

April 15, 2005

The Honorable Martin P. Votel
Preble County Prosecuting Attorney
103 North Barron Street
Eaton, Ohio 45320

SYLLABUS:

2005-015

1. Pursuant to R.C. 2923.1212(A)(9), a board of county commissioners that owns and has charge of a building, or that leases and has charge of a portion of a building that is not owned by the state or a political subdivision of the state, must post in the building, or portion of the building leased by the county, a sign that prohibits a person from carrying a concealed handgun into the building, or portion of the building leased by the county, when the person is not authorized by the Revised Code to do so.
2. Pursuant to R.C. 2923.126(B)(9), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into a building owned and under the charge of a board of county commissioners, or portion of a building leased and under the charge of the board and that is not owned by the state or a political subdivision of the state.
3. A board of county commissioners may not prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building.
4. Charging a fee for admission to an event on property that is not within a building does not permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

April 15, 2005

OPINION NO. 2005-015

The Honorable Martin P. Votel
Preble County Prosecuting Attorney
103 North Barron Street
Eaton, Ohio 45320

Dear Prosecutor Votel:

You have requested an opinion concerning the carrying of concealed handguns on property owned or leased by a board of county commissioners. Specifically, you ask:

1. Does R.C. 2923.1212 authorize a board of county commissioners to post in a county building a sign that announces that a person, including a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213, is prohibited from carrying a concealed handgun into the building?
2. May a board of county commissioners prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building?
3. If the answer to question two is no, does charging a fee for admission to an event on property that is not within a building permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property?

For the following reasons, it is our opinion that, pursuant to R.C. 2923.1212(A)(9), a board of county commissioners that owns and has charge of a building, or that leases and has charge of a portion of a building that is not owned by the state or a political subdivision of the state, must post in the building, or portion of the building leased by the county, a sign that prohibits a person from carrying a concealed handgun into the building, or portion of the building leased by the county, when the person is not authorized by the Revised Code to do so. Moreover, pursuant to R.C. 2923.126(B)(9), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into a building

owned and under the charge of a board of county commissioners, or portion of a building leased and under the charge of the board and that is not owned by the state or a political subdivision of the state.

In addition, a board of county commissioners may not prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building. Charging a fee for admission to an event on property that is not within a building does not permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property.

Authority of a Person to Carry a Concealed Handgun

R.C. 2923.12(A)(2) prohibits a person from knowingly carrying or having, concealed on him or concealed ready at hand a handgun. *See generally Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, 795 N.E.2d 633, at ¶15 (2003) (“[t]he General Assembly has determined that prohibiting the carrying of concealed weapons helps maintain an orderly and safe society. We conclude that that goal and the means used to attain it are reasonable. We hold that R.C. 2923.12 does not unconstitutionally infringe the right to bear arms;¹ there is no constitutional right to bear concealed weapons” (footnote added)). This prohibition does not apply, however, when the person is licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213:²

[R.C. 2923.12(A)(2)] does not apply to any of the following:

...;

(b) A person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69], unless the person knowingly is in a place described in [R.C. 2923.126(B)].

¹ Article I, section 4 of the Ohio Constitution declares that, “[t]he people have the right to bear arms for their defense and security.” *See also* U.S. Const. amend. II (“[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”).

² R.C. 2923.125 and R.C. 2923.1213, respectively, authorize persons to obtain licenses to carry a concealed handgun and temporary emergency licenses to carry a concealed handgun.

R.C. 2923.12(C)(2). Thus, a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may carry a concealed handgun, unless he knowingly is in a place described in R.C. 2923.126(B).³ *Id.*

R.C. 2923.126(A) further states that, except as provided in R.C. 2923.126(B) and R.C. 2923.126(C), a person who has been issued a license under R.C. 2923.125 or R.C. 2923.1213 “may carry a concealed handgun anywhere in this state if the [person] also carries a valid license and valid identification when the [person] is in actual possession of a concealed handgun.” Pursuant to R.C. 2923.126(B), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 is prohibited from carrying a concealed handgun into the following places:

- (1) A police station, sheriff’s office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to [R.C. 5119.02(A) or R.C. 5123.03(A)(1)];
- (2) A school safety zone, in violation of [R.C. 2923.122];
- (3) A courthouse or another building or structure in which a courtroom is located, in violation of [R.C. 2923.123];
- (4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under [R.C. Chapter 4303], in violation of [R.C. 2923.121];
- (5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

³ R.C. 2923.126(D) provides that a person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the Attorney General pursuant to a reciprocity agreement entered into pursuant to R.C. 109.69 has the same right to carry a concealed handgun in this state as a person issued a license under R.C. 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that statute. *See* R.C. 2923.12(C)(2)(b). R.C. 2923.126(D) also states that “[a] peace officer has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under [R.C. 2923.125].” *See generally* 2004 Op. Att’y Gen. No. 2004-028 at 2-252 (“except as otherwise provided by statute, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may carry a concealed handgun anywhere in this state while on or off duty”). *See generally also* 18 U.S.C. §§ 926B and 926C (exempting qualified current and former law enforcement officers from certain state laws that would otherwise prohibit these officers from carrying a concealed handgun while off duty).

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

(10) A place in which federal law prohibits the carrying of handguns.

See also R.C. 2923.12(C)(2)(b) (a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not knowingly carry a concealed handgun in a place described in R.C. 2923.126(B)). *See generally* R.C. 2923.12(G) (a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 who knowingly carries a concealed handgun in a place described in R.C. 2923.126(B) is guilty of carrying concealed weapons, a misdemeanor of the first degree).⁴

R.C. 2923.126(C) states that a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may be prohibited from carrying a concealed handgun on private premises or property when: (1) a private employer has a rule, policy, or practice prohibiting the carrying of firearms on the premises or property, or (2) a person or entity posts a sign prohibiting a person from carrying firearms on the premises or property:

(1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms⁵ on the private employer's premises or property, including motor vehicles owned by the private employer....

⁴ Under certain circumstances, carrying a concealed handgun into a place described in R.C. 2923.126(B) is a felony of the third or fourth degree. R.C. 2923.12(G).

⁵ For purposes of R.C. 2923.11-.24, a handgun is a "firearm." R.C. 2923.11(B)-(C).

....

(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. A person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of [R.C. 2911.21(A)(4)] and is guilty of a misdemeanor of the fourth degree. (Footnote added.)

See generally R.C. 2911.21 (a person, without privilege to do so, who “[b]eing on the land or premises of another, negligently [fails] or [refuses] to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either” is guilty of criminal trespass, a misdemeanor of the fourth degree).

R.C. 2923.126(B) and R.C. 2923.126(C) thus set forth a list of places where a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun. Accordingly, except as provided in R.C. 2923.126(B) and R.C. 2923.126(C), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may carry a concealed handgun anywhere in this state.⁶ *See* R.C. 2923.126(A); *see also* R.C. 2923.12(C)(2)(b).

Authority of a Board of County Commissioners to Post Signs Prohibiting the Carrying of Concealed Handguns into County Buildings

We will now turn to your first question, which asks whether R.C. 2923.1212 authorizes a board of county commissioners to post in a county building a sign that announces that a person, including a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213, is prohibited from carrying a concealed handgun into the building. Pursuant to R.C. 2923.1212(A)(9), a board of county commissioners that owns and has charge of a building, or that leases and has charge of a portion of a building that is not owned by the state or a political subdivision of the state, must post in the building, or portion of the building leased by the county, a sign that prohibits a person from carrying a concealed handgun into the building, or portion of the building leased by the county, when the person is not authorized by the Revised Code to do so. Moreover, pursuant to R.C. 2923.126(B)(9), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into a building owned and under the charge of a board of county commissioners, or portion of a building leased

⁶ It is assumed, for the purpose of this opinion, that the person is not subject to a disability under R.C. 2923.13 that prohibits the person from having or carrying a handgun, or prohibited by another federal or state law from having or carrying a handgun. *See, e.g.*, R.C. 2923.15 (a person may not carry a handgun while under the influence of alcohol or any drug of abuse).

and under the charge of the board and that is not owned by the state or a political subdivision of the state.

R.C. 2923.1212, which provides for the posting of signs prohibiting the carrying of handguns onto certain premises, states, in pertinent part:

(A) The following persons, boards, and entities, or designees, *shall post in the following locations a sign* that contains a statement in substantially the following form: “Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person’s control, convey, or attempt to convey a deadly weapon⁷ or dangerous ordnance onto these premises.”:

...;

(9) The officer of this state or of the political subdivision of this state, or the officer’s designee, who has charge of a building that is owned by this state or the political subdivision of this state, or who has charge of the portion of a building that is not owned by any governmental entity listed in this division but that is leased by a governmental entity listed in this division. (Emphasis and footnote added.)

R.C. 2923.1212(A)(9) unequivocally requires the officers of a political subdivision of this state who have charge of a building that is owned by the political subdivision, or who lease and have charge of a portion of a building that is not owned by the state or a political subdivision of this state, to post in the building, or portion of the building leased by the political subdivision, a sign that announces that, unless otherwise authorized by the Revised Code, a person is prohibited from carrying a handgun into the building, or portion of the building leased by the political subdivision. *See generally Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (“[i]t is axiomatic that when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*[.]” unless there appears a clear and unequivocal legislative intent to the contrary).

County commissioners are officers of a political subdivision of this state for purposes of R.C. 2923.1212. It is firmly established that county commissioners are officers of the county. *See State ex rel. DeChant v. Kelser*, 133 Ohio St. 429, 14 N.E.2d 350 (1938); 1989 Op. Att’y Gen. No. 89-087 at 2-411; *see also* R.C. 305.01 (the board of county commissioners shall consist of three persons who shall be elected and “hold office for the term of four years and until their successors are elected and qualified”). Moreover, counties are political subdivisions of the state. *See W. Pennsylvania Nat’l Bank v. Ross*, 345 F.2d 525, 526 (6th Cir. 1965); *Schaffer v. Bd. of Trustees of the Franklin County Veterans Mem’l*, 171 Ohio St. 228, 230-31, 168 N.E.2d 547 (1960); *Satzger v. Clermont County Bd. of Comm’rs*, 40 Ohio App. 2d 125, 128, 318 N.E.2d 421 (Clermont County 1973); 2002 Op. Att’y Gen. No. 2002-031 at 2-206. *See generally* 1972 Op.

⁷ As used in R.C. 2923.11-.24, a handgun is a deadly weapon. R.C. 2923.11(A)-(C).

Att’y Gen. No. 72-035 (syllabus) (“[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority”). Therefore, pursuant to R.C. 2923.1212(A)(9), a board of county commissioners that owns and has charge of a building, or that leases and has charge of a portion of a building that is not owned by the state or a political subdivision of the state, must post in the building, or portion of the building leased by the county, a sign that prohibits a person from carrying a concealed handgun into the building, or portion of the building leased by the county, when the person is not authorized by the Revised Code to do so.⁸

A person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 is required to comply with a sign posted by a board of county commissioners in accordance with R.C. 2923.1212(A)(9) since no provision in the Revised Code authorizes such a person to carry a handgun into a building or portion of a building described in R.C. 2923.1212(A)(9). *See generally* R.C. 2911.21 (a person, without privilege to do so, who “[b]eing on the land or premises of another, negligently [fails] or [refuses] to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either” is guilty of criminal trespass, a misdemeanor of the fourth degree).⁹ *See generally also Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910) (exceptions to the application or operation of the terms of a statute shall be recognized only when such exceptions are set forth clearly and unambiguously either in the statute itself or in another statute); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) (“[a]n exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”).

In fact, R.C. 2923.126(B)(9) provides that a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into “[a]ny building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division.” As stated earlier, a county is a political subdivision of the state. *See W. Pennsylvania Nat’l Bank v. Ross*; *Schaffer v. Bd. of Trustees of the Franklin County Veterans Mem’l*; *Satzger v. Clermont County Bd. of Comm’rs*; 2002 Op.

⁸ R.C. 2923.1212(A)(9) imposes the duty to post a sign prohibiting the carrying of handguns in buildings owned or portions of buildings leased by the county on the “officer” in charge of the building or portion of the building. It is a codified rule of statutory interpretation that, “[t]he singular includes the plural[.]” R.C. 1.43(A). Hence, the term “officer,” as used in R.C. 2923.1212(A)(9), includes the commissioners of a county.

⁹ Pursuant to R.C. 2911.21(B), “[i]t is no defense to a charge under [R.C. 2911.21] that the land or premises involved was owned, controlled, or in custody of a public agency.” *Accord State v. Newell*, 93 Ohio App. 3d 609, 611, 639 N.E.2d 513 (Hamilton County 1994).

Att’y Gen. No. 2002-031 at 2-206; 1972 Op. Att’y Gen. No. 72-035 (syllabus). R.C. 2923.126(B)(9) thus prohibits a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun into a building that is owned by a county, or portion of a building leased by the county and that is not owned by the state or a political subdivision of the state. *See generally* R.C. 2923.12(G) (a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 who knowingly carries a concealed handgun into a building or portion of a building described in R.C. 2923.126(B)(9) is guilty of carrying concealed weapons, a misdemeanor of the first degree).¹⁰ Accordingly, pursuant to R.C. 2923.126(B)(9), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into a building owned and under the charge of a board of county commissioners, or portion of a building leased and under the charge of the board and that is not owned by the state or a political subdivision of the state.¹¹

Authority of a Board of County Commissioners to Prohibit the Carrying of Concealed Handguns on Property That Is Not Within a Building

Your second question asks whether a board of county commissioners may prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building. A board of county commissioners may not prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on such property.

¹⁰ As stated in note four, *supra*, in certain circumstances, carrying a concealed handgun into a building or portion of a building described in R.C. 2923.126(B)(9) is a felony of the third or fourth degree. R.C. 2923.12(G).

¹¹ If a board of county commissioners leases a portion of a building that is owned or leased by the federal government, a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 is prohibited from carrying a concealed handgun into the building unless he is otherwise permitted to do so by 18 U.S.C. § 930(d). *See* 18 U.S.C. § 930 (prohibiting a person from knowingly possessing or causing to be present a firearm in a federal facility or federal court facility); R.C. 2923.126(B)(10) (a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 is prohibited from carrying a concealed handgun into “[a] place in which federal law prohibits the carrying of handguns”). *See generally* 18 U.S.C. § 930(h) (“[n]otice of the provisions of subsections (a) and (b) [of 18 U.S.C. § 930, which prohibits firearms and other dangerous weapons in federal facilities,] shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (e) [of 18 U.S.C. § 930, which prohibits firearms in federal court facilities,] shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if such notice is not posted at such facility, unless such person had actual notice of subsection (a) or (e), as the case may be”).

It is a well-settled principle that a board of county commissioners has only those powers prescribed by statute or as may exist by necessary implication. *State ex rel. Shriver v. Bd. of Comm'rs of Belmont County*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraph two). No statute expressly or impliedly authorizes a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on county property that is not within a building.¹²

Instead, as explained above, pursuant to R.C. 2923.126(B)(9) and R.C. 2923.1212(A)(9), a board of county commissioners only has the power to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun *into a building* owned and under the charge of the board, or portion of a building leased and under the charge of the board and that is not owned by the state or a political subdivision of the state. The term “building” is not statutorily defined for purposes of R.C. 2923.126 or R.C. 2923.1212. It is, therefore, accorded its common, ordinary meaning. R.C. 1.42; 1982 Op. Att’y Gen. No. 82-068 at 2-192; *see* 1983 Op. Att’y Gen. No. 83-064 at 2-268.

Black’s Law Dictionary 194-95 (6th ed. 1990) defines a “building” as a “[s]tructure designed for habitation, shelter, storage, trade, manufacture, religion, business, education, and the like.” *Accord* 1982 Op. Att’y Gen. No. 82-068 at 2-192; *Webster’s New World Dictionary* 185 (2nd college ed. 1986). The term “building” thus commonly denotes property that is located within a structure. *Cf., e.g.,* R.C. 3781.06(C)(2) (as used in R.C. 3781.06-.18 and R.C. 3791.04, “[b]uilding’ means any *structure* consisting of foundations, walls, columns, girders, beams, floors, and roof, or a combination of any number of these parts, with or without other parts or appurtenances” (emphasis added)). The use of the term “building” in R.C. 2923.126(B)(9) and R.C. 2923.1212(A)(9), therefore, indicates that a board of county commissioners may not regulate the carrying of concealed handguns in locations not within a structure.¹³ *See generally State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) (“[u]nder the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded”), *cert. denied*, 526 U.S. 1145 (1999); *Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (same).

That this was the intent of the General Assembly is supported by the fact that in R.C. 2923.126(C) the General Assembly has used the terms “land” and “premises” instead of the term “building” when addressing the authority of a person licensed to carry a concealed handgun to carry a concealed handgun on private property. R.C. 2923.126(C)(3) authorizes an owner or person in control of “private land or premises, and a private person or entity leasing land or

¹² For the purpose of this opinion, it is assumed that the property that is not within a building is not a place listed in R.C. 2923.126(B)(1)-(8) or (10).

¹³ Whether a particular location is within a structure is a question of fact that must be resolved on a case-by-case basis at the local level. *See generally* 1983 Op. Att’y Gen. No. 83-057 at 2-232 (“[t]his office is not equipped to serve as a fact-finding body”).

premises owned by the state, the United States, or a political subdivision of the state or the United States” to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the land or premises. The use of the terms “land” and “premises” in R.C. 2923.126(C) to describe the places on private property a person licensed to carry a concealed handgun may be prohibited from carrying a concealed handgun demonstrates that, if the General Assembly had intended to authorize a political subdivision to ban the carrying of concealed handguns on property not located within a building, it could have found words to convey that intent, having done so with respect to property owned or leased by a private person or entity. Compare R.C. 2923.126(B)(9) and R.C. 2923.1212(A)(9) (authorizing a board of county commissioners to ban the carrying of concealed handguns in *buildings* owned or portions of *buildings* leased by the board) with R.C. 2923.126(C)(2)(b) (“[a] political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in [R.C. Chapter 2744], for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any *premises* or *property* owned, leased, or otherwise under the control of the political subdivision” (emphasis added)). See generally *Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 66, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Because the General Assembly uses language in R.C. 2923.126(C) to authorize private persons and entities to prohibit the carrying of concealed handguns on property not within a building, it follows that the General Assembly did not intend to authorize a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building. See generally *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”). Therefore, a board of county commissioners may not prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building.¹⁴ See generally Am. Sub. H.B. 12, 125th Gen. A. (2004) (eff. Apr. 8, 2004) (sec. nine, uncodified) (“[n]o municipal corporation may adopt or continue in existence any ordinance, and no township may adopt or continue in existence any resolution, that is in conflict with [R.C. 2923.12-.1213], including, but not limited to, any ordinance or resolution that attempts to restrict

¹⁴ Under R.C. 2923.126(C)(3), if a board of county commissioners leases property to a private person or entity, the person or entity may post a sign prohibiting a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property even though the property is not within a building.

the places where a person possessing a valid license to carry a concealed handgun may carry a handgun concealed”).

Charging a Fee for Admission to an Event on Property Does Not Permit the Banning of Concealed Handguns on the Property

Your third question asks, if the answer to question two is no, does charging a fee for admission to an event on property that is not within a building permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property? Charging a fee for admission to an event on property that is not within a building does not permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property.

Nothing in R.C. 2923.126 or elsewhere in the Revised Code indicates that charging a fee for admission to an event on property that is not within a building authorizes a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property. Absent such authority, a board of county commissioners may not prohibit the carrying of a concealed handgun on property not within a building when a fee is charged for admission to an event on the property.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 2923.1212(A)(9), a board of county commissioners that owns and has charge of a building, or that leases and has charge of a portion of a building that is not owned by the state or a political subdivision of the state, must post in the building, or portion of the building leased by the county, a sign that prohibits a person from carrying a concealed handgun into the building, or portion of the building leased by the county, when the person is not authorized by the Revised Code to do so.
2. Pursuant to R.C. 2923.126(B)(9), a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 may not carry a concealed handgun into a building owned and under the charge of a board of county commissioners, or portion of a building leased and under the charge of the board and that is not owned by the state or a political subdivision of the state.
3. A board of county commissioners may not prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on property that is not within a building.

4. Charging a fee for admission to an event on property that is not within a building does not permit a board of county commissioners to prohibit a person licensed to carry a concealed handgun under R.C. 2923.125 or R.C. 2923.1213 from carrying a concealed handgun on the property.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", with a stylized flourish at the end.

JIM PETRO
Attorney General