

SHOULD I STAY OR SHOULD I GO?

A CHP HOLDER'S DILEMMA

Answer provided by Timothy J. Priebe, Esq. Mr. Priebe is an attorney licensed in Colorado and California. He is a CHP (Conceal Handgun Permit) holder, a NRA certified instructor in Basic Pistol, Personal Protection in the Home and Personal Protection outside of the Home. He also teaches a two hour class that relates to the law and firearm ownership including open and concealed carry. He can be contacted at Legal-tactics.com.

With each new class that I teach, a student will ask a question that I can't directly answer. When this occurs, I research the law and then share the answer with my students. I provide this service for my students as I want them to continue to learn and stay informed.

A question that has been asked a lot is this:

Can I carry my handgun in a business that does not want me to carry on their premises?

Before discussing the answer I want to make two things clear. First, I am not advocating breaking the law. Just the opposite. I want to make sure that I am compliant with the law especially when I am carrying. However, there are rules and there are laws. Rules apply to the business and laws apply to the State. You cannot be arrested for violating the rules but you can if you violate the law. Second, no reader should take anything I write as legal advice. I will educate you on the current status of the law and it will be up to you to decide how you want to act.

Let's say your local mall, a private business, has a sign at its entrance that states, "No Guns Allowed". One approach that you could take is to inform the manager/owner that due to their policy on your 2nd Amendment Rights, you will be taking your dollars and spending them at their competitor's business. Perhaps if enough people did this, we could enlighten some businesses owners to change their policies so we do not have to worry about this.

What if you have tried this and it did not work or you decide that you do not want to take this approach? What do you do? Well, let's first review what the law allows.

C.R.S. 18-12-214 (1)(a) : A permit to carry a concealed handgun authorizes the permittee to carry a concealed handgun in all areas of the state, except as specifically limited in this section.

C.R.S. 18-12-214 (5): Nothing in this part shall be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, private tenant, private employer, or private business entity.

So, under Colorado law you are allowed to carry everywhere in the state except where prohibited by this section. Subsection (5) does not state that you can't carry in a business but it does not take away any rights that the private business may have to limit (or not limit) you from carrying in their business.

Back to the mall; You are carrying your firearm and you now have to make a decision between going to this mall and violating their rules and having to drive somewhere else to do your shopping. Your decision could affect whether or not you will have the ability to protect yourself and your family.

First, do you see a sign which states that you cannot open carry or conceal carry in the business? Many private businesses are playing both sides of the issue. They will post their sign in such a manner that no one other than a window cleaner would notice the sign. For example, a certain business in Colorado Springs has a "no guns" sign on one store but not at their other store also located in Colorado Springs. The store which posts the "no guns" sign is so small and placed so low on the corner of a sliding entrance door that a reasonable person would totally not see it.

So let's say that you do or do not see such a sign. You proceed into the business. What are the possible criminal issues?

Trespass

A person could be charged with trespassing if he or she unlawfully enters or remains in or upon the premises of another.

In a private business the owner does want you to enter and remain on their premises. They want you to spend money there. So this throws a curve into a normal trespass situation.

There are statutes which cover 1st Degree Trespass, 2nd Degree Trespass and Third Degree trespass. For brevity, I will tell you that if you are in a private business and somehow you are accused of trespassing, you should not be charged with anything other than a Third Degree trespass.

C.R.S. 18-4-504 (1) states:

A person commits the crime of third degree criminal trespass if such person unlawfully enters or remains in or upon premises of another.

To determine definitions for this statute, we must turn to another statute, C.R.S. 18-4-201.

In Section (3), it states: A person “enters unlawfully” or “remains unlawfully” in or upon premises *when the person is not licensed, invited, or otherwise privileged to do so*. A person who, regardless of his or her intent, enters or remains in or upon premises that are at the time open to the public *does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to him or her by the owner of the premises or some other authorized person*.

You, by virtue of being a potential customer of a business, are invited to be on their premises. However, that invitation or license, can be revoked by only two persons: the owner of the premises or some other authorized person, (i.e., security).

Let’s go back to the mall. I am carrying concealed, I have my CHP card on me and somehow I mistakenly allow my gun to be seen by someone in the mall. I am then approached by someone in authority. I am told that the store does not allow any type of firearms in the store and I am asked to leave.

At that point, I am still legal? Yes, I believe so. How do you proceed from that point? You keep your hands away from your handgun, you stop what you are doing and you comply with their request. I do not see a case for trespassing at that point.

From my friends in the public defender’s office, I have learned who the people are that get into trouble in this situation. They are the CHP holders who want to start arguing about their rights to stay on the premises while carrying. **TO THOSE PEOPLE, YOU HAVE NO RIGHTS TO CARRY YOUR HANDGUN UNDER THIS SITUATION.** You are on private property and you have been asked to leave by someone with authority to do so. If you do not, you are a trespasser and you face arrest and criminal charges.

We, as CHP holders, must know what the law is and abide by it. What that means to me is that if I can carry open, I decide whether I want to carry open given tactical considerations of where I am going. If I can carry concealed, I do. But if I cannot legally carry open or concealed then I don’t. Plain and simple.

If you are found guilty of a third degree trespass, you have committed a class 1 petty offense. This is below a level of a misdemeanor crime. However, with any criminal charge there is a chance that you will lose your firearm in the process.

By now knowing the law, you can plan accordingly.