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July 10, 2017

ATTORNEY GENERAL OPINION NO. 2017-9

The Honorable Blake Carpenter
State Representative, 81st District
2425 N. Newberry, Apt. 3202
Derby, KS 67037

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act; License to Carry Concealed Handgun

Synopsis: A state university policy requiring concealed handguns carried on campus to be carried without a round in the chamber does not violate K.S.A. 2016 Supp. 75-7c03(a). Cited herein: K.S.A. 2016 Supp. 12-16,124(a); 75-7c03; 75-7c17; K.S.A. 76-712; 76-725.

* * *

Dear Representative Carpenter:

As the State Representative for the 81st District, you ask for our opinion regarding the scope of K.S.A. 2016 Supp. 75-7c03(a), which reads:

The attorney general shall issue licenses to carry concealed handguns to persons who comply with the application and training requirements of this act and who are not disqualified under K.S.A. 75-7c04, and amendments thereto. Such licenses shall be valid throughout the state for a period of four years from the date of issuance. **The availability of licenses to carry concealed handguns under this act shall not be construed to impose a general prohibition on the carrying of handguns without such license, whether carried openly or concealed, or loaded or unloaded.**¹

¹ Emphasis added.

Your question is whether the language in bold type above prohibits a state university from adopting a policy whereby persons carrying a concealed handgun on campus must do so without a round in the chamber. For the reasons explained below, we think the answer to your question is no.

To answer your question, we follow the rules of statutory construction established by the Kansas Supreme Court:

The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.²

The plain language of K.S.A. 2016 Supp. 75-7c03(a) authorizes the issuance of concealed carry licenses, and establishes the expiration date for those licenses. The language you ask about clarifies that the existence of such licenses should not be construed to generally prohibit unlicensed open or concealed carry of handguns. Or, to put it another way, the fact that concealed carry licenses are available in Kansas does not mean that a person must have a license to legally carry a handgun openly or concealed, regardless of whether the handgun is loaded.

We do not think the plain and unambiguous language of K.S.A. 2016 Supp. 75-7c03(a) addresses the authority of state universities to adopt a policy such as you describe. Rather, it appears that the phrase, “. . . whether carried openly or concealed, or loaded or unloaded” simply emphasizes that it is not generally illegal for a law-abiding person to carry a loaded handgun.

That conclusion is consistent with the grammatical structure of the sentence. The subject of the sentence is “[t]he availability of licenses to carry concealed handguns” and the predicate is “shall not be construed.” The remainder of the sentence sets forth the manner in which the subject (and nothing more) may not be construed.

But the source of legal authority for a state university to adopt a policy requiring persons carrying a concealed handgun on campus to do so without a round in the chamber is not the availability of concealed carry licenses; rather, the Board of Regents and state universities claim that authority from K.S.A. 76-712, which grants the Board of Regents the power of “control, operation, management or supervision” of state universities, and K.S.A. 76-725, which authorizes the chief administrative officer of each state university to “administer the affairs of such institution” subject to state laws and Board of Regents

² *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 918 (2013), quoting *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 564–65 (2012) (internal citations omitted).

policies and regulations.³ As we noted in Attorney General Opinion No. 2016-17, the legislature has enacted various laws preempting the authority of local governments to regulate firearms,⁴ but state agencies are not subject to the same limitations. In fact, “[t]he only provisions of Kansas law that limit the authority of state agencies to regulate concealed carry are found in the [Personal and Family Protection Act, K.S.A. 2016 Supp. 75-7c01 *et seq.*]”⁵

Nothing in the statutory provision you have brought to our attention, nor any other provision of the Personal and Family Protection Act, addresses any limitation on those separate sources of authority upon which universities have based the policy in question. In the absence of a statute prohibiting a state university from regulating the *manner* of carrying a concealed handgun on campus, the university’s authority to do so derives from the statutes granting general control over university operations to the Board of Regents and the chief administrative officer.⁶

This conclusion is consistent with the legislative history of K.S.A. 2016 Supp. 75-7c03(a). The language you ask about was enacted as part of 2015 Senate Bill 45 (SB 45),⁷ which amended various provisions of state law to allow the concealed carry of handguns without a state-issued license; SB 45 was also referred to as the “constitutional carry” bill. The chief sponsor of SB 45 provided the following written testimony during a hearing before the Senate Federal and State Affairs Committee:

Senate Bill 45 is a common sense measure that builds upon the good work the legislature accomplished in past years. Currently, in the state of Kansas, it is lawful for a law abiding citizen to carry a firearm, without a permit, in the open or unconcealed anywhere except for areas that have been exempted via statute. Therefore, it makes sense that a law abiding citizen should have the freedom to carry a firearm under their clothing or in their purse if they so choose without undergoing the permitting process.⁸

³ The state universities and the Board of Regents also note that the Kansas Constitution, Art. 6, Sec. 2, requires that state law “provide for a state board of regents *and for its control and supervision of public institutions of higher learning.*”

⁴ See, e.g., K.S.A. 2016 Supp. 12-16,124(a) (“[n]o city or county shall adopt or enforce any ordinance, resolution or regulation . . . 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”) and 75-7c17(a) (“[n]o 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”) (emphasis added).

⁵ Attorney General Opinion No. 2016-17.

⁶ This is consistent with our conclusion in Attorney General Opinion 2016-15 that “neither the PFPA nor any other provision of law restricts the *state* government from adopting rules to govern the manner or carrying or storing a concealed handgun *once the handgun is inside a state-owned or leased building.*” (emphasis in original).

⁷ L. 2015, Ch. 16.

⁸ *Minutes*, Senate Federal and State Affairs Committee, February 12, 2015, Attachment 1.

Although testimony before a legislative committee does not necessarily reflect legislative intent, we note that a majority of the Kansas Senate, 26 senators, co-sponsored SB 45 when it was introduced. We therefore think that the above testimony *is* indicative of the legislative intent behind SB 45, and that the amendments to K.S.A. 75-7c03(a) were part of the effort to legalize unlicensed concealed carry. There is no indication in the legislative record that the language about which you ask was intended to extinguish the general authority of the Board of Regents or a state university to regulate the *manner* of carrying a concealed firearm on campus. Because neither the plain language of that statute itself, nor the legislative history of its enactment, addresses a state university's general authority that has a basis in both the Kansas constitution and statute, we think a court would "not read into the statute something not readily found in it."⁹

To summarize, it appears that the language you ask about was meant to prevent the misinterpretation of the legislature's clear intent to allow unlicensed concealed carry by persons who may lawfully possess a firearm. That specific statutory language does not bar a state university from adopting policies requiring concealed handguns carried on campus to be carried without a round in the chamber. We therefore think that the answer to your question is no.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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⁹ See fn. 2, *supra*.