

STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 23-007

Handgun-Carry Policies Permitted Under Tenn. Code Ann. § 49-50-803

Question

Does Tenn. Code Ann. § 49-50-803, which authorizes “each private K-12 school” to establish a handgun-carry policy, allow such a school to adopt a policy that permits its faculty members to “conceal carry” if the school operates a preschool on the school’s campus?

Opinion

Yes. A private K-12 school that operates a preschool on the school’s campus may adopt a handgun-carry policy that permits its faculty members to “conceal carry,” assuming that the policy is adopted in accordance with Tenn. Code Ann. § 49-50-803.

ANALYSIS

Under Tennessee law, one is generally prohibited from possessing or carrying a firearm on any public or private school property. Specifically, it is a criminal offense to possess or carry a firearm, whether openly or concealed, “in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.” Tenn. Code Ann. §§ 39-17-1309(b)(1) & (c)(1).

Several persons, however, are statutorily exempt from the application of Tenn. Code Ann. §§ 39-17-1309(b) & (c), including those “[p]ersons permitted to carry a handgun on the property of private K-12 schools by § 49-50-803.” *Id.* § 39-17-1309(e)(9). The goal of the statutory exemption is to provide autonomy to private schools in determining handgun-carry policy on their campuses. This exemption applies *only* (1) to the school or institution where the person is located, when that school or institution has adopted “a handgun carry policy pursuant to § 49-50-803;” (2) while the person is on the property or grounds covered by the private school or institution’s policy; *and* (3) when the person is otherwise in compliance with the policy adopted by the private school or institution. *Id.*

Under Tenn. Code Ann. § 49-50-803, the “board or governing entity of *each private K-12 school*, or the chief administrative officer if the school does not have a board or governing entity, may establish a handgun carry policy,” which policy can prohibit, permit, or permit in certain areas the carrying of a handgun “*for any property on which the school is located that is owned or operated by the school and for any building or structure located on the school property.*” *Id.* § 49-

50-803(a) (emphasis added). If the board or governing entity, or the chief administrative officer when appropriate, permits a person to possess handguns at the private school, “[t]he person must have a valid Tennessee handgun carry permit, pursuant to § 39-17-1351.”¹ *Id.* § 49-50-803(b)(2).

Whether a private K-12 school may, within the meaning and scope of Tenn. Code Ann. § 49-50-803, adopt a policy that permits its faculty members to “conceal carry” if the school operates a preschool on the school’s campus is a question of statutory construction.

The most basic principle of statutory construction is to give effect to the legislative intent without unduly restricting or expanding the coverage of a statute beyond its intended scope. *State v. Frazier*, 558 S.W.3d 145, 152 (Tenn. 2018); *Westgate Smoky Mountains v. Phillips*, 426 S.W.3d 743, 747-48 (Tenn. 2013). To fulfill this directive, courts begin with the plain language of the statute and the words that the General Assembly has chosen. *Frazier*, 558 S.W.3d at 152; *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). Because words are known by the company they keep, courts construe these words in the context in which they appear in the statute and in light of the general purpose of the statute. *Lee Med.*, 312 S.W.3d at 526-27. And because courts will seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning, *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995), they avoid basing their interpretation on a single sentence, phrase, or word, *Lee Med.*, 312 S.W.3d at 527 (citing *Westinghouse Elec. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984)), and avoid giving a literal meaning to a phrase when doing so results in a construction that frustrates the objective of the statute, *see Heirs of Ellis v. Estate of Ellis*, 71 S.W.3d 705, 712 (Tenn. 2002); *State by Lockert v. Knott*, 631 S.W.2d 124, 127 (Tenn. 1982).

These well-established statutory construction principles dictate that, in construing § 49-50-803, the phrase “each private K-12 school” should not be read in isolation; rather, the phrase must be read in context and interpreted in light of the general purpose of the statute as a whole, which is to allow each such private school to establish its own handgun-carry policy.

The phrase “each private K-12 school”—if read in isolation and literally—could be taken to mean that the exemption applies only to a private school that offers kindergarten through grade 12 classes, nothing more and nothing less. But that reading so narrows the scope of the exemption that a private school offering, for example, only K-6 classes could not adopt a handgun-carry policy, nor could a private school offering just 9-12 classes. And that reading would be at odds with another provision in title 49 that defines a “K-12 school” in the public sector as “a school that offers *any* of the grades kindergarten through twelve” Tenn. Code Ann. § 49-1-702(9) (emphasis added).²

¹ Tennessee Code Annotated § 39-17-1351 governs the issuance of enhanced handgun-carry permits in this State. An enhanced handgun-carry permit allows open or concealed carry. *See* Tenn. Att’y Gen. Op. 05-154 (Oct. 11, 2005); <https://www.tn.gov/safety/tnhp/handgun/permittypes.html>. Persons holding concealed handgun-carry permits under Tenn. Code Ann. § 39-17-1366 are not included within the scope of Tenn. Code Ann. § 49-50-803.

² While Tenn. Code Ann. § 49-1-702(9) defines a “K-12 school” for different purposes than the adoption of handgun-carry policies, courts still look to such definitions for guidance when the statute deals with the same subject matter. *See State v. Adams*, 24 S.W.3d 289, 295 (Tenn. 2000); *see, e.g., Potts v. Potts*, M2020-00170-COA-R3-CV, 2021 WL 2226622, at *9 (Tenn. Ct. App. June 2, 2021) (in considering the meaning of the undefined term “parent” in Tenn.

But when one considers the statute as a whole and in light of its purpose, that narrow construction is likely to be rejected as hyper-technical and as impermissibly limiting the scope of the statute and frustrating its objective. On the other hand, reading the phrase “each private K-12 school” in context and in light of the purpose of the statute makes clear that the intent of the legislature is best furthered by construing the phrase to include not only private schools that offer less than K-12 classes—e.g., K-6, or K-8, of 9-12—but also private schools that operate a preschool in addition to offering K-12 classes or some subset of K-12 classes.

Reading the phrase “each private K-12 school” to refer to subsets of such schools and to such schools that also operate a preschool comports with the basic rules of statutory construction and with the legislative intent to allow each private school to adopt an individualized handgun-carry policy. Thus, Tenn. Code Ann. § 49-50-803 may be properly construed to permit a private K-12 school that operates a preschool on its campus to establish a handgun-carry policy for its faculty members. Moreover, that policy need not be limited to the K-12 school itself since a handgun-carry policy may be established by a private K-12 school “for *any property on which the school is located that is owned or operated by the school and for any building or structure located on the school property.*” *Id.* § 49-50-803(a) (emphasis added). The italicized language would allow the policy to cover a preschool that is located on the property on which the private K-12 school is located.

Accordingly, a private K-12 school that operates a preschool on the school’s campus may adopt a handgun-carry policy that permits its faculty members to “conceal carry,” assuming that the policy is adopted in accordance with Tenn. Code Ann. § 49-50-803.

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Code Ann. §§ 36-6-101 & 106 in Tennessee’s custody and visitation statutes, the court looked to definitions of the term “parent” in other statutes in title 36).