

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 28, 2023

Opinion No. 23-004

Enhanced Handgun Carry Permit Holder Carrying Handgun with Intent to Go Armed Following Conviction for Driving Under the Influence of an Intoxicant

Question

If a person is prohibited under Tenn. Code Ann. § 39-17-1307(h)(1)(B) from carrying a firearm with the intent to go armed as a result of one or more convictions for driving under the influence of an intoxicant but the person possesses an enhanced handgun carry permit and does not have a disqualification under Tenn. Code Ann. § 39-17-1351(c)(11), may that person be charged or convicted under Tenn. Code Ann. § 39-17-1307(h)(1)(B)?

Opinion

A person who possesses an enhanced handgun carry permit does not commit an offense under Tenn. Code Ann. § 39-17-1307(h)(1)(B) when that person carries his or her handgun with the intent to go armed, assuming that the person is not disqualified from holding an enhanced handgun carry permit under Tenn. Code Ann. § 39-17-1351(c)(11).¹

ANALYSIS

Tennessee Code Annotated § 39-17-1351 governs the issuance of enhanced handgun carry permits in this State. An enhanced handgun carry permit allows the permit holder to carry a handgun with the intent to go armed.² To be eligible for an enhanced handgun carry permit, the applicant must, among other things, confirm, under oath

[t]hat the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application *and* that *none* of the convictions has occurred within five (5) years from the date of application or renewal.

Tenn. Code Ann. § 39-17-1351(c)(11) (emphasis added).

Thus, under this provision, a person who has been convicted of the offense of driving under the influence of an intoxicant *two or more times* within ten years from the date of application for

¹ The scope of this opinion is limited to statutory interpretation.

² See Tenn. Code Ann. §§ 39-17-1308(a)(2); -1351(n)(1); see also *State v. Williamson*, 368 S.W.3d 468, 480 (Tenn. 2012) (citing Tenn. Code Ann. § 39-17-1351(b) after stating “one’s status as an ‘armed party’ is not per se illegal”).

an enhanced handgun carry permit is not eligible for a permit—no matter when those convictions occurred within the ten-year period immediately preceding the date of application. But a person who has been convicted of the offense of driving under the influence of an intoxicant *once* within ten years from the date of the application remains eligible to obtain a permit as long as the conviction did not occur within the five-year period immediately preceding the date of application or renewal.

This particular eligibility requirement does not conflict with but rather parallels the statutory provision that makes it an offense for a person to carry a firearm with the intent to go armed if that person “[h]as been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within the prior ten (10) years *or* one (1) time within the prior five (5) years.” *Id.* § 39-17-1307(h)(1)(B) (emphasis added). In other words, carrying a firearm with the intent to go armed is an offense under § 39-17-1307(h)(1)(B) only if the person has been convicted for driving under the influence twice in the last ten years or once in the last five years, in which case that person would be ineligible for an enhanced handgun carry permit. Accordingly, a person who holds an enhanced handgun carry permit does not commit an offense under Tenn. Code Ann. § 39-17-1307(h)(1)(B) when that person carries his or her handgun with the intent to go armed, assuming that the person is not disqualified from holding an enhanced handgun carry permit under Tenn. Code Ann. § 39-17-1351(c)(11).

In short, the express terms of these two statutory provisions mirror one another and preclude an enhanced handgun carry permit holder who satisfies Tenn. Code Ann. § 39-17-1351(c)(11) from being prosecuted under Tenn. Code Ann. § 39-17-1307(h)(1)(B). Furthermore, the General Assembly has specifically provided that “[i]t is a defense to the application of § 39-17-1307 if the possession or carrying was . . . [b]y a person authorized to possess or carry a firearm pursuant to . . . § 39-17-1351” *Id.* § 39-17-1308(a)(2).

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