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ATTORNEY GENERAL OPINION NO. 2016-9

The Honorable Kay Wolf
State Senator, 7th District
8339 Roe
Prairie Village, KS 66207

Re: Cities and Municipalities–Miscellaneous Provisions–Firearms and Ammunition; Regulation by City or County, Limitations

State Departments; Public Officers and Employees–Firearms–Personal and Family Protection Act; Restrictions on Carrying Concealed Handgun; Certain Local Ordinances and Resolutions Inapplicable; Concealed Handguns in Public Buildings

Synopsis: A state-owned or leased medical care facility must either allow concealed carry inside the facility or install adequate security measures and post signage to prohibit concealed carry, unless the facility has temporarily exempted itself from the provisions of K.S.A. 2015 Supp. 75-7c20. After any such exemption expires, a state-owned or leased medical care facility must comply with the provisions of K.S.A. 2015 Supp. 75-7c20. If concealed carry is allowed inside a state-owned or leased medical care facility, the facility may regulate the manner of carrying concealed handguns inside the facility. Medical personnel of a state-owned or leased medical care facility may require patients to temporarily store concealed handguns during medical treatment.

A municipal-owned or leased medical care facility must either allow concealed carry inside the facility or install adequate security measures and post signage to prohibit concealed carry, unless the facility has temporarily exempted itself from the provisions of K.S.A. 2015 Supp. 75-7c20. After any such exemption expires, a municipal-owned or leased medical care facility must comply with the provisions of K.S.A. 2015 Supp. 75-7c20.

> The governing body of a municipality may not adopt an ordinance, resolution or other regulation to govern the carrying of concealed handguns inside a municipal-owned or leased medical care facility. However, a physician, nurse, or other medical personnel of a municipal-owned or leased medical care facility may refuse to allow a patient to carry a concealed handgun while medical services are being provided, as long as such action is not implementing a local law, official policy, or decision by the governing body of the municipality.
>
> K.S.A. 2015 Supp. 75-7c20 does not apply to a state or municipal-owned medical care facility that is leased in its entirety by a private entity, whether for-profit or not-for-profit.
>
> The Personal and Family Protection Act does not require a state or municipal building to provide storage facilities for concealed handguns carried into the building by members of the public. Cited herein: K.S.A. 2015 Supp. 12-16,124; 21-6301; 21-6302; 21-6304; 21-6309; 65-425; 75-7c01; 75-7c03; 75-7c10; 75-7c17; 75-7c20; 75-6102; K.A.R. 16-11-7.

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Dear Senator Wolf:

As the State Senator for the 7th District, you ask our opinion on "the application of K.S.A. 2015 Supp. 75-7c20 to patients admitted to a state or municipal-owned medical care facility." Specifically, you ask whether such medical care facilities must permit a patient to carry a concealed handgun during the patient's stay at the facility. In your letter, you note that "[t]he administration of certain medications and the need for various tests, treatments, and other medical procedures would likely make it difficult for a patient to consistently retain access and control over a concealed handgun throughout their stay at the medical care facility."

K.S.A. 2015 Supp. 75-7c20 is part of the Personal and Family Protection Act (PFPA),[1] commonly known as the Kansas concealed carry law. K.S.A. 2015 Supp. 75-7c20(a) establishes the general rule concerning concealed carry inside state or municipal-owned buildings:

> The carrying of a concealed handgun shall not be prohibited in any state or municipal building unless such building has adequate security measures[2] to ensure that no weapons are permitted to be carried into

[1] K.S.A. 2015 Supp. 75-7c01 *et seq*.

[2] The PFPA defines "adequate security measures" as "the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal 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

> such building and the building is conspicuously posted [with signage approved by the Attorney General].

Whether K.S.A. 2015 Supp. 75-7c20 applies to a particular medical care facility is a question of fact. The statute only applies to a "state or municipal building," which is generally defined as "a building owned or leased by such public entity."[3] There are two relevant exceptions to this definition: a building that is held in title by the state or a municipality solely for revenue bond purposes, and a building that is leased in its entirety by a private entity.[4]

This means that a state or municipal-owned medical care facility[5] is considered a "state or municipal building" for the purposes of the PFPA, unless the building is leased by a private entity or is held in title solely for revenue bond purposes. Thus, if a city owns a hospital building but the hospital's operations are conducted by a private entity that leases the entire building from the city, then the hospital is not considered a state or municipal building under K.S.A. 2015 Supp. 75-7c20.

Because the application of K.S.A. 2015 Supp. 75-7c20 to a particular building depends on the facts of each case, we limit our opinion to only those state or municipal-owned medical care facilities that fall within the definition of "state or municipal building" under the PFPA. We also limit our analysis to concealed carry by members of the public, and not by law enforcement officers or employees of the medical care facility.

K.S.A. 2015 Supp. 75-7c20(j)(1) presently allows the governing body or, if no governing body exists, the chief administrative officer, of a state or municipal building to exempt the building from its provisions for a period of only four years.[6] During an exemption period, the building may prohibit concealed carry simply by posting certain signage at all exterior entrances to the building.[7] After the four-year exemption period expires, the building is required to comply with K.S.A. 2015 Supp. 75-7c20.

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the public." K.S.A 2015 Supp. 75-7c20(m)(1). Effective July 1, 2016, such security personnel must be armed. *See* L. 2016, Ch. 86, § 6. The PFPA excludes "any cutting instrument that has a sharpened or pointed blade" from its definition of "weapon," and therefore the adequate security measures need not prohibit knives, machetes or similar objects from entering the building. *See* K.S.A. 2015 Supp. 75-7c20(m)(6).

[3] K.S.A. 2015 Supp. 75-7c20(m)(5)(A). "Municipality" 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. 2015 Supp. 75-7c20(m)(2) and 75-6102(b).

[4] *Id*. *See also* Attorney General Opinion No. 2013-14 (under the PFPA, "building" refers to the entire structure, not just a portion of a building) and Attorney General Opinion No. 2013-021 (discussion of what constitutes a "building" under the PFPA). Effective July 1, 2016, concealed handguns may be prohibited in only a portion of a state or municipal building. *See* L. 2016, Ch. 86, § 6.

[5] The PFPA defines "medical care facility" as a hospital, an ambulatory surgical center, or a recuperation center. A hospice is not included in this definition. *See* K.S.A. 2015 Supp. 75-7c20(j)(1) and K.S.A. 65-425(h).

[6] Effective July 1, 2016, such exemptions may run until July 1, 2017. *See* L. 2016, Ch. 86, § 6.

[7] K.S.A. 2015 Supp. 75-7c10(a). *See also* K.A.R. 16-11-7.

Taken together, the above provisions mean that a medical care facility that is considered a "state or municipal building" under the PFPA presently has three options with respect to its policies on concealed carry within the facility by members of the public. First, the facility may exercise an exemption and prohibit concealed carry by posting required signage. Second, the facility may prohibit concealed carry into the facility by installing "adequate security measures" at all exterior public entrances and posting certain signage. Third, the facility may choose to allow concealed carry by any person who may lawfully possess a firearm.[8] Under current law, once an exemption expires, only the second and third options are available.

As a practical matter, we acknowledge that it would be challenging, if not impossible, to provide adequate security measures at medical care facilities where emergency care is provided. To qualify as "adequate security measures" under the PFPA, such measures must be in place at all public exterior entrances to the building and must include electronic detection equipment and security personnel at each entrance to "ensure that weapons are not permitted to be carried into such building by members of the public." This language encompasses *all* public entrances, including the emergency room entrance, and includes *all* public visitors to the facility, including patients. The PFPA provides no exceptions for patients who enter an emergency room through the public entrance and need immediate medical care, or whose medical condition is such that requiring security screening of the patient for weapons is unsafe or impracticable. However, we must consider the law as it is currently written.

Turning to your question, we will separately discuss the application of K.S.A. 2015 Supp. 75-7c20 to state-owned or leased medical care facilities ("state facilities") and municipal-owned or leased medical care facilities ("municipal facilities"), because different rules apply to municipal facilities.

State Facilities

With respect to state facilities, K.S.A. 2015 Supp. 75-7c20 generally requires concealed carry to be allowed inside a state building unless the building is exempt or provides adequate security measures and signage. But neither the PFPA nor any other provision of law restricts the *state* government from adopting rules to govern the manner of carrying or storing a concealed handgun *once the handgun is inside a state-owned or leased building*.

We therefore believe that under current law, a *state* agency may regulate the carrying or storage of a concealed handgun by patients and other members of the public while inside a state facility. In the absence of a statute to the contrary, we believe the state may require, for example, that concealed handguns carried inside state facilities be holstered or unloaded, or it may prohibit patients from carrying a concealed handgun

[8] In 2015, the law was changed to allow any person over the age of 21 to lawfully carry a concealed handgun, provided that the person is not prohibited from possessing a firearm under state or federal law. A state-issued license is no longer required to lawfully carry a concealed handgun. *See* L. 2015, Ch. 16, §§ 2, 3 and 8. *See also* K.S.A. 2015 Supp. 21-6301(i)(5), 21-6302(a)(4), and 75-7c03(a).

into an x-ray room. Medical personnel may also require that a patient remove a concealed handgun from his or her person before medications or procedures are provided.

We note, however, that neither the PFPA nor any other provision of law requires state facilities to provide secure storage for handguns carried into the facility by members of the public. Therefore, even if a state facility is required by law to allow a patient to carry a concealed handgun into the facility, it is under no obligation to provide a means for the patient to safely store the handgun while the patient is receiving medical treatment. The state facility could suggest, but not require, that the patient leave his or her handgun in a secure location outside the facility if the patient will not be permitted to carry the handgun while receiving treatment.

Municipal Facilities

With respect to municipal facilities, there are other laws that prohibit a *municipality*, but not the state government, from regulating firearms. One provision of the PFPA, K.S.A. 2015 Supp. 75-7c17(a), generally bars municipalities from regulating concealed carry in any fashion:

> No city, county or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by individuals except as provided in K.S.A. 21-6301, 21-6302, 21-6304, 21-6309, 75-7c10 or 75-7c20, and amendments thereto, or K.S.A. 21-4218(f), prior to its repeal.

Thus, a municipality may enforce certain criminal laws involving the unlawful carrying or possession of firearms (K.S.A. 2015 Supp. 21-6301, 21-6302, 21-6304 and 21-6309), and it may take actions authorized by the PFPA, but otherwise has no authority to regulate, restrict or prohibit concealed carry.

K.S.A. 2015 Supp. 12-16,124(a) further prohibits cities and counties from regulating firearms in general:

> No city or county shall adopt or enforce any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation of firearms or ammunition, or any component or combination thereof.

To interpret the scope of these limiting statutes, we rely upon the Kansas Supreme Court's guidance for statutory interpretation:

> [T]he best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used. If the makers'

> language is plain and unambiguous, there is no need to use canons of construction or legislative history or other background considerations to construe the legislature's intent.[9]

By its plain and unambiguous terms, K.S.A. 2015 Supp. 75-7c17(a) only prevents a *city, county or other political subdivision* from regulating, restricting or prohibiting concealed carry except as authorized by other statutes. Likewise, K.S.A. 2015 Supp. 12-16,124(a) only prohibits a *city or county* from governing firearms. It is our opinion that such language restricts only the governmental bodies of municipalities, because only those bodies have the power to adopt or enforce the type of local laws barred by those statutes.

K.S.A. 2015 Supp. 12-16,124(a) also prohibits local government "agents" from taking "any administrative action" concerning local firearm regulations. The statute does not define "administrative action," but the ordinary meaning of the term is "[a] decision or an implementation relating to the government's executive function . . . ."[10] The statute also does not define "agent," but the term ordinarily means "[s]omeone who is authorized to act for or in place of another; a representative."[11] Thus, a representative of a city or county, who is authorized to act for or in place of the city or county, may not implement local laws governing firearms or make a decision based upon such local laws.

Whether a person is acting as an agent of a city or county is a question of fact. However, K.S.A. 2015 Supp. 12-16,124(a) only prohibits an agent of a city or county from taking administrative action "governing the requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation of firearms or ammunition, or any component or combination thereof."

We do not believe K.S.A. 2015 Supp. 12-16,124(a) or 75-7c17(a) restricts medical personnel employed by a city, county or other political subdivision from making medical decisions that temporarily restrict the ability of a patient to carry a concealed handgun on their person. We reach this conclusion because we assume that the governing body of a city, county or other political subdivision would not enact local laws or rules mandating certain procedures be followed during medical treatment at a municipal facility. Therefore, any medical decision by municipal medical personnel would not be a "decision or an implementation" related to the local government's executive function.

Thus, a city council or county commission could not pass an ordinance, resolution or any other regulation governing the manner in which concealed handguns must be handled while inside a municipal facility. However, a physician employed by a city-owned hospital could lawfully refuse to allow a particular patient to carry a concealed handgun during treatment based upon individualized medical concerns, so long as the

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[9] *Taylor v. Kobach*, 300 Kan. 731, 735-36 (2014) (internal citations omitted).
[10] Black's Law Dictionary (10th ed. 2014) (Westlaw).
[11] *Id*.

physician's directive is not implementing a formal rule, ordinance or resolution enacted by the local government.[12]

To help illustrate our analysis, consider a scenario in which a county-owned hospital is subject to the provisions of K.S.A. 2015 Supp. 75-7c20 (i.e., is not subject to a temporary exemption), and has no adequate security measures in place. If the county commission enacts a resolution requiring concealed handguns carried inside the county hospital to be unloaded, we believe such action would violate K.S.A. 2015 Supp. 12-16,124(a) and 75-7c17(a) because those statutes expressly prohibit a *county* from regulating concealed carry or the carrying of firearms in general except as allowed under the PFPA.

Using the same hypothetical county hospital, consider another scenario in which a patient arrives at the hospital for a scheduled surgical procedure carrying a concealed handgun. If the patient's physician bars the patient from carrying the handgun into the operating room for safety and sanitation reasons, is the physician violating state law? In this scenario we believe the answer is no, because the physician's order is not an action taken by the county governing body, and could not be construed as an administrative action taken on behalf of the county government's executive function. Therefore, such an action would not run afoul of the prohibitions in K.S.A. 2015 Supp. 12-16,124(a) and 75-7c17(a).

Summary

To summarize, whether a state or municipal-owned or leased medical care facility is a "state or municipal building" subject to the provisions of K.S.A. 2015 Supp. 75-7c20 is a question of fact. Neither a medical care facility that is leased by a private entity, nor a medical care facility that is held in title by the state or a municipality solely for bond financing purposes, is subject to K.S.A. 2015 Supp. 75-7c20.

The governing body or, if no governing body exists, the chief administrative officer, of a state or municipal-owned medical care facility may temporarily exempt the facility from K.S.A. 2015 Supp. 75-7c20. After any exemption expires, the facility must either allow concealed carry inside the facility or continue to prohibit concealed carry by installing

[12] This is not to suggest that medical personnel employed by a municipal medical care facility have unfettered authority to regulate concealed carry inside the facility. A municipal medical employee could be deemed an agent of the municipality if a court determined that an apparent agency relationship existed. *See, e.g.*, *Shawnee State Bank v. North Olathe Indus. Park, Inc.*, 228 Kan 231, Syl. ¶ 3 (1980) ("An ostensible or apparent agency may exist if a principal has intentionally or by want of ordinary care induced and permitted third persons to believe a person is his or her agent even though no authority, either express or implied, has been actually conferred upon the agent."). We believe a temporary restriction on a patient's ability to carry a concealed handgun during medical treatment, imposed by medical personnel based upon patient-specific medical considerations, is less likely to be considered an action on behalf of the municipality than a blanket policy that affects all patients without regard to the type of treatment being provided.

adequate security measures at each exterior public entrance and posting the facility with required signage.

There is nothing in state law that prohibits a state-owned medical care facility from regulating the carrying of concealed handguns inside its facility. This means that notwithstanding the provisions of K.S.A. 2015 Supp. 75-7c20, a state-owned medical care facility may adopt rules governing the manner of carrying concealed handguns inside the facility.

Municipal-owned medical care facilities that fall within the PFPA's definition of "state or municipal building" are subject to more legal restrictions on their ability to restrict or regulate concealed carry inside the facility. However, those legal restrictions only bar the local governmental body from adopting an ordinance, resolution or other regulation that regulates concealed carry or firearms in general, except as expressly authorized by the PFPA. Agents of the local governmental body may not take administrative action to implement any such local rules.

Medical personnel employed by a municipality do not violate K.S.A. 2015 Supp. 12-16,124(a) by refusing to allow an individual patient to carry a concealed handgun during treatment so long as such refusal is not based upon or implementing an ordinance, resolution or other policy or regulation adopted by the local governing body.

Even if a state or municipal medical care facility is required to allow concealed carry inside the facility, medical personnel may *recommend* that a patient leave their handgun in a secure location if the patient will not be permitted to carry the handgun during treatment. There is no legal requirement that a state or municipal medical care facility provide secure firearm storage for patients or visitors to the facility.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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