This provision can only be read to mean that an enhanced permit holder carrying a weapon on prohibited federal property would not be subject to prosecution for state law violations. The federal government certainly could and probably would prosecute anyone bringing a weapon into an unauthorized area regardless of the person's possession of a state permit.)
12. In a parade or demonstration for which a permit is required.
13. In courthouses except in courtrooms during a judicial proceeding. -- (The right to carry in courthouses except in courtrooms during judicial proceedings is granted to enhanced permit holders expressly by Section 97-37-7 without reference to Section 45-9-101(13). Section 45-9-101(13) states that

regular permit holders may not carry in "courthouses" or "courtrooms" with the caveat that nothing contained therein precludes a judge from determining who "will" carry a weapon "in his courtroom." Presumably under this authority, a judge has authority to determine who will, who can and who cannot carry a weapon in his courtroom. However, the governing authority of the jurisdiction, whether municipal or county could restrict a regular permit holder from initial entry into the courthouse, as opposed to the courtroom, by posting a sign. However, such signage could not prevent an enhanced permit holder from entry into the courthouse. Under no interpretation of the law would either a regular or enhanced permit holder be authorized to carry a firearm into a courtroom during a judicial proceeding unless authorized by the judge. Likewise, as noted above, an individual would not have unfettered gun carrying access to places within the building that are not generally open to the general public. See MS AG Op. Cantrell (Oct. 1, 2013)).

If an enhanced permit holder ignores such signs, we previously opined in MS AG Op. Cantrell (Oct. 1, 2013) that the permit holder could be liable for a violation of Section 97-17-97 (trespass after warning), Section 97-17-93 (entry without permission) or other statute. Also in Cantrell, we opined that while a property owner can use the signage set forth in statute, "[p]osting of a differently worded sign could also be sufficient but actual notice might have to be proved."

Both Section 97-37-7(2) and Section 45-9-101(13) make it clear that neither an enhanced nor regular permit holder can carry into the following locations:

1. Any place of nuisance defined in Section 95-3-1 which would include "any place . . . in or upon which lewdness, assignation or prostitution is conducted, permitted, continued or exists or any other place . . . or upon which a controlled substance as defined in section 41-29-105 . . . is unlawfully used, possessed, sold or delivered and the personal property and contents used in conducting or maintaining any such place for any such purpose. See Miss. Code Ann. Section 95-3-1 (as amended).
2. Any police, sheriff or highway patrol station.
3. Any detention facility, prison or jail.

With regard to posting of signs pursuant to Section 45-9-101(13), a municipality is acting pursuant to state law and not exercising its independent regulatory authority. As discussed herein below, the Legislature has placed substantial limitations on a municipality's authority to regulate the possession of firearms. This principle is important because as we noted above Section 45-9-101(13) applies only to the carrying of concealed weapons and not openly carried weapons. Thus, we find no authority for a municipality to restrict the open carrying of firearms by use of signs or any means other than the express and limited authority given by Section 45-9-53 discussed below. Your third question is whether the City's pre-existing ordinance is enforceable. With regard to municipal ordinances, this office has opined as follows:

The Attorney General's Office generally does not interpret municipal ordinances by way of official opinion. We have previously recognized that the interpretation and application of municipal ordinances are more appropriately determined by the governing authority of the municipality. MS AG Op., Jones (July 27, 2012); MS AG Op., Adams (March 25, 2011); MS AG Op., Doty (Oct. 6, 2000).

MS AG Op. Trapp (April 5, 2013). Moreover a municipality only has "authority under home rule to enact an ordinance . . . provided the ordinance does not conflict with state statutes." MS AG Op. Povall (Dec. 18, 2009). In *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So.2d 1022, 1031 (Miss. 2005) the Supreme Court reversed an order granting summary judgment because a genuine issue of material fact exist[ed] as to whether the . . . Ordinance conflict[ed] with Department of Health regulations." With regard to the City's ordinance, it is apparent that the ordinance in some instances does and perhaps in many instances could conflict with state law thus causing the ordinance to be preempted. Any attempt by this office to discuss each aspect of the ordinance and the multiple factual scenarios to which it could be applied would be hopelessly complex and confusing. For this reason, and because opinions of this office must avoid factual determinations and opining on past acts and because we cannot possibly anticipate each factual scenario in which enforcement of the ordinance might be attempted, this opinion will instead attempt to set out affirmatively what we believe is the permissible scope for municipal ordinances relating to carrying of weapons.

Section 45-9-51, subject to limited exceptions, prohibits municipalities from regulating the carrying of firearms as follows:

Subject to the provisions of Section 45-9-53, no county or municipality may adopt any ordinance that restricts . . . the possession . . . of firearms

Section 45-9-53 authorizes limited regulations by stating:

(1) This section and Section 45-9-51 **do not affect the authority that a county or municipality may have under another law:**

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(f) To regulate the carrying of a firearm at: (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event;<sup>5</sup>

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<sup>5</sup> We take the legislative language at its face value. By this statute, the Legislature clearly indicated that it did not intend to "affect the authority" of a municipality granted by another law to regulate guns in the enumerated categories found in (i) through (iii). We therefore logically conclude that to the extent additional regulatory authority over possession of firearms in places other than (i) through (iii) could be gleaned from a statute such as the Home Rule Statute, that authority is stripped or rescinded by virtue of Sections 49-5-51 and 49-51-53.

Our reading of these statutes is that a municipality may regulate, by ordinance, the carrying of any firearm, whether concealed or not, at only the locations or events identified in Section 45-9-53 if, as the statute notes, the municipality is authorized by "another law" to enact such an ordinance. Our research has found no law that expressly authorizes municipalities to regulate the carrying of a firearm. However, it is the opinion of this office that the Home Rule Statute, Miss. Code Ann. Section 21-17-5, provides such authority and would constitute "another law" as referenced in Section 49-5-51.

Based on this authority, it is the opinion of this office that a municipality could pass an ordinance prohibiting concealed carry under a regular carry permit or open carrying of weapons only at the following locations: (1) a public park or at a public meeting of the municipality or other municipal governmental body;<sup>6</sup> (2) a political rally, parade or official political meeting; or (3) a nonfirearm-related school, college or professional athletic event. This opinion and a municipality's authority, however, are limited with regard to enhanced permit holders because such enhanced permit holders are expressly authorized via Section 97-7-7(2) and Section 45-9-101(13) to carry concealed pistols in a "meeting place" of a governmental entity or to a "non-firearm related school, college or professional athletic event." Thus, a municipality could not prohibit enhanced permit holders from carrying in these locations by ordinance.

Additionally, any municipal ordinance that regulates the open carry of weapons in the places enumerated in Section 49-5-53(f) must meet constitutional muster. While many courts have considered restrictions on concealed carry of firearms to be either presumptively valid or not involving constitutional protections granted under the Second Amendment to the United States Constitution,<sup>7</sup> a ban on the open carry of firearms at least potentially impinges on rights granted under both Article 3, Section 12 of the Mississippi Constitution and the Second Amendment. In MS AG Op. Lance (June 13, 2013), this office opined on the factors that must be considered in determining whether

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<sup>6</sup> The current version of the City's ordinance purports to prohibit the right of citizens to carry weapons on governmental property controlled by other governmental entities. This office has previously opined that one governmental entity cannot usurp control over facilities owned by a separate governmental entity. See *eg.*, MS AG Op. White (June 2, 2006) (Opining that "the Jackson City Council has no authority to ban gun shows on the Mississippi State Fairgrounds.") Thus, this office does not believe that a municipality could by ordinance restrict carry rights on property owned or controlled by other local or state governmental entities.

<sup>7</sup> See *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir.2013) (holding Second Amendment does not provide the right to carry a concealed firearm); *Kachalsky v. County of Westchester*, 701 F.3d 81 (holding New York legislation limiting concealed firearms in public does not violate the Second Amendment); *Hightower v. City of Boston*, 693 F.3d 61, 73 (1st Cir.2012) (holding revocation of license to carry concealed firearm did not violate Second Amendment); *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir.2009) ("laws prohibiting the carrying of concealed weapons" are an "example [ ] of 'longstanding' restrictions that [are] 'presumptively lawful' under the Second Amendment") (quoting *Heller*, 554 U.S. at 626); *Richards v. County of Yolo*, 821 F.Supp.2d 1169, 1174 (E.D. Cal.2011) ("[T]he Second Amendment does not create a fundamental right to carry a concealed weapon in public"); *Martinkovich v. Oregon Legislative Body*, 2011 WL 7693036, at p. 2 (D. Or. Aug. 24, 2011) ("The Second Amendment does not prohibit regulations on carrying a concealed weapon."); *Dorr v. Weber*, 741 F.Supp.2d 993, 1005 (N.D. La. 2010) ("a right to carry a concealed weapon under the Second Amendment has not been recognized to date").

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open carry of weapons can be restricted on public property. In Lance, we noted that each individual property and restriction or regulation must be considered on a case-by-case basis in light of both Mississippi state law and federal constitutional law. With regard to this aspect of the applicable law, we refer you to the Lance opinion as our best analysis on that topic.

If our office can be of further assistance, please feel free to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Ricky G. Luke  
Assistant Attorney General

OFFICIAL OPINION