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Opinion No. 09-152

Authority of Counties and Municipalities to Prohibit Firearms in Parks Which They Own

QUESTION

Is Section 2 of Chapter 428 of the 2009 Public Acts of Tennessee subject to challenge on the grounds that it is an unconstitutional delegation of legislative authority to counties or municipalities in violation of Art. II, § 3, of the Tennessee Constitution?

OPINION

Chapter 428, Section 2 of the 2009 Public Acts of Tennessee does not unlawfully delegate legislative authority to counties or municipalities in violation of Article II, § 3, of the Tennessee Constitution.

ANALYSIS

Tenn. Code Ann. § 39-17-1311(a) prohibits the carrying of firearms on public parks, playgrounds and other recreational facilities owned used or operated by municipal, county and state governments. Tenn. Code Ann. § 39-17-1311(b) identifies certain classes of persons who are not subject to the prohibitions set forth in subsection (a).[1] Prior to the enactment of Chapter 428, handgun carry permit holders were not among the exempted classes and therefore could not lawfully carry firearms on parks, playgrounds and other recreational facilities owned or operated by state, county and municipal governments.

Section 1 of Chapter 428 added holders of handgun carry permit holders to the classes of persons who are not subject to the prohibitions set forth in subsection (a), "except as otherwise provided in subsection (d)." Section 2 of Chapter 428 also added a subsection (d) to Tenn. Code Ann. § 39-17-1311 which authorizes county and municipal governments to elect to prohibit the carrying of firearms by handgun carry permit holders on parks, playgrounds and other recreational facilities which they own.[2]

[1] Those classes included law enforcement officers and military personnel in the discharge of their duties. Tenn. Code Ann. §§ 39-17-1311(b)(1)(A) and (b)(1)(D).

[2] Section 2 of Chapter 428 states that a county or municipality may make such an election by majority vote of its legislative body.

You have asked whether Chapter 428 would be subject to challenge on grounds that it constitutes an unlawful delegation of state legislative authority in violation of Art. II, § 3, of the Tennessee Constitution. That section vests the legislative authority of the state in the hands of the General Assembly.

Under Art. II, § 3, a statute must be complete at the time of its passage. Its efficacy cannot be dependent upon further action. If the validity of a statute is dependent upon further action by a county or municipal legislative body or popular vote, it would violate Art. II, § 3 and would therefore be invalid. *Jones v. Haynes,* 221 Tenn. 50, 53-54, 424 S.W.2d 197, 198 (1968).[3]

If, however, a law of general applicability is complete at the time of its enactment, the legislature may leave questions related to its operation and enforcement in the hands of counties and municipalities. *Clark v. State ex rel. Bobo,* 172 Tenn. 429, 113 S.W.2d 374 (1938), provides an example of the application of this rule. In that case, the plaintiff challenged the constitutionality of the local option provisions under the liquor laws.[4] Under the statutory structure that was adopted in Tennessee, the manufacture and sale of alcoholic beverages is prohibited unless the county or municipality votes to authorize such manufacture or sale. The plaintiffs argued that the local option provisions were an unconstitutional delegation of legislative authority in violation of art. II, § 3. The Court rejected the argument and held that the local option provision was a valid exercise of legislative authority. The Court reasoned that prior to the enactment of the local option provision, the manufacture and sale of alcohol was prohibited. The local option provisions did not repeal the general prohibition; they amended the statute to enable counties and municipalities to determine matters related to the operation and effect of that prohibition within their jurisdictions.

As it applies to parks, playgrounds and other recreational facilities owned by counties and municipalities, Chapter 428 operates in like manner.[5] Tenn. Code Ann. § 39-17-1311(a) operates as a general prohibition against carrying firearms in parks, playgrounds and recreational facilities that are owned by county or municipal governments. Chapter 428 does not repeal the general prohibition, nor does it delegate to counties and municipalities the power to adopt or reject that prohibition or otherwise condition its validity upon local approval. Instead, with the enactment of Chapter 428, the General Assembly itself has determined the sphere within which the prohibition set forth in section 1311(a) shall operate and has left to local governments the decision whether to bring the parks, playgrounds and other recreational facilities they own within its terms. Chapter 428 therefore ought to withstand challenge on the theory that it unconstitutionally delegates legislative power in violation of Art. II, § 3, of the Tennessee Constitution.

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[3] *See also Halmonthaller v. City of Nashville*, 206 Tenn. 64, 332 S.W.2d 163 (1960); *Wright v. Cunningham*, 115 Tenn. 445, 91 S.W. 293 (1905).

[4] Local-option laws are not confined to the manufacture and sale of alcoholic beverages. They are also in effect for pari-mutuel wagering, Tenn. Code Ann. § 4-36-401; wheel taxes, Tenn. Code Ann. § 5-8-102; metropolitan governments, Tenn. Code Ann. § 7-2-106; and the local-option sales tax, Tenn. Code Ann. § 67-6-705. *See Profill Development v. Dills*, 960 S.W.2d 17, 40-41 (Tenn. Ct. App. 1997).

[5] Chapter 428 also authorizes handgun carry permit holders to carry firearms on parks that are owned by the state.

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