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June 24, 2015

ATTORNEY GENERAL OPINION NO. 2015-11

The Honorable Susie Swanson
State Representative, 64th District
1422 5th St.
Clay Center, KS 67432

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act; Restrictions on Carrying Concealed Handgun; Liabilities; Sign Requirements

Synopsis: The definition of “state or municipal building” in the Personal and Family Protection Act (PFPA) excludes county-owned buildings leased in their entirety by private entities. A private non-profit entity that leases a county-owned building is not required to install adequate security measures in order to prohibit the carrying of concealed handguns inside the building. The PFPA shields private entities from increased liability following the 2013 amendments to the PFPA. Cited herein: K.S.A. 2014 Supp. 75-7c01; 75-7c10; 75-7c20; 75-7c24; 75-6102; K.S.A. 2013 Supp. 75-7c10; K.A.R. 16-11-7; K.A.R. 16-13-1.

* * *

Dear Representative Swanson:

As State Representative for the 64th District, you ask our opinion on two questions concerning the Personal and Family Protection Act (PFPA),¹ commonly known as the “concealed carry law.” First, you ask whether a private non-profit organization that is a tenant in a county-owned building and receives some funding through local property taxes may prohibit the carrying of handguns, concealed or unconcealed, without

¹ K.S.A. 2014 Supp. 75-7c01 *et seq.*

providing adequate security measures. You also ask us to clarify whether the PFPA affords liability protections for a private entity that chooses to prohibit the carrying of handguns inside the entity's building by posting signage without providing adequate security measures.

With respect to your first question, the PFPA creates two categories of buildings: "state or municipal" buildings, and buildings that are *not* "state or municipal" buildings. This distinction is important because each category of building has different requirements that must be met before handguns may be prohibited inside the building.

State or municipal buildings must comply with requirements outlined in K.S.A. 2014 Supp. 75-7c20 in order to prohibit concealed carry inside those buildings. Generally, the carrying of concealed handguns by concealed carry licensees must be allowed inside state or municipal buildings unless the building is posted as prohibiting concealed carry and the building provides "adequate security measures"² to ensure that no weapons are brought into the building. There are exceptions to this general rule, but those exceptions are not relevant to your questions.³ With the enactment of 2015 Senate Bill 45, beginning July 1, 2015 state or municipal buildings must comply with the same requirements in order to prohibit *unlicensed* concealed carry inside those buildings.⁴

For buildings that are *not* state or municipal buildings, licensed concealed carry may be prohibited if that building is properly posted with signage approved by the Attorney General.⁵ The PFPA does not require such buildings to be outfitted with adequate security measures in order to prohibit licensed concealed carry, and the 2015 amendments to the concealed carry law do not alter this rule.⁶

Under the PFPA, a "state or municipal building" is:

[A] building owned or leased by such public entity. *It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.*⁷

² "Adequate security measures" means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. K.S.A. 2014 Supp. 75-7c10(g)(1) and 75-7c20(m)(1).

³ The governing body or chief administrative officer of certain state or municipal buildings may temporarily exempt the building from the requirements of K.S.A. 75-7c20. See K.S.A. 2014 Supp. 75-7c20(i) and (j). Buildings located on the grounds of the Kansas State School for the Deaf and the Kansas State School for the Blind are wholly exempt from this requirement. See K.S.A. 2014 Supp. 75-7c20(k).

⁴ See L. 2015, Ch. 16, § 13.

⁵ K.S.A. 2014 Supp. 75-7c10(a). See also K.A.R. 16-11-7.

⁶ L. 2015, Ch. 16, § 11.

⁷ K.S.A. 2014 Supp. 75-7c20(m)(5)(A) (emphasis added).

The plain language of this definition excludes a municipal⁸ building that is leased by a private entity, irrespective of whether that entity receives funding from local property taxes. Therefore, a county-owned building that is leased in its entirety by a private non-profit entity is not considered a “state or municipal building” for the purposes of the PFPA, and the licensed concealed carry of handguns may be prohibited inside such a building by properly posting Attorney General-approved signage.

Unlike licensed concealed carry, the law does not establish different requirements for private and public buildings with respect to the open, or unconcealed, carry of firearms inside buildings. Open carry of firearms may be prohibited inside *any* building by posting signage approved by the Attorney General;⁹ adequate security measures are not required. The same signage that is used to prohibit the licensed concealed carry of handguns into a building may also be used to prohibit the open carry of firearms inside the building.¹⁰

With respect to your second question, the PFPA includes specific language that limits liability for wrongful acts and omissions related to the actions of persons carrying concealed handguns inside buildings. Liability provisions for privately owned or leased buildings are found within K.S.A. 2014 Supp. 75-7c10(c), which states:

(1) Any private entity which provides adequate security measures in a private building and which conspicuously posts signage in accordance with this section prohibiting the carrying of a concealed handgun in such building as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(2) Any private entity which does not provide adequate security measures in a private building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(3) Nothing in this act shall be deemed to increase the liability of any private entity where liability would have existed under the personal and family protection act prior to the effective date of this act.

⁸ For the purposes of the PFPA, “municipal” means any county, township, city, or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof, but does not include school districts. K.S.A. 2014 Supp. 75-7c20(m)(2). *See also* K.S.A. 2014 Supp. 75-6102(b).

⁹ K.S.A. 2014 Supp. 75-7c24(a). *See also* K.A.R. 16-13-1.

¹⁰ K.S.A. 2014 Supp. 75-7c24(d)(2); K.A.R. 16-13-1(b).

This language, enacted in 2013,¹¹ creates specific liability protections for a private entity that chooses to prohibit licensed concealed carry inside its buildings by posting signage and installing adequate security measures, and for a private entity that chooses to allow licensed concealed carry inside its buildings.¹² A private entity that chooses to prohibit licensed concealed carry inside its buildings but does not install adequate security measures would not fall within either of these two specific provisions. However, such an entity *would* fall within the provisions of subsection (c)(3).

Subsection (c) of K.S.A. 2014 Supp. 75-7c10 shields private entities from any asserted increase in liability beyond what existed for that entity “prior to the effective date of this act,” which is July 1, 2013.¹³ Thus, a private entity that chooses to prohibit concealed carry inside its buildings without installing adequate security measures would be subject to traditional principles of premises liability,¹⁴ but would not be subject to increased liability by virtue of the 2013 amendments to the PFP. In other words, whatever liability existed for a private entity with respect to persons inside that entity’s building prior to the enactment of K.S.A. 2014 Supp. 75-7c10(c)(1) and (2) remained the same following the enactment of those statutes.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb

¹¹ See L. 2013, Ch. 109, § 9.

¹² Beginning July 1, 2015, these specific liability protections will apply to both licensed and unlicensed concealed carry. See L. 2015, Ch. 16, § 11.

¹³ See L. 2013, Ch. 109, § 12.

¹⁴ See, e.g., *Jones v. Hansen*, 254 Kan. 499 (1994) (An entity occupying property owes invitees and licensees the duty of reasonable care under all the circumstances. An entity occupying property owes a trespasser the duty to refrain from willfully, wantonly, or recklessly injuring the trespasser).