

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

August 31, 2021

Opinion No. 21-13

Governmental Employment Policies Prohibiting the Possession, Carrying, Storage, and Transportation of Handguns

Question 1

In light of Tenn. Code Ann. §§ 39-17-1313 and/or 39-17-1314, or other applicable law, may a Tennessee state- or local-government employer enforce an employment policy prohibiting its employees or independent third parties who are authorized to carry a handgun from storing that handgun in the person's vehicle while the person is at work and the vehicle is parked in space provided by the governmental employer?

Opinion 1

No.

Question 2

If a local government employer adopts an employment policy potentially in violation of Tenn. Code Ann. § 39-17-1313, would an employee have standing to seek a declaratory ruling pursuant to Tenn. Code Ann. § 39-17-1314(g) on that issue?

Opinion 2

Whether a local government employee would have standing to seek a declaratory ruling that a particular employment policy violates Tenn. Code Ann. § 39-17-1313 would depend on the specific facts and circumstances in any given instance. Only a court of competent jurisdiction could determine, based on the specific facts and circumstances, whether a particular employee has demonstrated, as required by Tenn. Code Ann. § 39-17-1314(g)(1), that he or she has been "adversely affected" by the particular employment policy and whether the employee has presented a justiciable claim under the particular facts involved.

Question 3

In light of Tenn. Code Ann. § 39-17-1306 or other applicable law, may a local government adopt ordinances, rules, or policies, including employment policies, that prohibit a judge or judicial magistrate from carrying a handgun if the judge or judicial magistrate has an enhanced handgun permit under Tenn. Code Ann. § 39-17-1351?

Opinion 3

A local government may not adopt an ordinance, rule, or policy that prohibits a judge or judicial magistrate who is vested with judicial powers under Tenn. Code Ann. § 16-1-101 and who holds an enhanced handgun permit under Tenn. Code Ann. § 39-17-1351 from carrying his or her handgun if that regulation or policy conflicts with Tenn. Code Ann. § 39-17-1306.

ANALYSIS

The Tennessee legislature has reserved to itself exclusive authority to regulate firearms in this State by expressly “preempt[ing] the whole field” of firearms regulation, subject only to specific exceptions. Tenn. Code Ann. § 39-17-1314(a). In sum and substance, the plain language of § 39-17-1314(a) completely removes from local governments the authority to regulate the “possession, carrying, . . . storage, and transportation” of firearms and ammunition, “[e]xcept as otherwise provided by state law or as specifically provided in subsection (b).”¹ See *Tennessee Firearms Assoc. v. Metropolitan Gov’t*, M2016-01782-COA-R3-CV, 2017 WL 2590209, at *7 (Tenn. Ct. App. May 17, 2017) (observing that Tenn. Code Ann. § 39-17-1314 “preempts the field of firearm regulation *to the exclusion of* metropolitan governments ‘[e]xcept as otherwise provided by state law’”) (emphasis added).

When the General Assembly expressly preempts a particular field of regulation—as it has done with respect to firearms—local governments may not effectively nullify state law on the same subject by enacting ordinances or other regulations² that ignore applicable state laws, that grant rights that state law denies, or that deny rights that state law grants. *State ex. rel. Beasley v. Mayor & Aldermen of Town of Fayetteville*, 196 S.W.2d 407, 415-16, 268 S.W.2d 330, 334 (Tenn. 1954). Put another way, a local government may not adopt regulations or ordinances that “infringe the spirit of a state law or are repugnant to the general policy of the state.” *Capitol News Co., Inc. v. Metropolitan Gov’t*, 562 S.W.2d 430, 434 (Tenn. 1978); *Nichols v. Tullahoma Open Door, Inc.*, 640 S.W.2d 13, 18 (Tenn. Ct. App. 1982). But a local regulation in the field may nevertheless be

¹ The full text of Tenn. Code Ann. § 39-17-1314(a) is as follows:

Except as otherwise provided by state law or as specifically provided in subsection (b), the general assembly preempts the whole field of the regulation of firearms, ammunition, or components of firearms or ammunition, or combinations thereof including, but not limited to, the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation thereof, to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions, enactments or regulation. No county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy any part of the field regulation of firearms, ammunition or components of firearms or ammunition, or combinations thereof.

² For purposes of the legal analysis here, there is no material difference between the “employment policies” referred to in the questions and “ordinances” or “other regulations.” “It is a well settled principle of law that one cannot do indirectly what cannot be done directly.” *Haynes v. City of Pigeon Forge*, 883 S.W.2d 619, 622 (Tenn. Ct. App. 1994); see, e.g., *Allmand v. Pavletic*, 292 S.W.3d 618, 625-29 (Tenn. 2009) (finding that a municipality was prohibited from entering into contracts that exceeded the authority granted to it by charter or statute). Thus, if an ordinance or other regulation prohibiting the possession, carrying, storage, or transportation of handguns would be preempted by state law, that same prohibition embodied in an employment policy would be invalid, as well.

valid as long as there is no conflict between the state statute and the local regulation and the requirements of the local regulation are not unreasonable or discriminatory. *Capitol News*, 562 S.W.2d at 434; Tenn. Att’y Gen Op. 18-04 (Jan. 31, 2018).

1. Validity of Government Employment Policies That Prohibit Employees and Independent Third Parties from Storing Handguns in Personal Vehicles Parked in Areas Provided by the Governmental Employer

Tennessee state law makes special provision for the transportation and storage of firearms and firearm ammunition in motor vehicles that are “on or utilizing any public or private parking area.” Tenn. Code Ann. § 39-17-1313. Specifically,

a person who has a valid enhanced handgun permit³ or concealed handgun carry permit⁴ or who lawfully carries a handgun pursuant to § 39-17-1307(g)⁵ may, unless expressly prohibited by federal law, transport and store a firearm or firearm ammunition in the person’s motor vehicle . . . while on or utilizing any public or private parking area if:

- (1) The person’s motor vehicle is parked in a location where the motor vehicle is permitted to be; and
- (2) The firearm or ammunition being transported or stored in the motor vehicle:
 - (A) Is kept from ordinary observation if the person is in the motor vehicle; or
 - (B) Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person’s motor vehicle or a container securely affixed to the motor vehicle if the person is not in the motor vehicle.

Id. § 39-17-1313(a).

“Persons” covered by Tenn. Code Ann. § 39-17-1313 include employees of governmental entities, as well as independent third parties, who are “on or utilizing any public . . . parking area” because “parking area” is defined as “*any property provided by a business entity, public or private employer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles.*” *See id.* § 39-17-1313(c)(2)(A) (emphasis added).

³ *See* Tenn. Code Ann. § 39-17-1351.

⁴ *See id.* § 39-17-1366.

⁵ Tennessee Code Ann. § 39-17-1307(g), which permits “constitutional carry,” became effective July 1, 2021. *See* 2021 Tenn. Pub. Acts, ch. 108.

No state law grants governmental entities the authority to override Tenn. Code Ann. § 39-17-1313 to enforce employment policies that prohibit the storage of firearms and ammunition in personal motor vehicles parked in public parking areas. In fact, state law precludes such measures.

First, Tenn. Code Ann. § 39-17-1313(a) itself allows the transportation and storage of firearms in motor vehicles as outlined above “[n]otwithstanding any law or any ordinance or resolution adopted by the governing body of a city, county or metropolitan government.”

Second, state law that gives governmental entities some specified authority to regulate firearms expressly excepts Tenn. Code Ann. § 39-17-1313. *See id.* § 39-17-1314(b)(1) (providing that local governmental entities are authorized to regulate “[t]he carrying of firearms by employees or independent contractors of the [local governmental entity] when acting in the course and scope of their employment or contract, *except as otherwise provided in § 39-17-1313*”) (emphasis added); § 39-17-1359(a)(1) (providing that governmental entities are authorized to prohibit the possession of weapons by any person who is on property owned, operated, or managed or under the control of the government entity “[e]xcept as provided in § 39-17-1313”) (emphasis added).⁶

Hence, a governmental employment policy that prohibits employees or independent third parties authorized to carry handguns from storing their handguns in their personal vehicles while they are at work and their vehicles are parked in an area provided by the governmental employer would be at cross-purposes with state law, which permits the conduct that the employment policy would prohibit. Because such a policy promulgated by a local governmental entity would be repugnant to state law, it would be preempted by the State’s exclusive right to regulate firearms under Tenn. Code Ann. § 39-17-1314(a).⁷

A like state policy would also not be enforceable. While Tenn. Code Ann. § 39-17-1314(a) would not preempt such a policy,⁸ Tenn. Code Ann. § 39-17-1359(a)(1) provides that the State is authorized to prohibit the possession of weapons by any person who is on property owned, operated, or managed or under control of a governmental entity “[e]xcept as provided in § 39-17-1313.” Because state agencies are creatures of statute, they may exercise only such power as the legislature delegates to them. *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995); *In re Sentinel Trust Co.*, 206 S.W.3d 501, 519 (Tenn. Ct. App. 2005). Accordingly, state agencies cannot take any action that the General Assembly, by statute, prohibits them from taking. *See id.*

⁶ Significantly, Tenn. Code Ann. § 39-17-1359 expressly applies to the State, as well as local governmental entities, unlike Tenn. Code Ann. § 39-17-1314 which applies to local governmental entities only.

⁷ The statement in Tenn. Att’y Gen. Op. 13-41 (May 28, 2013) that Tenn. Code Ann. § 39-17-1313 “does not address and thus has no impact on the employment relationship between an employer and an employee” must be confined to its context of employment relationships between *private* employers and their employees. *See note 2, supra.* Significantly, two years after Opinion 13-41 was issued, the General Assembly amended Title 50 to prohibit a private employer from discharging or taking adverse action against its employees “solely for transporting or storing a firearm or firearm ammunition in an employer parking area in a manner consistent with § 39-17-1313(a).” 2015 Tenn. Pub. Acts, ch. 80, § 1 (codified at Tenn. Code Ann. § 50-1-312).

⁸ *See note 6, supra.*

2. *Standing of Employee to Seek Declaration under Tenn. Code Ann. § 39-17-1314(g) That Local Government Employment Policy Violates Tenn. Code Ann. § 39-17-1313*

Tennessee Code Annotated § 39-17-1314(g) creates a private cause of action for a party who is “adversely affected” by “[a]n ordinance, resolution, policy, rule, or other enactment that is adopted or enforced by a county, city, town, municipality, or metropolitan government or any local agency, department, or official” that violates Tenn. Code Ann. § 39-17-1314.⁹ An individual party is “adversely affected” if the individual “[l]awfully resides within the United States, [m]ay legally possess a firearm under Tennessee law, and [i]s or was subject to the ordinance, resolution, policy, rule, or other enactment.” Tenn. Code Ann. § 39-17-1314(h)(1) (emphasis added). An individual “is or was subject to” a regulation if the individual “[i]s or was physically present within the boundaries of the political subdivision for any reason.” *Id.* § 39-17-1314(h)(1)(C).

Standing is a judicial doctrine used to determine whether a particular party is entitled to judicial relief. *State v. Harrison*, 270 S.W.3d 21, 27 (Tenn. 2008). To have standing, the party must have a justiciable claim,¹⁰ *Huntsville Util. Dist. v. General Trust Co.*, 839 S.W.2d 397, 401 (Tenn. Ct. App. 1992), and must also have a sufficiently personal stake in a matter to warrant a judicial resolution of the dispute. *SunTrust Bank v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000); *Browning-Ferris Indus. of Tennessee, Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982). Persons whose rights or interests have not been affected have no standing and are, therefore, not entitled to judicial relief. *See Lynch v. City of Jellico*, 205 S.W.3d 384, 395 (Tenn. 2006). “The sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest.” *Wood v. Metropolitan Gov’t*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005).

Because the primary focus of a standing inquiry is on the party, not on the merits of the party’s claim, *Wood*, 196 S.W.3d at 158, the outcome of the inquiry is dependent on the particular facts and circumstances in any given instance. The court must carefully examine a party’s allegations “to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.” *Cox v. Shell Oil Co.*, 196 S.W.3d 747, 758 (Tenn. Ct. App. 2005).

Accordingly, whether a particular local government employee would have standing to seek a declaration that Tenn. Code Ann. § 39-17-1314 preempts an employment policy because it violates Tenn. Code Ann. § 39-17-1313 would depend on the specific facts and circumstances involved. Only a court of competent jurisdiction could determine, based on the specific facts and circumstances in any given case, whether a particular individual has demonstrated, as required by Tenn. Code Ann. § 39-17-1314(g)(1), that he or she has been “adversely affected” by the particular employment policy and whether that individual has presented a justiciable claim under the particular facts involved.

⁹ The ordinance, resolution, policy, rule, or other enactment must be one that is adopted or enforced on or after July 1, 2017. Tenn. Code Ann. § 39-17-1314(g)(2).

¹⁰ As the Tennessee Supreme Court has explained, Tennessee’s doctrine of justiciability includes the concept of standing and limits judicial decisions to controversies that involve real and existing disputes that are not theoretical or abstract. *See West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015).

3. Validity of Local Government Regulations That Prohibit Judges and Judicial Magistrates from Carrying Handguns

For the reasons explained above, a local government may only adopt an ordinance, rule, or policy that prohibits judges and judicial magistrates who possess enhanced handgun permits under Tenn. Code Ann. § 39-17-1351 from carrying their handguns if the State has made a positive grant of authority to local governments to regulate the carrying of handguns by judges and the local regulation is not repugnant to state law.

Here, there are two positive state grants of authority which permit governmental entities to regulate the possession and carrying of firearms. First, Tenn. Code Ann. 39-17-1313(b)(1) authorizes local governmental entities to regulate the carrying of firearms by employees acting in the course and scope of their employment.¹¹ Second, Tenn. Code Ann. § 39-17-1359(a)(1) authorizes governmental entities to prohibit the possession of weapons by any person who is on property owned, operated, or managed or under control of a governmental entity.

State law, though, also permits judges who possess enhanced handgun permits under Tenn. Code Ann. § 39-17-1351 to carry their handguns under certain circumstances. As explained below, this law partially forecloses local government regulation.

Tennessee Code Ann. § 39-17-1306 generally prohibits persons from carrying firearms while in buildings where “judicial proceedings are in progress”¹² regardless of whether the firearm is carried for the purpose of going armed. Tenn. Code Ann. § 39-17-1306(a); *see State v. Williams*, 854 S.W.2d 904, 907 (Tenn. Crim. App. 1993). But judges are exempt from the general prohibition against the possession of firearms in any building in which judicial proceedings are being conducted when the judge (1) is engaged in the “actual discharge of official duties as a judge”; (2) is authorized to carry a handgun pursuant to § 39-17-1351; (3) keeps the handgun concealed at all times when in the discharge of such duties; and (4) is vested with judicial powers under § 16-1-101.¹³ *See id.* § 39-17-1306(c)(3).

Accordingly, a local government may not adopt an ordinance, rule, or policy that prohibits a judge or judicial magistrate who is vested with judicial powers under Tenn. Code Ann. § 16-1-101 and holds an enhanced handgun permit under Tenn. Code Ann. § 39-17-1351 from carrying his or her handgun if that regulation conflicts with Tenn. Code Ann. § 39-17-1306. *See id.* § 39-17-1314(a); *State ex. rel. Beasley*, 196 S.W.2d at 415-16, 268 S.W.2d at 334 (local government cannot nullify state law on the same subject by enacting regulations that ignore applicable state laws, nor can it deny rights that state law grants).

¹¹ This provision, though, would not allow a local government to regulate any judge who was not an employee of the local government.

¹² *See* Tenn. Att’y Gen. Op. 19-07 (June 18, 2019) (discussing meaning and scope of the phrase “judicial proceedings are in progress” as used in Tenn. Code Ann. § 39-17-1306(a)).

¹³ Tennessee Code Ann. § 16-1-101 provides: “The judicial power of the state is vested in judges of the courts of general sessions, recorders of certain towns and cities, circuit courts, criminal courts, common law and chancery courts, chancery courts, courts of appeals, and the supreme court, and other courts created by law.”

Other local regulation that does not conflict with Tenn. Code Ann. § 39-17-1306 remains permissible. For instance, Tenn. Code Ann. § 39-17-1359 allows a local government to prohibit persons, including persons possessing an enhanced gun permit under Tenn. Code Ann. § 39-17-1351, from carrying handguns into a courtroom when it is being used for an administrative meeting, as opposed to a judicial proceeding. Tenn. Att’y Gen. Op. 12-32 (Mar. 9, 2012). There is no state law provision that would preclude the application of Tenn. Code Ann. § 39-17-1359 to judges or judicial magistrates when there are no judicial proceedings in progress in the building.

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