



STATE OF KANSAS

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November 4, 1982

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ATTORNEY GENERAL OPINION NO. 82-238

Mr. John Dekker
Director of Law
Office of the City Attorney
City Hall - Thirteenth Floor
455 N. Main St.
Wichita, Kansas 67202

Re: Crimes and Punishments -- Crimes Against the Public
Safety -- Possession of Firearm at a Person's Fixed
Place of Business

Synopsis: Pursuant to the exemption in subsection (d) of K.S.A.
21-4201 (as amended by L. 1982, ch. 135, §2 and further
amended by L. 1982, ch. 136, §1), any person may possess
a concealed weapon while working at his or her fixed
place of business. Cited herein: K.S.A. 21-4201
(as amended by L. 1982, ch. 135, §2 and further amended
by L. 1982, ch. 136, §1), 21-4204, 38-725.

* * *

Dear Mr. Dekker:

You request an interpretation of K.S.A. 21-4201 (as amended by L. 1982,
ch. 135, §2 and further amended by L. 1982, ch. 136, §1), which provides
inter alia that it shall be a misdemeanor for any person to carry a
pistol or other firearm concealed on his person "except when on the
person's land or in the person's abode or fixed place of business."

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K.S.A. 21-4201(d) (as amended). Specifically, you ask for an opinion which interprets the phrase, "a person's . . . fixed place of business," to ascertain under what circumstances it authorizes the carrying of a concealed weapon.

We find no Kansas cases which have interpreted the scope of the phrase "fixed place of business", however, courts in other jurisdictions have done so. It has been generally held that a person who has a possessory interest in a business or place of employment (i.e., an owner or co-owner of the premises) is permitted to carry a concealed firearm therein under an exemption from a concealed weapons statute for a person at his fixed place of business. See, e.g., Coker v. State, 76 S.E. 103 (1912); Franklin v. State, 77 S.E. 653 (1913); Gunzel v. State, 285 S.W. 1092 (1926); Roumel v. United States, 261 A.2d 240 (1970). However, courts have split on the issue of whether mere employees who have no possessory interests in their places of business are permitted to carry concealed firearms therein under said exemption.

In states where the statutory exemption is worded similarly to "except in his dwelling house or place of business or on other land possessed by him," the courts have generally held that employees who have no possessory interests in their places of employment do not fall within the exemption and, therefore, may not carry concealed weapons while at work. United States v. Waters, 73 F.Supp. 72, cause certified 175 F.2d 340, app. dism'd 335 U.S. 869 (1947); People v. Clark, 176 N.W.2d 427 (1970); State v. Bloom, 167 A. 221 (1933). These courts have reasoned that, because of the language "or on other land possessed by him," the legislature intended to limit the right of a person to carry a concealed firearm to those places in which the person had a possessory interest. In some of these cases, the courts have determined that their legislatures have intended to limit the possession of firearms in their jurisdictions and could not be presumed to have intended that every employee would be permitted to carry a firearm while working. State v. Valentine, 307 A.2d 617 (1973); Berkley v. United States, 370 A.2d 1331 (1977).

In states where the statutory language is more similar to that of the Kansas statute, lacking the phrase "or on other lands possessed by him," the courts have held that the place of business exemption extends to employees while they are on the premises of their employer during their working hours. People v. Marotta, Super., 180 Cal. Rptr. 611 (1981); Banks v. State, 98 S.W. 242 (1906); Gunzel v. State, 285 S.W. 1092 (1926); Coker v. State, 76 S.E. 103 (1912); Idellett v. State, 81 S.E. 379 (1914). The court in Idellett v. State, supra, noted

that, since the legislature had decided that a citizen would be permitted to carry a pistol without a license at his home and place of business, the law must be applied impartially and could not distinguish between a landed proprietor and a laborer. In the sole Illinois case which interprets "fixed place of business" in the Illinois statute from which the Kansas statute was derived, the Illinois court did not suggest that an employee lacking a possessory interest in his place of business would not fall within the exemption. Rather, the court decided that a taxicab was not stationary and, therefore, could not be considered to be a "fixed" place of business.

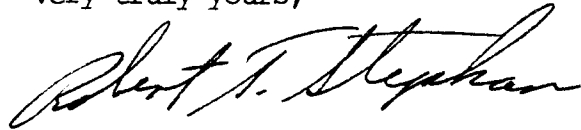
Because the latter group of cases has been decided under statutes which more closely parallel the Kansas statute, it is our opinion that the rationale adopted in these cases should be applied to the Kansas statute. Therefore, we believe the exemption in K.S.A. 21-4201 (as amended) for a person at the person's fixed place of business applies to all employees who work in a fixed geographical location during those hours the employee is working.

This view is further supported by applying the rules of statutory construction to K.S.A. 21-4201 (as amended). While the fundamental rule of statutory construction for all statutes is that the purpose and intent of the legislature governs [Kansas State Board of Healing Arts v. Dickerson, 229 Kan. 627 (1981)], legislative intent must be discerned from the face of a penal statute without the aid of outside facts or circumstances. State v. Goza, 4 Kan.App.2d 309 (1980). In addition, penal statutes are to be construed in favor of the person sought to be subjected to their operation and should not be read to add that which is not readily found therein or to read out what as a matter of ordinary English is in it. National Co-op Refinery Ass'n. v. Board of County Com'rs of McPherson County, 228 Kan. 595 (1980). There is nothing contained within the statute itself which would indicate to anyone reading it that the legislature intended the exemption to apply only to owners or managers of businesses. The plain language of the statutory exemption applies to all persons while they are at their fixed places of business. We note, however, that collateral statutes may prohibit certain persons from possessing such weapons; e.g., K.S.A. 21-4204, which applies to ex-felons, drunkards or narcotics addicts, and K.S.A. 38-725 which applies to certain juveniles. Therefore, it is our opinion that K.S.A. 21-4201 (as amended) must be read as exempting

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all persons who are not otherwise prohibited by law from possessing firearms from the prohibition against carrying concealed firearms while they are working at their fixed places of business.

Very truly yours,



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Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:JEF:BLH:may