

Opinion No. 2013-013

May 1, 2013

The Honorable Stephanie Malone  
State Representative  
2105 South O Street  
Fort Smith, Arkansas 72901-5737

Dear Representative Malone:

I am writing in response to your request for my opinion on the following questions:

1. May a municipality prohibit the carry of concealed firearms on all city property, including rights-of-way, by posting signs in accordance with A.C.A. 5-73-306(19)(A)?
2. May a municipality prohibit the carry of concealed firearms on some or all city sidewalks by posting signs in accordance with A.C.A. 5-73-306(19)(A)?
3. May a municipality prohibit the carry of concealed firearms on one or more city streets by posting signs in accordance with A.C.A. 5-73-306(19)(A)?
4. May a municipality prohibit the carry anywhere in an entire city on property where the city exercises control (streets, highways, sidewalks, rights of way) by posting signs at every entrance to that city in accordance with A.C.A. 5-73-306(19)(A)?

**RESPONSE**

All four of your questions are concerned, at least in part, with the authority of a city to ban the carrying of concealed handguns on public rights-of-way by posting

notices thereon of the sort specified in the statute. In my opinion, the statute affords a city the authority to ban the carrying of handguns on municipal property such as buildings, grounds and parks. I question that this authority extends to public rights-of-way and sidewalks.

***Question 1: May a municipality prohibit the carry of concealed firearms on all city property, including rights-of-way, by posting signs in accordance with A.C.A. 5-73-306(19)(A)?***

In my opinion, the answer to your question is “yes” with respect to most city-owned realty. Specifically with respect to “rights-of-way,” however, I cannot offer a categorical opinion. The Code is ambiguous regarding the status of “rights-of-way,” failing to specify whether this unique category of property qualifies as a “place” subject to posting. As an executive officer, I cannot undertake the essentially legislative task of clarifying the scope of the statute.

The statute referenced in your question provides in pertinent part:

No license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun into:

\* \* \*

19)(A) Any place at the discretion of the person or entity exercising control over the physical location of the place by placing at each entrance to the place a written notice clearly readable at a distance of not less than ten feet (10') that “carrying a handgun is prohibited.”

(B)(i) If the place does not have a roadway entrance, there shall be a written notice placed anywhere upon the premises of the place.

(ii) In addition to the requirement of subdivision (19)(B)(i) of this section, there shall be at least one (1) written notice posted within every three (3) acres of a place with no roadway entrance.

(C) A written notice as described in subdivision (19)(A) of this section is not required for a private home.

(D) Any licensee entering a private home shall notify the occupant that the licensee is carrying a concealed handgun.<sup>1</sup>

As reflected in the highlighted passage above, any “entity” – a category I believe includes a city<sup>2</sup> – may at its discretion bar carrying concealed weapons on any “place” over which it “exercis[es] control.”

As used in your question, the term “rights-of-way” appears clear enough, denoting the streets and highways over which the city has been statutorily granted “control.” At first blush, it would appear that the city might bar the carrying of concealed handguns on its rights-of-way by observing the prescribed notice provisions. Upon reflection, however, I question that the legislature intended a city’s power of prohibition to extend to rights-of-way.

Insofar as “rights-of-way” comprise “city property,” as your question assumes, the city clearly exercises some measure of “control” over the property.<sup>3</sup> The issue,

---

<sup>1</sup> A.C.A. § 5-73-306 (Supp. 2011) (emphasis added). Subsection (19) of this statute was amended by Acts 2013, No. 226, § 4, which essentially provides that licensees may carry concealed handguns onto the property of a college or university if (1) the licensee is a staff member; (2) the institution complies with the posting provisions set forth in the current statute; and (3) the institution has not imposed restrictions of its choosing. The second of these conditions is difficult to reconcile with the unamended A.C.A. § 5-73-306(14), which generally bars concealed handguns, without need of posting any signs, from “[a]ny school, college, community college, or university campus building or event, unless for the purpose of participating in an authorized firearms-related activity.” Act 226 will take effect 90 days from the date of adjournment *sine die* of the current legislative session. See *Fulkerson v. Refunding Board*, 201 Ark. 957, 147 S.W.2d 980 (1941). This rule stems from Amendment 7 to the Constitution of Arkansas, which gives the people “ninety days after the final adjournment of the session” to file referendum petitions.

<sup>2</sup> See Op. Att’y Gen. 2003-244 (opining that the statute is “sufficiently broad to include *any* person or entity that exercises control over property – even governmental entities such as cities”).

<sup>3</sup> A “right-of-way is generally defined as follows:

The right to pass through property owned by another. \* A right-of-way may be established by contract, by longstanding usage, or by public authority (as with a highway).

*Black’s Law Dictionary* (9<sup>th</sup> ed. 2009). The term “public right-of-way” – which is what I presume you mean by including the term “rights-of-way” within the designation of “city property” – is defined as follows: “The right of passage held by the public in general to travel on roads, freeways, and other

however, is whether municipal property used as a right-of-way is the *type* of property addressed by the statute – i.e., whether it constitutes a “place” of the sort that the legislature has designated as subject to posting. Despite the repeated use of the term “place” in the statute, it is unclear precisely what the term denotes. It is anyone’s guess, for instance, what it means to “exercis[e] control over the *physical location of the place*” (emphasis added).

The redundant, highlighted passage just quoted, however, does contain at least a suggestion – and it is no more than that – that a “place” is geographically bounded in a manner that is inconsistent with the status of a “right-of-way.” This notion of “place” as a circumscribed area is reinforced by the provisions of the statute preceding subsection (19), which catalog the following “prohibited places”:

- 1) Any police station, sheriff’s station, or Department of Arkansas State Police station;
  
- (2) Any Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department facility;

---

thoroughfares.” *Id.*; accord 25 Am.Jur.2d *Easements and Licenses in Real Property* § 7 (1996) (“A right of way may be public or private; the prime element of a public way, or ‘highway,’ is the rights of public enjoyment. . . .” (footnotes omitted)).

The universally accepted rule regarding city “control” over its rights-of-way is as follows:

A municipality . . . has no authority to control its streets or to grant rights and privileges thereto or thereon, unless it has been so authorized by the legislature, even where the fee title is held by it, and its authority is limited to that prescribed in its charter, and by the general statutes of the state, and is subject at all times to legislative control. . . . Such grants of authority, however, are strictly construed in the interest of the common right.

39 Am.Jur.2d *Highways, Streets and Bridges* § 236 (1999) (footnotes omitted). The Arkansas General Assembly has ceded control over city streets in the following statute:

The city council shall:

- (1) Have the care, supervision, and control of all the public highways, bridges, streets, alleys, public squares, and commons within the city; and
  
- (2) Cause those public highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair, and free from nuisance.

A.C.A. § 14-301-101 (1987).

(3)(A) Any building of the Arkansas State Highway and Transportation Department or onto grounds adjacent to any building of the Arkansas State Highway and Transportation Department.

(B) However, subdivision (3)(A) of this section does not apply to a rest area or weigh station of the Arkansas State Highway and Transportation Department;

(4) Any detention facility, prison, or jail;

(5) Any courthouse;

(6)(A) Any courtroom.

(B) However, nothing in this subchapter precludes a judge from carrying a concealed weapon or determining who will carry a concealed weapon into his or her courtroom;

(7) Any polling place;

(8) Any meeting place of the governing body of any governmental entity;

(9) Any meeting of the General Assembly or a committee of the General Assembly;

(10) Any state office;

(11) Any athletic event not related to firearms;

(12) Any portion of an establishment, except a restaurant as defined in § 3-5-1202, licensed to dispense alcoholic beverages for consumption on the premises;

(13) Any portion of an establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises;

(14) Any school, college, community college, or university campus building or event, unless for the purpose of participating in an authorized firearms-related activity;

(15) Inside the passenger terminal of any airport, except that no person is prohibited from carrying any legal firearm into the passenger terminal if the firearm is encased for shipment for purposes of checking the firearm as baggage to be lawfully transported on any aircraft;

(16) Any church or other place of worship<sup>[4]</sup>;

(17) Any place where the carrying of a firearm is prohibited by federal law;

(18) Any place where a parade or demonstration requiring a permit is being held, and the licensee is a participant in the parade or demonstration.

This list is striking in that its recited range of “prohibited places” is restricted to rooms, buildings, grounds and geographically limited “events” like parades or demonstrations. This list in itself suggests that the meaning of “place” as used in the statute might indeed be restricted to areas that are defined – and hence subject to enforceable prohibitions – in a way that might not include a “right-of-way.”<sup>5</sup>

---

<sup>4</sup> This subsection of A.C.A. § 5-73-306 was amended by Acts 2013, No. 67, § 1 to add the following as subsection (B):

However, this subchapter does not preclude a church or other place of worship from determining who may carry a concealed handgun into the church or other place of worship.

<sup>5</sup> The proposition that the notion of “place” that applies in subsection (19) of the statute should accord with that reflected in the previous 18 subsections follows the following principles of statutory construction:

Pursuant to the doctrine of *ejusdem generis*, when general words follow specific words in a statutory enumeration the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Likewise, the doctrine of *noscitur a sociis*, which literally translates to “it is known from its associates,” provides that a word can be defined by the accompanying words.

This suggestion is bolstered by the fact that subsection (19) defines the pertinent posting requirements in terms of whether a “place” does or does not have a “roadway entrance” – a distinction consistent with a notion of “place” as a terminus, as distinct from the area designated as a right-of-way accessing that terminus.<sup>6</sup>

Moreover, as suggested above, the posting restrictions of subsection 19 would appear to be practically impossible to observe if applied to a right-of-way. A street or a highway, after all, may have countless entrances and exits, ranging from the commencement of city jurisdiction to its end, and including along the way every intersecting cross street, driveway, alley and footpath.

Compounding the unlikelihood that the legislature intended to include such property within its range of “prohibited places” is the fact that embracing such an interpretation would compel the conclusion that a driver lawfully carrying a concealed weapon would suddenly be in violation of the law every time he entered or crossed any posted right-of-way.<sup>7</sup> To read the term “place” as including a “right-of-way,” then, would result in a highly implausible inference of legislative intent. The Arkansas courts have long held that in interpreting statutory language, it is inappropriate to give the statute a reading that would result in an absurdity, or to presume that the legislature enacted a vain and meaningless law.<sup>8</sup>

---

*Hanley v. Arkansas State Claims Commission*, 333 Ark. 159, 167, 970 S.W.2d 198 (1998) (citations omitted). Applying both of these principles, the court concluded that the claim at issue in that case was different in kind from claims falling within the range of specifically enumerated exceptions to the Commission’s jurisdiction listed in Ark. Code Ann § 19-10-204(b). *Id.* By comparison, in the present case, the properties subject to posting pursuant to subsection (19) can be assumed to be of a kind with those listed earlier in the statute.

<sup>6</sup> This narrower reading of the term “place” seems consistent, for instance, with its usage in A.C.A. § 5-73-304(c), as amended by Acts 2013, No. 415, § 1, which mandates that an auxiliary law enforcement officer produce the authorization exempting him from gun-carry licensing requirements “upon demand at the request of any . . . owner or operator of any of the prohibited places as set out in § 5-73-306.” The phrase “owner or operator” implies that the referenced premises are a fixed location other than a right-of-way.

<sup>7</sup> Section 3(B) of the statute recited above appears designed to avoid precisely such an absurd result, exempting weigh stations, which a driver might enter and leave regularly in the course of a journey, from the blanket proscription against carrying concealed handguns on property owned by the Arkansas Highway and Transportation Department.

<sup>8</sup> See *Yarbrough v. Witty*, 336 Ark. 479, 484, 987 S.W.2d 257(1999); *Lawhon Farm Servs. v. Brown*, 335 Ark. 272, 948 S.W.2d 1 (1998); *Citizens To Establish A Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996); *Henson v. Fleet Mortgage Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995); *Neely v. State*, 317 Ark.

Reading the statute as a whole, then, I suspect the legislature intended to authorize a city's prohibition-by-posting on only restricted spaces of the sort listed above – i.e., spaces that might lend themselves to the notice provisions articulated in the statute. Having tentatively suggested this reading, however, I must note that only a court or the legislature could affirm its propriety.

***Question 2: May a municipality prohibit the carry of concealed firearms on some or all city sidewalks by posting signs in accordance with A.C.A. 5-73-306(19)(A)?***

In my opinion, for the reasons set forth in my response to your previous question, I question that the legislature intended the statute to extend to sidewalks.

The Arkansas Code authorizes cities of both the first and second class to “regulate the use of sidewalks” within their jurisdictions.<sup>9</sup> Although these statutes clearly invest municipalities with “control” over sidewalks, for the reasons discussed in my response to your previous question, a sidewalk does not strike me as a “place” of the sort generally subject to the posting provisions of A.C.A. § 5-73-306(19)(A). Without legislative or judicial guidance, however, I cannot unequivocally opine to this effect. I can and will opine that subsection (18) of the referenced statute categorically forbids carrying a concealed weapon on any sidewalk used for a permitted parade or demonstration.

***Question 3: May a municipality prohibit the carry of concealed firearms on one or more city streets by posting signs in accordance with A.C.A. 5-73-306(19)(A)?***

See response to question 1, *supra*.

***Question 4: May a municipality prohibit the carry anywhere in an entire city on property where the city exercises control (streets, highways, sidewalks, rights of way) by posting signs at every entrance to that city in accordance with A.C.A. 5-73-306(19)(A)?***

---

312, 877 S.W.2d 589 (1994); *Death and Total Permanent Disability Trust Fund v. Whirlpool Corp.*, 39 Ark. App. 62, 837 S.W.2d 293 (1992).

<sup>9</sup> A.C.A. §§ 14-54-104 and -105 (Repl. 1998).

The Honorable Stephanie Malone  
State Representative  
Opinion No. 2013-013  
Page 9

For the reasons set forth in my response to your first question, I suspect that the answer to this question is “no.” Considering the statute in its entirety, I question that the legislature intended to empower a city, by the simple expedient of posting its sidewalks and rights-of-way, effectively to ban the carrying of concealed handguns within city limits.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM/JHD:cyh