

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

July 16, 2019

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Re: Open Carry/Concealed Carry/Enhanced Carry

Dear Ms. Bryan:

Attorney General Jim Hood has received your request for an official opinion of this office and assigned it to me for research and reply.

### Issues Presented and Response

Your request letter sets forth various issues and legal arguments relating to acceptable provisions for a municipal ordinance relating to possession of firearms. Your letter contains extensive legal analysis and citations to both cases and opinions regarding Mississippi firearm possession law. This opinion responds to the specifically identified issues raised in your letter as follows:

**Issue No. 1:** May a municipality, through its home rule authority or otherwise, regulate, by ordinance, the carrying of any firearm, whether concealed or not, as defined in MCA Section 45-9-101, 97-37-7 and the State Constitution at (1) a public park or at a public meeting of the municipality or other municipal governmental body; (2) a political rally, parade or official political meeting; or (3) a nonfirearm-related school, college or professional athletic event. If the answer to this question is yes, then may the municipality enforce its ordinance by making any offense punishable as a misdemeanor?

Section 45-9-53 provides, in relevant part, as follows:

(1) This section and Section 45-9-51 do not affect the authority that a county or municipality may have under another law: . . .

(f) To regulate the carrying of a firearm at: (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event; or . . .

Miss. Code Ann. Section 45-9-53 (as amended). In our opinion, the "authority . . . under another law" in paragraph (1) of the statute would include authority under the Home Rule Statute.<sup>1</sup> Thus, to the extent not inconsistent with state law, Section 45-9-53(1)(f) gives a municipality the authority to regulate the carrying of a firearm, either openly or concealed, at "(i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event."

The ordinance could apply to openly<sup>2</sup> carried firearms, firearms carried concealed with a regular concealed license issued under Section 45-9-101(13) or firearms carried concealed without a license under the authority of Section 45-9-101(24).<sup>3</sup> The ordinance, however, could only apply in a limited manner to an enhanced concealed license holder. This is true, because enhanced license holders are expressly granted the right to carry in places identified in Section 45-9-101(13). See Miss. Code Ann. Section 97-37-7(2) ("A person licensed under Section 45-9-101 to carry a concealed pistol, who (a) has voluntarily completed an instructional course in . . . use of firearms . . . shall also be authorized to carry weapons in . . . any location listed in subsection (13) of Section 45-9-101, except any place of nuisance as defined in Section 95-3-1, any police, sheriff or highway patrol station or any detention facility, prison or jail."). A "meeting place" of a governmental body, a "school, college or professional athletic event not related to firearms" and a "parade . . . for which a permit is required" are all places listed in Section 45-9-101(13) in which an enhanced concealed carrier could carry a concealed pistol or revolver. Thus, a municipal ordinance enacted pursuant to Section

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<sup>1</sup>The Home Rule Statute, Section 21-17-15, states, in relevant part:

The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, . . .

Miss. Code Ann. Section 21-17-5 (as amended).

<sup>2</sup>When a local government regulates the open carry of weapons, it is imperative that the local government consider federal constitutional rights guaranteed under the Second Amendment. See MS AG Op., Lance (June 13, 2013).

<sup>3</sup>These unlicensed concealed carriers are subject to the same limitations as regular concealed license holders.

Manya Creel Bryan, Esq.  
July 16, 2019  
Page 3

45-9-53(1)(f) could not prohibit possession of concealed firearms by enhanced license holders in these places since such an ordinance would be inconsistent with Section 97-37-7(2). See MS AG Op., Povall (Dec. 18, 2009)("[A] municipality only has 'authority under home rule to enact an ordinance ... provided the ordinance does not conflict with state statutes.'").

The second part of Issue No. 1 asks "may the municipality enforce its ordinance by making any offense punishable as a misdemeanor?" This office has previously opined as follows:

A municipality is authorized to pass ordinances and sets limits on the penalties for any such ordinances, in accordance with Section 21-13-1. MS AG Op., Mitchell (February 16, 1996). With respect to the scope and content of municipal ordinances, a municipality has the authority to "adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi..." MS AG Op., Gibson (April 21, 2006). Furthermore, a municipal governing authority has the authority to enact ordinances for the purpose of protecting the general health, safety and welfare of the citizens of the municipality. MS AG Op., Miller (June 4, 2004). The power to enact ordinances in a given area must be exercised in conformity to and consistent with state law. Should a conflict exist, state law would prevail.

Specific to your inquiry, the general rule is that a municipality cannot pass a criminal ordinance on a subject more severe or comprehensive than a state statute dealing with that particular subject. *Amory v. Yielding*, 203 Miss. 265, 34 So.2d 726 (1948); MS AG Op., Patten (January 10, 1996); MS AG Op., Scales (April 8, 1980).

MS AG Op., Scanlon (July 1, 2011). Here, the legislature has expressly delegated regulatory authority to municipalities pursuant to Section 45-9-53(1)(f). Thus, to the extent that an ordinance does not conflict with State law regarding the rights of enhanced carriers, a municipality may pass a criminal ordinance prohibiting possession of firearms in those areas listed in Section 45-9-53(1)(f). Naturally, any criminal penalties imposed would have to be consistent with Section 21-13-1.

**Issue No. 2:** May a municipality, by statute, regulate the carrying of any firearm, whether concealed or not, at (1) a public park or at a public meeting of the municipality or other municipal governmental body; (2) a political rally, parade or official political meeting; or (3) a nonfirearm-related school, college or professional athletic event? If the answer to this question is yes, then how is the statute enforced? Also, is the municipality under a duty to post signage under the statute?

Manya Creel Bryan, Esq.  
July 16, 2019  
Page 4

Your question asks may a "municipality, by statute, regulate the carrying of weapons" at the places identified in Section 45-9-53(1)(f). Based on a follow-up conversation with you, we understand this question to be whether a municipality may use the notice provisions of Section 45-9-101(13) that are afforded owners or persons exercising control over the physical location to restrict the carry of concealed weapons on the property.<sup>4</sup> It is imperative to understand that Section 45-9-101 applies only to concealed carry. As we have previously opined:

Section 45-9-101 does not apply to open carrying of weapons. This statute is devoted in its entirety and facially applies only to licensing issues and authority to carry "stun guns, concealed pistols or revolvers." Therefore, it is the opinion of this office that the licensing and other requirements set forth in Subsection (13) do not apply to or restrict in any manner the open carry of any firearm.

MS AG Op., Trapp (Dec. 2, 2013); *See also*, Miss. Code Ann. Section 45-9-101(14)("The licensing requirements of this section do not apply to the carrying ... of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed as defined in Section 97-37-1.").

Section 45-9-101(13) provides authority to a person controlling property as follows:

In addition to the places enumerated in this subsection, **the carrying of a stun gun, concealed pistol or revolver may be disallowed** in any place in the discretion of the person or entity exercising control over the physical location of such place **by the placing of a written notice** clearly readable at a distance of not less than ten (10) feet **that the "carrying of a pistol or revolver is prohibited."**

(Emphasis added). As noted, this applies only to the carrying of a concealed handgun, and the required verbiage is quoted in the statute. However, the authority or ability of a municipality to use the sign posting authority has been restricted almost to the point of non-existence.<sup>5</sup> The current and applicable language of Section 45-9-53 states:

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<sup>4</sup>A municipality enacting an ordinance is exercising regulatory authority. "When acting pursuant to [state sign posting statutes such as Section 45-9-101(13)], a county is acting pursuant to state law and not exercising its independent regulatory authority." MS AG Op., Broom (Feb. 6, 2015)(citing MS AG Op., Trapp (Dec. 2, 2013)).

<sup>5</sup>Section 45-9-53 was amended in 2014 by H.B. 314 and in 2015 by S.B. 2619. H.B. 314 limited a local government's use of signage to locations listed in Section 45-9-53(1)(f), and S.B. 2619 limited the use of signage to locations listed in Section 45-9-101(13). Notably, the signage authority in 45-9-101(13) is specifically applicable to prevent the carry of concealed weapons in places that are "[i]n addition to the places enumerated in [Section 45-9-101(13)]. Signage for places listed in Section 45-9-101(13) is neither required nor is the signage authority even applicable to such locations.

(4) **No county or a municipality may use the written notice provisions of Section 45-9-101(13) to prohibit concealed firearms on property under their control except:**

(a) **At a location listed in Section 45-9-101(13)** indicating that a license issued under Section 45-9-101 does not authorize the holder to carry a firearm into that location, as long as the sign also indicates that carrying a firearm is unauthorized only for license holders without a training endorsement or that it is a location included in Section 97-37-7(2) where carrying a firearm is unauthorized for all license holders; and

(b) **At any location under the control of the county or municipality aside from a location listed in subsection (1)(f) of this section or Section 45-9-101(13)** indicating that the possession of a firearm is prohibited on the premises, as long as the sign also indicates that it does not apply to a person properly licensed under Section 45-9-101 or Section 97-37-7(2) to carry a concealed firearm or to a person lawfully carrying a firearm that is not concealed.

MISSISSIPPI OFFICIAL OPINION

Miss. Code Ann. Section 45-9-53 (as amended)(emphasis added). This language limits a county or municipality to posting signs to prohibit "concealed firearms" in locations listed in Section 45-9-101(13). The sign must also indicate "that carrying a firearm is *unauthorized* only for license holders without a training endorsement or that it is a location included in Section 97-37-7(2) where carrying a firearm is unauthorized for all license holders." Miss. Code Ann. Section 45-9-53 (as amended). The effect of this language is that a municipality can only post a sign where it is already otherwise illegal to carry a firearm. A sign is not needed for locations in Section 45-9-101(13), because without an enhanced concealed license, possession of a concealed firearm is already illegal. Section 97-37-7(2) makes it clear that no concealed license authorizes **concealed**<sup>6</sup> carry of a firearm in "any place of nuisance as defined in Section 95-3-1, any police, sheriff or highway patrol station or any detention facility, prison or jail." Again, no sign is needed in these places, because the statute already makes it unlawful to carry a concealed weapon. However, to the extent a municipality decides to post a sign regarding Section 45-9-101(13) locations, the statute should be followed to ensure the sign gives notice that it only applies to concealed license holders without the

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<sup>6</sup>In your letter, you indicate your belief that because Section 45-9-101(13) states "no license issued pursuant to the section shall authorize a person to carry . . . into any police, sheriff or highway patrol station . . . [or] any meeting place of a governing body" that it is clear that no signage is required to prevent a person from openly carrying a pistol into a police station. A license is not needed or granted to openly carry a weapon. The provisions of Section 45-9-101 neither authorize nor prohibit the open carry of a weapon. We agree that no signage is required to prevent a concealed carrier from entering a police station because of similar language in both Sections 45-9-101(13) and 97-37-7(2). No statute exists with regard to open carry into police stations, etc. *Compare* Miss. Code Ann. Section 97-37-17 (as amended)(expressly banning open carrying of firearms on educational property).

Manya Creel Bryan, Esq.  
July 16, 2019  
Page 6

training/enhanced endorsement. A municipality can, likewise, post a sign regarding prohibited locations in Section 97-37-7(2). This sign should indicate that the location is one where carrying a firearm is unauthorized for all concealed "license holders."

Subsection (4)(b) authorizes a municipality to post signs in places other than those identified in Section 45-9-101(13) and subsection (1)(f). However, the required verbiage of the required sign negates any practical value of the sign. The required language provides that the prohibition on carrying a firearm "does not apply to a person properly licensed under Section 45-9-101 or Section 97-37-7(2) to carry a concealed firearm or to a person lawfully carrying a firearm that is not concealed." Thus, the prohibition on possessing weapons would not apply to regular concealed license holders, enhanced concealed license holders or someone legally and openly carrying a weapon. Thus, the sign would only apply to someone that was otherwise already carrying a weapon in violation of state law. The sign would apply to convicted felons who are already prohibited from carrying a weapon and, perhaps, other limited circumstances in which someone was carrying in violation of law. In the event a municipality chooses to post a sign under Section 45-9-53(4)(b), the sign must indicate "that it does not apply to a person properly licensed under Section 45-9-101 or Section 97-37-7(2) to carry a concealed firearm or to a person lawfully carrying a firearm that is not concealed."

With regard to signs posted under the authority of Section 45-9-101(13), the statute provides the general requirement. In this vein, the statute provides that "the placing of a written notice [must be] clearly readable at a distance of not less than ten (10) feet" and should state that the "carrying of a pistol or revolver is prohibited." Miss. Code Ann. Section 45-9-101 (as amended). Also, the additional information [discussed above] from Section 45-9-53 must be placed on the sign.

The second part of your question two is how would the statute be enforced. Section 97-37-1 makes it a crime to carry a weapon concealed "except as otherwise provided in Section 45-9-101." The reference to Section 45-9-101 would include the enhanced license granted under Section 97-37-1. Accordingly, if someone violates the signage allowed under Section 45-9-53, that person would be committing a crime under Section 97-37-1 punishable in accordance therewith. With regard to the posting under Section 45-9-53(4)(b), any person violating the signage would be prosecuted under the underlying crime making it illegal to carry the weapon (e.g., Miss. Code Ann. Section 97-37-5 (possession by felon)).

**Issue No. 3:** What signage is required to inform citizens that firearms are not allowed at (1) a public park or at a public meeting of the municipality or other municipal governmental body; (2) a political rally, parade or official political meeting; or (3) a nonfirearm-related school, college or professional athletic event.

We assume, for purposes of this issue, that you are asking about required signage in the event that a municipality seeks to pass an ordinance regarding prohibition of

Manya Creel Bryan, Esq.  
July 16, 2019  
Page 7

firearms in the areas identified in Section 45-9-53(1)(f). It is fundamental that all persons are presumed to know the law. *McNeely v. State*, 277 So.2d 435, 437 (Miss. 1973). Thus, assuming that a municipal ordinance has been duly enacted, the citizenry would be charged with knowledge of the ordinance. Unless the ordinance itself calls for the posting of a sign, we are unaware of any authority that would require the posting of a sign in order to prohibit the possession of a weapon.

If our office can be of further assistance, do not hesitate to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Ricky G. Luke  
Assistant Attorney General

OFFICIAL OPINION