



ALAN WILSON
ATTORNEY GENERAL

June 28, 2018

The Hon. Tom Corbin
South Carolina Senate
PO Box 142
Columbia, SC 29202

The Hon. Ronnie W. Cromer
South Carolina Senate
PO Box 142
Columbia, SC 29202

The Hon. Nathan Ballentine
South Carolina House of Representatives
PO Box 142
Columbia, SC 29202

Dear Senators Corbin and Cromer and Representative Ballentine:

We received your requests seeking an opinion on the legality of a CWP holder carrying, with express permission, a concealed weapon into a church which also operates a daycare and preschool on the same premises. This opinion sets out our Office's understanding of your question and our response.

Issue:

Your legal question is whether a person holding a Concealed Weapons Permit ("CWP") who has the express permission of the appropriate church authorities to carry a concealed weapon on the premises is nevertheless barred from carrying by the fact that the church also operates a daycare and a preschool at the same location.

Your letters describe a scenario where a church also operates a daycare and preschool on the same premises. Based on your letters, we understand that in many cases portions of the same building and facilities will be used for worship services and religious classes at some times and regular childcare at others. For the purposes of this opinion, we presume that the church either owns or has legal possession and control of the real property it uses for these purposes.

Response:

It is the opinion of this Office that a person who has the express permission of the appropriate official or governing body of a church which owns or has legal possession or control of the church's real property may lawfully carry on those premises consistent with that permission even when the church also operates a daycare or preschool. S.C. Code Ann. § 16-23-20(8) (2015). Because we believe that a court would find this issue dispositive in the scenario

described, we omit here any discussion of scenarios where the church does not have legal possession or control of the real property both because it is beyond the scope of the request and because such a question would be highly fact-specific.

Section 16-23-20 of the South Carolina Code generally addresses the legality of carrying a handgun in this State and provides in relevant part:

It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

...

(8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;

...

(12) a person who is granted a permit under provision of law by the State Law Enforcement Division to carry a handgun about his person, under conditions set forth in the permit

S.C. Code Ann. § 16-23-20 (2015).

The permit referred to in Section 16-23-20(12) includes South Carolina's Concealed Weapons Permit which is established pursuant to Section 23-31-215 of the Code. S.C. Code Ann. § 23-31-215 (Supp. 2018). The CWP statute includes limitations on where a permit holder may legally carry pursuant to that permit in Subsection (M):

(M) A permit issued pursuant to this section does not authorize a permit holder to carry a concealable weapon into a:

...

(6) daycare facility or preschool facility;

...

(8) church or other established religious sanctuary unless express permission is given by the appropriate church official or governing body.

Senator Tom Corbin
Senator Ronnie W. Cromer
Representative Nathan Ballentine
Page 3
June 28, 2018

§ 23-31-215(M). It appears that the question here has arisen in connection with these limitations on carrying pursuant to the CWP statute. *See id.*

This author's research has not identified any reported South Carolina case or prior opinion of this Office which addresses your question directly. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out above. As this Office has previously opined,

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005). Additionally, "[t]he rules of statutory construction developed by our Supreme Court establish that a criminal statute must be strictly construed against the state and any ambiguity or doubt or uncertainty must be resolved in favor of the defendant." *Op. S.C. Att'y Gen.*, 1983 WL 182044 (November 2, 1983) (citing *State v. Germany*, 216 S.C. 182, 57 S.E.2d 165 (1950); *State v. Lewis*, 141 S.C. 483, 86 S.E. 1057 (1927)).

Turning to the question presented in your letters, we begin our analysis by distinguishing between lawfully carrying a handgun pursuant to a CWP and lawfully carrying a handgun pursuant to the permission of a property owner. We discuss each of these legal provisions in turn for the sake of clarity.

1. Carrying a Handgun Pursuant to a Concealed Weapons Permit

As set out above, Section 16-23-20(12) provides that a person issued a CWP by SLED may lawfully carry a handgun "under conditions set forth in the permit." S.C. Code Ann. § 16-23-20(12) (2015). Section 23-31-215 of the South Carolina Code establishes that Concealed Weapons Permit and includes restrictions on where the permit holder is authorized to carry. S.C. Code Ann. § 23-31-215(M) (Supp. 2018). As you reference in your letter, two of the restrictions include a "daycare facility or preschool facility" and "church or other established religious sanctuary unless express permission is given by the appropriate church official or governing

Senator Tom Corbin
Senator Ronnie W. Cromer
Representative Nathan Ballentine
Page 4
June 28, 2018

body." § 23-31-215(M)(6)&(8). We understand that your question centers on these restrictions, in that Subsection 23-31-215(M)(8) expressly contemplates that an "appropriate church official or governing body" may give permission for a CWP holder to carry in a "church or other established religious sanctuary" but no equivalent provision appears in Subsection 23-31-215(M)(6) regarding daycares. *See id.*

The "Law Abiding Citizens Self-Defense Act of 1996" which establishes South Carolina's Concealed Weapons Permit also unambiguously preserves other lawful bases for carrying a handgun. For example, Subsection 23-31-215(O) clarifies that a CWP "is not required for a person: (1) specified in Section 16-23-20, items (1) through (5) and items (7) through (11)." S.C. Code Ann. § 23-31-215(O)(1) (Supp. 2018). The General Assembly also included a provision codified at Section 23-31-220 which addresses property rights specifically:

Nothing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon . . . 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.

S.C. Code Ann. § 23-31-220 (2007).

2. Carrying a Handgun Pursuant to the Permission of a Property Owner

Section 16-23-20(8) provides that a person may lawfully possess a handgun "whether concealed or not" when that person is "in his home or upon his real property or . . . has the permission of the owner or the person in legal possession or the person in legal control of the home or real property." S.C. Code Ann. § 16-23-20(8) (2015) (emphasis added). We reiterate that this basis for lawful carry exists independently of the Concealed Weapons Permit statute. S.C. Code Ann. § 23-31-215(O)(1) (Supp. 2018). While this is readily apparent from the plain language of the text, we take this opportunity to set out some of the statutory history for the purpose of total clarity.

The right of a person to lawfully carry on their own premises predates any South Carolina weapons permit and has been recognized by statute in this State at least since 1880 when the General Assembly passed what appears to be the first law in South Carolina directly regulating handgun possession as such. Act No. 362, 1880 S.C. Acts 447. Section 2472 of the General Statutes of South Carolina, 1881-1882, read in relevant part:

Senator Tom Corbin
Senator Ronnie W. Cromer
Representative Nathan Ballentine
Page 5
June 28, 2018

Any person carrying a pistol . . . or other deadly weapon usually used for the infliction of personal injury, concealed about his person, shall be guilty of a misdemeanor Nothing herein contained shall be construed to apply to peace officers while in the actual discharge of their duties as such officers, or to persons carrying concealed weapons while upon their own premises.

1881-1882 S.C. General Statutes § 2472. This language essentially remained the statutory law of South Carolina with certain amendments for the next eighty-five years. *Cf.* 1962 S.C. Code § 16-145 ("Nothing herein contained shall be construed to apply to persons carrying concealed weapons upon their own premises or to peace officers in the actual discharge of their duties as such.").

In 1965 the General Assembly repealed that legislation passed in 1880 and replaced it with the original version of what is now Section 16-23-20, but at that time was codified in the 1962 Code of Laws at Section 16-129.1. Act No. 330, 1965 S.C. Acts 578, *see also* 1962 S.C. Code § 16-129.1. The new legislation carried forward the exception for a landowner to carry a handgun on their own land: a pistol could be lawfully carried by "[a]ny person in his home, or upon his real property, or fixed place of business." *Id.* We observe that Subsection (8) originally did not expressly address the lawfulness of handgun possession by a person with the permission of the owner of real property. *See id.* In 2004 the General Assembly amended Subsection 16-23-20(8) to its current language which expressly addresses permission. Act No. 294, 2004 S.C. Acts 2977.

The original 1965 Act establishing the original version of what is now Section 16-23-20 also did not include any reference to a permit issued by SLED. Act No. 330, 1965 S.C. Acts 578. The first such reference was added as Subsection (12) of that same statute by amendment in 1974. *Cf.* Act No. 330, 1965 S.C. Acts 578 & Act No. 1236, 1974 S.C. Acts 2871.

In summary, we observe two points from this legislative history: first, that the South Carolina Legislature historically has carefully avoided criminalizing the possession of a handgun on private property by the property owner; and second, that the Legislature has established lawful carry pursuant to a SLED permit independently of lawful carry pursuant to property ownership. *See discussion supra; cf.* S.C. Code Ann. § 23-31-220 (2007) (expressly preserving "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").

Senator Tom Corbin
Senator Ronnie W. Cromer
Representative Nathan Ballentine
Page 6
June 28, 2018

3. Carrying a Handgun Pursuant to the Permission of a Property Owner on Premises not
Otherwise Authorized Pursuant to a Concealed Weapons Permit

We believe that a court would conclude that Section 16-23-20(8) is dispositive of the question presented in your letters, in that § 16-23-20(8) allows a person to carry a concealed weapon on a church property with appropriate permission. S.C. Code Ann. § 16-23-20(8) (2015). We understand that in the scenario presented in your letter, the church would be "a private property owner or person in legal possession or control" of the church property which also is used as a daycare. S.C. Code Ann. § 23-31-220(2) (2007). In that capacity, the church has the right to "allow or prohibit the carrying of a concealable weapon upon [its] premises." *Id.* Where the church exercises that right to allow certain persons who are not otherwise prohibited by law to carry a concealed weapon, we believe that a court would conclude that such carry is lawful as contemplated by Section 16-23-20(8). *Id.*; *see also* S.C. Code Ann. § 16-23-20(8) (2015). Put more simply, we believe that a person who has the express permission of the church to carry a concealed weapon on its real property may carry a concealed weapon on that real property as permitted. *Id.*

For this reason we believe that the various restrictions on lawfully carrying a handgun pursuant to a Concealed Weapons Permit simply would not be relevant to the resolution of the question presented in your letter. If a court were to read in isolation the restrictions on authorized carry under South Carolina's CWP statute, such a court might be required to construe the intent of the Legislature when it set out the various restrictions. However, such a construction is unnecessary when the Legislature also has expressly established that a person may carry on private property with the permission of the owner or entity in legal control, and the person carrying the handgun does so consistent with such permission. *See* S.C. Code Ann. §§ 16-23-20(8) (2015) & 23-31-220(2) (2007).

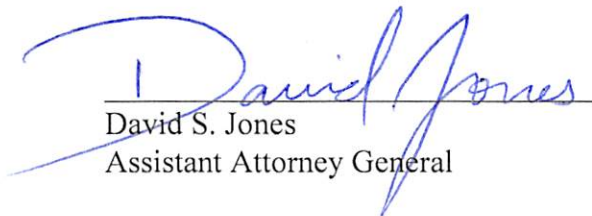
This opinion should not be construed to read that where a church or other established religious sanctuary chooses to extend permission to certain persons to carry a handgun on its premises, that permission must be "all-or-nothing." While this author's research has not identified any reported decisions on this question, we see no legal obstacle to a church choosing to exercise its rights as a private landowner so as to grant permission to certain persons to carry a handgun only at certain times or only upon a certain portion of the premises. *See* S.C. Code Ann. § 23-31-220 (2007). We also note that our Office has issued numerous prior opinions regarding firearms generally and Concealed Weapons Permits specifically, and this opinion should be read in the context of those other discussions of applicable law.

Senator Tom Corbin
Senator Ronnie W. Cromer
Representative Nathan Ballentine
Page 7
June 28, 2018

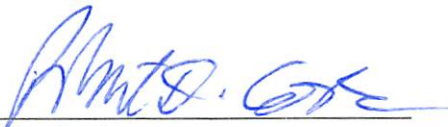
Conclusion:

This Office has reiterated in numerous opinions that it strongly supports the Second Amendment and the right of citizens to keep and bear arms, and we affirm that position again here. *See, e.g., Op S.C. Att'y Gen.*, 2015 WL 4596713 (July 20, 2015). It is the opinion of this Office that a court would conclude that where a person has the express permission of the appropriate official or governing body of a church which owns or has legal possession or control of the church's real property, and where that person is not otherwise prohibited by law from possessing a concealed handgun, that person may lawfully carry on the premises consistent with such permission even when the church also operates a daycare or preschool on the same premises. *See S.C. Code Ann. § 16-23-20(8)* (2015).

Sincerely,


David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Solicitor General