

OP. NO. 05-078

EDUCATIONAL INSTITUTIONS: GENERAL PROVISIONS — UNIVERSITY OF VIRGINIA – BOARD OF VISITORS.

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – OTHER ILLEGAL WEAPONS – DANGEROUS USE OF FIREARMS OR OTHER WEAPONS.

Governing boards of Virginia’s public colleges and universities may not impose general prohibition on carrying of concealed weapons by permitted individuals. Pursuant to specific grants of statutory authority, however, colleges and universities may regulate conduct of students and employees to prohibit them from carrying concealed weapons on campus.

The Honorable R. Creigh Deeds
Member, Senate of Virginia
January 4, 2006

Issue Presented

You ask whether Virginia law allows public colleges and universities to prohibit the carrying of concealed weapons by permitted individuals onto public property.

Response

It is my opinion that the governing boards of Virginia’s public colleges and universities may not impose a general prohibition on the carrying of concealed weapons by permitted individuals. Pursuant to specific grants of statutory authority, however, it is my opinion that colleges and universities may regulate the conduct of students and employees to prohibit them from carrying concealed weapons on campus.

Background

You report that one of your constituents, an employee of the University of Virginia Medical Center, is the holder of a valid concealed weapons permit and would like to carry his firearm to and from the hospital, his place of employment. You further relate that you understand the University of Virginia has a policy prohibiting the carrying of weapons on campus.

Applicable Law and Discussion

The right of a citizen, with a properly issued permit, to carry a concealed handgun is considered universal within the Commonwealth, subject to limited constraints.¹ The General Assembly specifically has set out those places where the carrying of a concealed handgun is prohibited: (1) places of worship;² (2) courthouses;³ (3) elementary through high schools;⁴ (4) places licensed for on-premises alcoholic beverage consumption;⁵ and (4) such private property as may be prohibited by the owner.⁶ The right to carry openly has not been revoked by the General Assembly.⁷

Additionally, someone to whom a court has granted a concealed carry permit already has undergone an extensive criminal background check.⁸ Section 18.2-308(E) necessarily requires

that the court is satisfied that the applicant has not received mental health treatment or substance abuse treatment within five years prior to the application, is not a user or distributor of controlled substances, is not an illegal alien, is not a fugitive from justice, and has not been convicted of any assault, sexual battery, stalking, or any of the other offenses detailed in subsection E.

It is well established in Virginia that a university, through its board, "has not only the powers expressly conferred upon it, but it also has the implied power to do whatever is reasonably necessary to effectuate the powers expressly granted."⁹ This broad authority does not, however, supersede statutory or case law, public policy, or explicit statements of the General Assembly regarding specific topics.¹⁰

The powers expressly conferred and possessed by the governing body of an educational institution include the authority "[t]o establish rules and regulations for the conduct of students while attending such institution"¹¹ and "[t]o establish rules and regulations for the employment of professors, teachers, instructors, and all other employees and provide for their dismissal for failure to abide by such rules and regulations."¹²

The University of Virginia has promulgated a "Security and Firearms Policy," which provides that "[t]he possession, storage, or use of any kind of ammunition, firearms, fireworks, explosives, air rifles and air pistols on University-owned or operated property, without the expressed written permission of the University Police, is prohibited."¹³

It is my opinion that the safe operation of the campus allows regulation of, or under limited circumstances, prohibition of, firearms by any persons attending events on campus, visiting dormitories or classroom buildings, attending specific events as invitees, or under any circumstance permitted by law. The universal prohibition of firearms by properly permitted persons other than students, faculty, administration, or employees, however, is not allowed under law. A board of visitors has responsibility for the protection of the students enrolled at their university. At the same time, the rights guaranteed by the Second Amendment of the Constitution of the United States¹⁴ and by Article I, § 13, of the Constitution of Virginia,¹⁵ which protect all citizens, may not be summarily dismissed for transient reasons.

In light of the General Assembly's specific statements regarding the limits of carrying concealed handguns and the grant of authority to colleges and universities to regulate the conduct of students and employees, it is my opinion that neither a board of visitors nor a president of a public college or university may infer authority from its enabling legislation to adopt a universal prohibition of carrying concealed handguns by holders with valid permits.

Conclusion

Accordingly, it is my opinion that the governing boards of Virginia's public colleges and universities may not impose a general prohibition on the carrying of concealed weapons by permitted individuals. Pursuant to specific grants of statutory authority, however, it is my opinion that colleges and universities may regulate the conduct of students and employees to prohibit them from carrying concealed weapons on campus.

¹See *generally* Va. Code Ann. § 18.2-308 (Supp. 2005).

²See § 18.2-283 (2004).

³See § 18.2-283.1 (2004).

⁴See § 18.2-308.1(B) (Supp. 2005).

⁵See § 18.2-308(J3).

⁶See § 18.2-308(O).

⁷See § 18.2-287.4 (Supp. 2005) (prohibiting carrying of certain large ammunition capacity weapons); see also § 18.2-308 (prohibiting carrying of concealed weapons without permit).

⁸See § 18.2-308(D).

⁹Goodreau v. Rector & Visitors of Univ. of Va., 116 F.Supp.2d 694, 703 (W.D. Va. 2000) (quoting Batcheller v. Commonwealth, 176 Va. 109, 123, 10 S.E.2d 529, 535 (1940)).

¹⁰See Va. Code Ann. § 23-69 (2003) (providing that board of visitors "shall be at all times subject to the control of the General Assembly"); see also § 23-76 (2003) (providing that board of visitors may "make such regulations as they deem expedient, *not being contrary to law*" (emphasis added)); Jones v. Commonwealth, 267 Va. 218, 223, 591 S.E.2d 72, 75 (2004) (noting that University of Virginia is governmental entity under control of General Assembly).

¹¹Section 23-9.2:3(A)(2) (Supp. 2005).

¹²Section 23-9.2:3(A)(5).

¹³University of Virginia, *Financial and Administrative Policies*, Section XV.J.1 ("Security and Firearms Policy"), ¶ 2.0 (Dec. 4, 1995), available at <http://www.virginia.edu/finance/polproc/pol/xvj1.html> .

¹⁴"[T]he right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

¹⁵"[T]he right of the people to keep and bear arms shall not be infringed[.]" Va. Const. art. I, § 13.

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