



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 19, 1999

James A. Preacher, Jr.
Chief of Police
Norway Police Department
P.O. Box 127
Norway, South Carolina 29113

Re: Informal Opinion

Dear Chief Preacher:

You have asked several questions concerning the carrying of handguns in motor vehicles. Your questions are as follows:

- (1) If a person has a Concealed Weapons Permit, where is he/she permitted to carry said weapon in his/her vehicle?
- (2) If a person does not have a Concealed Weapons Permit and does not meet exceptions of S. C. Code Ann. Sec. 16-23-20, as amended, where is he/she allowed to carry said weapon in his/her vehicle?
- (3) If the motor vehicle does not have a glove box that can lock, how should the said weapon be stored (i.e. locked in trunk, or a locked case)?

I will attempt to answer each in turn.

LAW/ANALYSIS

The "Law Abiding Citizens Self-Defense Act of 1996," codified at S. C. Ann. Section 23-31-205 et seq., requires that if an individual meets certain criteria, a "concealable weapons permit" must be issued. The statute is thus representative of the so-called "right to carry" acts which have been enacted throughout the United States.

Section 23-31-215 of the Act **requires** SLED to issue the concealable weapons permit, provided certain requirements such as age, residency, proof of training, and a favorable fingerprint review and background check, etc. are met. Section 23-31-210 (5) defines a "concealable weapon" as "... a firearm having a length of less than twelve inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing except when needed for self-defense, defense of others, and the protection of real or personal property." In short, the permit extends to the citizen the right to carry the weapon on his or her person.

The Act, however, mentions several **express** exceptions where the holder of a concealable weapons permit may not carry the weapon. Section 23-31-215 (M) specifically provides as follows:

[a] permit issued pursuant to this section does not authorize a permit holder to carry a concealable weapon into a:

- (1) police, sheriff, or highway patrol station or any other law enforcement office or facility;
- (2) detention facility, prison, or jail or any other correctional facility or office;
- (3) courthouse or courtroom;
- (4) polling place on election days;
- (5) office of or the business meeting of the governing body of a county, public school district, municipality, or special purpose district;
- (6) school or college athletic event not related to firearms;
- (7) day care facility or pre-school facility;
- (8) place where the carrying of firearms is prohibited by federal law;
- (9) church or other established religious sanctuary;

- (10) hospital, medical clinic, doctor's office, or any other facility where medical services or procedures are performed unless expressly authorized by the employer.

In addition, § 23-31-220 further specifies that

[n]othing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon:

- (1) the right of a public or private employer to prohibit a person who is licensed under this article from carrying a concealable weapon upon the premises of the business or work place or while using any machinery, vehicle, or equipment owned or operated by the business;
- (2) the right of a private property owner or person in legal possession or control to allow or prohibit the carrying of a concealable weapon upon his premises.

The posting by the employer, owner, or person in legal possession or control of a sign stating "No Concealable Weapons Allowed" shall constitute notice to a person holding a permit issued pursuant to this article that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place. A person who brings a concealable weapon onto the premises or work place in violation of the provisions of this paragraph may be charged with a violation of Section 16-11-620. In addition to the penalties provided in Section 16-11-620, a person convicted of a second or subsequent violation of the provisions of this paragraph must have his permit revoked for a period of one year. The prohibition contained in this section does not apply to persons specified in Section 16-23-20, item (1).

Section 23-31-225 also states that “[n]o person who holds a permit issued pursuant to Article 4, Chapter 31, Title 23 may carry a concealable weapon into the residence or dwelling place of another person without the express permission of the owner or person in legal control or possession, as appropriate.” Nothing in the Act, however, prohibits a permit holder from carrying a weapon on his person while in an automobile, or otherwise requires that the permit holder keep the weapon in the car’s glove compartment or trunk. The General Assembly could easily have listed the automobile as an exception to the permit in any of the foregoing sections, but did not. Indeed, the one provision where automobiles are addressed in the Act is § 23-31-230, which provides that “[n]otwithstanding any provision of law, any person may carry a concealable weapon from an automobile or other motorized conveyance to a room or other accommodation he has rented and upon which an accommodation tax has been paid.” This Section authorizes persons without CWP permits to carry a concealable weapon to a motel or other similar accommodation without violating the law. If the General Assembly had thought it necessary in any way to deal with CWP permit holders in the context of the automobiles itself, it would have likely done so in § 23-31-230, but such was not done. Thus, it can be at least inferred from this provision that such was not intended.

Furthermore, Section 23-31-217 states that “[n]othing in this article shall affect the provisions of Section 16-23-20.” In other words, as we have previously concluded, “[i]n effect, the Legislature intended to leave § 16-23-20 untouched.” Op. Atty. Gen., October 9, 1998. Thus, because nothing in the CWP statute appears to limit a permittee from carrying a concealed weapon in an automobile, we must look to § 16-23-20 to determine if any part therein could be deemed to prohibit the permittee from carrying a concealed weapon in his/her an automobile in exactly the same way as is permitted in the Law Abiding Citizens Self-Defense Act. In our judgment, such carrying by the permittee in the automobile is not prohibited.

Section 16-23-20 defines the act of unlawfully carrying a pistol and provides in pertinent part that “[i]t shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol, except as follows. . . .” The statute enumerates twelve exceptions. Among them are exceptions for regular, salaried law enforcement officers; licensed hunters or fisherman while engaged in hunting or fishing or going to or from their places of hunting or fishing, and any prison guard engaged in his official duties. Subsection (9) also provides for a limited exception for carrying a pistol in an automobile, providing that “[a]ny person in a vehicle where the pistol is secured in a closed compartment, closed console, or closed trunk . . .” is exempt from the pistol law’s prohibitions. In addition, Subsection (12) exempts “[a]ny person who is granted a permit under provision of law by

the State Law Enforcement division to carry a pistol about his person, under conditions set forth in the permit.”

Thus, the precise question is whether the permittee’s right to carry is in any way limited by the automobile exception contained in Subsection (9). Put another way, is a CWP permittee required by Subsection (9) to be treated the same way as a person without a CWP while carrying a concealable weapon in an automobile? Such a reading would require the weapon to be “secured in a closed compartment, closed console, or closed trunk. . . .”

A number of principles of statutory construction are relevant to this inquiry. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in the statute. Hay v. S. C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In construing the statute, the words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expanding its operation, Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

Moreover, the true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. City of Cola. v. Niagara Fire Ins. Co., 249 S.C. 388, 154 S.E.2d 674 (1967). Moreover, when a statute is penal in nature, it must be construed strictly against the state and in favor of the defendant. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991). Finally, a statute must not be construed in such a way as to reach an absurd result.

Applying these rules of construction, it is my opinion that § 16-23-20 (9) (automobile exception) cannot be deemed to limit a person with a CWP permit thereby requiring the permittee to keep the pistol in the locked glove compartment or trunk while in the automobile. Recently, in an unpublished opinion, State v. Barwick, our Court of Appeals addressed the question of the interrelationship of the various exemptions contained in § 16-23-20. There, the Court concluded that the exception for hunting and fishing was not intended to be limited by the automobile exemption.

Although the Court’s decision was not published, and thus it cannot be deemed stare decisis, nevertheless, the reasoning of the Court must be respected and given due deference. The Court analyzed § 16-23-20 as follows:

[t]he exceptions to the weapons statute must be read

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independently of each other. Otherwise each exception could control another exception, possibly leading to an untenable result. For example, subsection (11) excepts "any prison guard while engaged in his official duties." S. C. Code Ann. § 16-23-20 (1985). If the logic of the trial judge's interpretation were followed, a prison guard in the course of duty would have to keep his or her weapon locked in the trunk or glove compartment.

State v. Barwick, (Unpublished Opinion No. 96-UP-208 filed July 18, 1996). This Office is required to follow the Court's decision.

In this instance, therefore, § 16-23-20 (12), which exempts from the pistol law, any person granted a permit by SLED to carry the pistol (defined for purposes of this exemption as the CWP permit authorized pursuant to § 23-31-210 et seq.), must be given equal weight as § 16-23-20 (9) and cannot be interpreted as limited by Subsection (9). Accordingly, applying the rule of construction that penal laws are strictly construed, as well as the other rules of construction referenced above, and based upon the same analysis as used in Barwick, it is my opinion that a CWP permittee is not limited by § 16-23-20 (9). The result is that the permittee does not have to keep the concealable weapon as required by § 16-23-20 (9) while in an automobile, but may carry such weapon as permitted by the "Law Abiding Citizens Self-Defense Act of 1996." In other words, if a person has a CWP permit under the Law Abiding Citizens Self-Defense Act of 1996, that permit is not limited by the fact that the permittee is in an automobile. The permittee may carry the concealable weapon in the same way as is authorized by the Law Abiding Citizens Self-Defense Act of 1996.

Your second question is whether an individual **who does not have a concealed weapons permit and does not meet any of the other exceptions contained in § 16-23-20**, may carry the weapon in a motor vehicle as authorized by §16-23-20 (9). As stated above, this Section allows the transport of a pistol in a closed glove compartment, closed console, or closed trunk.

In addition, you ask where the pistol may be stored in the motor vehicle if the vehicle does not have a glove compartment that can lock. The statute does not require that the glove compartment be locked, only closed. See, Op. Atty. Gen., May 4, 1989. Therefore, if the vehicle does not have a glove compartment that can be closed, the pistol may be stored securely in a closed console. If the vehicle has neither a console nor glove compartment that can be closed, the pistol should be placed in the closed trunk. The statute provides no other

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specific motor vehicle exceptions.

CONCLUSION

In conclusion, based upon the same interpretation given by the Court in the Barwick case, it is my opinion that a person with a Concealed Weapons Permit may carry a concealed weapon on his or her person as authorized by the "Law Abiding Citizens Self-Defense Act of 1996" in an automobile. In other words, § 16-23-20 (9) of the pistol law does not require the CWP permittee to keep such concealable weapon in the trunk, glove compartment or console of an automobile. The CWP statute permits the carrying of the weapon on the person by such means as a shoulder holster, but he or she may also carry such concealable weapon in a handbag or briefcase while in the automobile as well. See Op. Atty. Gen., October 9, 1998 (copy enclosed). However, if a person does not have a CWP permit issued pursuant to the "Law Abiding Citizens Self-Defense Act of 1996," and no other exception contained in § 16-23-20 is applicable, he or she may only carry a pistol in an automobile as specified in § 16-23-20 (9) as discussed herein.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph
Enclosure