



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 9, 1998

The Honorable John M. Knotts, Jr.
Member, House of Representatives
500 West Dunbar Road
West Columbia, South Carolina 29169

Re: Informal Opinion

Dear Representative Knotts:

You have sought an opinion to the following question:

[o]nce a person is given a permit by the State of South Carolina to carry a weapon, does a person have the right to carry that pistol in her pocketbook or briefcase?

Law / Analysis

The "Law-Abiding Citizens Self-Defense Act of 1996", codified at S. C. Code 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

Representative Knotts

Page 2

October 9, 1998

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.

Thus, the issue here is whether a person who has obtained a concealable weapons permit pursuant to the statute is entitled to carry that weapon in a handbag, purse or briefcase. Put another way, the question presented is whether a handbag or briefcase may be considered as carrying the concealable weapon "in a manner that is hidden from the public in normal wear of clothing except when needed for self-defense, defense of others and protection of real or personal property."

A number of principles of statutory construction are relevant to your 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 Commission, 273 S. C. 269, 255 S.E.2d 837 (1979). In construing a 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). Courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole or destructive of its obvious intent. Id. Furthermore, a choice of language in an act will not be construed with literality when to do so will defeat the lawmaker's manifest intention, and a court will reject the ordinary meaning of words used in a statute when, to accept ordinary meaning, will lead to a result that could not have been intended by the Legislature. South Carolina State Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946). Finally, a statutory provision which works a forfeiture or inflicts a penalty, should be strictly construed, Wallace v. Wannamaker, 231 S.C. 158, 97 S.E.2d 502 (1957).

At first blush, it would appear that the definition of "concealable weapon" contained in § 23-31-210 (5) may prohibit a permittee under the Act from carrying the weapon except "where hidden from public view in normal wear of clothing" However, §23-31-215 (J)

Representative Knotts

Page 3

October 9, 1998

(1) authorizes revocation of a permit by SLED if an individual "become[s] a person prohibited under state law from possessing a weapon" Failure to surrender a permit following a revocation constitutes a misdemeanor.

Thus, all doubt must be resolved in favor of the permittee and the penal provisions of the statute must be strictly construed. Accordingly, we must examine the entire Act to determine whether it is sufficiently clear that a permittee carrying a weapon in a purse, handbag or briefcase is in violation of § 23-31-210 (5) of the Act. In my opinion, it is not.

First of all, the statute does not define "clothing" for purposes of the phrase "hidden from public view in normal wear of clothing" While a pocketbook, purse or handbag may not technically constitute an article of clothing, it is undeniable that many associate these accessories with clothing. As one Judge has recognized, a woman's handbag today is thought of almost as an extension of her person and even though it is not carried beneath the clothing as is a wallet or change purse, it is analogous to these items "which are found in or about such clothing" See, State v. Caraher, 293 Or. 741, 653 P.2d 942, 954, (1982) [Campbell, J. concurring in result] [" . . . under some circumstances a handbag or purse might gratify" as being found "about 'such clothing'"].

Furthermore, the permittee's placement of the weapon in a handbag, purse or briefcase for carrying could conceivably qualify under the exception contained in the definition of "concealable weapon" "except when needed for self-defense, defense of others, and the protection of real or personal property." It may well be that the Legislature thought that the majority of permittees would carry the weapon in a pants pocket or coat pocket, but that there would be instances where such was not possible, and that carrying the pistol in a handbag, purse or briefcase would thus qualify as part of the "self-defense" exception. Many will say this exception relates to actual use of the weapon in self-defense. However, where the individual is carrying a handbag or briefcase, such is an extension of the "person" and thus the carrying of the weapon in this way, although not literally being hidden beneath clothing, is the next thing to it, and does literally qualify as part of the "self-defense" exception.

Instructive in this regard is the Virginia Supreme Court decision, Schaaf v. Commonwealth of Virginia, 220 Va. 429, 258 S.E.2d 574 (1979). There, the question was whether a person who had not obtained a concealed weapon permit could be convicted for carrying a pistol ". . . about his person, hid from common observation" where such pistol was being carried in a handbag. The Supreme Court of Virginia concluded in the affirmative.

As the Court reasoned,

[h]andbags are made in various sizes, colors and styles, and some are designed to carry a great number of articles deemed necessary or convenient by the carrier. The bags are often supported by shoulder straps and are easily opened and closed by devices such as zippers, buckles or stays. A pistol carried in such a bag is not only near and about the carrier's person, hidden from common observation, but in some handbags it is so accessible that it could be fired without being removed therefrom. "(I)t is so connected with the person as to be readily accessible for use or surprise if desired"

258 S.E.2d at 574, quoting Sutherland v. Commonwealth, 109 Va. 834, 835, 65 S.E. 15, 15 (1909). The purpose of the "Law Abiding Citizens Self-Defense Act of 1996" is to enable a citizen with a valid permit to defend himself or herself when necessary. Thus, based upon the reasoning in Schaff, a court could conclude that a permittee carrying a pistol in a handbag or briefcase would be using such for "self-defense, defense of others, and the protection of real or personal property." Certainly, when viewed in the light most favorable to the permittee that it could be said to violate the scope of the permittee's permit.

Moreover, this Office has, on at least one occasion, concluded that carrying a pistol in a handbag is carrying the weapon "about the person" in violation of § 16-23-20 which makes it unlawful for anyone to carry a pistol "about the person, whether concealed or not . . ." except in the circumstances enumerated herein. That Opinion is distinguishable from the present situation because it obviously did not deal with a permittee under the "Law Abiding Self-Defense Act of 1996." However, the 1977 Opinion is instructive for the conclusion that it is a crime in South Carolina to carry a concealed weapon (without a permit) in a handbag (or briefcase) because such is "about the person". Therefore, notwithstanding the literal language of § 23-31-210 (5), it seems anomalous for the Legislature to treat a weapon contained in a handbag or briefcase as "about the person" for purposes of unlawfully carrying a concealed weapon, but to split hairs over whether such is on the person (concealed under clothing) for purposes whether a person with a valid concealable weapons permit is complying with the scope of his permit. Such distinction seems artificial and against common sense.

Other parts of the Act also cast doubt upon whether a permittee carrying a pistol in

Representative Knotts

Page 5

October 9, 1998

a handbag or briefcase is in violation thereof. Section 23-31-217 states that “[n]othing in this article shall affect the provisions of Section 16-23-20.” Moreover, § 23-31-215 (O) (3) provides that “[a] permit issued pursuant to this article is not required for a person . . . (3) carrying a concealable weapon **in a manner not prohibited by law.**” (emphasis added).

Section 16-23-20 (12) makes it “unlawful for anyone to carry about the person, whether concealed or not, any pistol,” except as follows:

. . . (12) [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.

Persons authorized to carry weapons pursuant to items (6) and (12) of this section may exercise this privilege only after acquiring a permit from the State Law Enforcement Division **as provided for in Article 4 of Chapter 31 of Title 23.** (emphasis added).

It is well-recognized that all parts and provisions of a legislative enactment be given effect and conflicts reconciled is reasonably and logically possible. Adams v. Clarendon Co. School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Where in conflict, a subsequent section of an enactment must prevail over a prior one, being the last in point of time or order of arrangement. Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945). Section 23-31-217, stating that “[n]othing in this article shall affect the provisions of Section 16-23-20” is subsequent in the CWP Act to § 23-31-210 (5)’s definition of “concealable weapon.” In effect, the Legislature intended to leave § 16-23-20 untouched. Moreover, § 16-23-20 clearly deals with carrying a concealed weapon “about the person”, not just on the body of an individual beneath his or her clothing. Subsection (12) of § 16-23-20 specifically references permits issued by SLED “to carry a pistol about his person.” Finally, Subsection (12) was amended at the same time as the “Law Abiding Citizens Self-Defense Act of 1996” was enacted. The amendment changed the last paragraph of Subsection (12) to provide that persons authorized to carry weapons pursuant to Subsection (12) may do so only after obtaining a permit” as provided for in Article 4 of Chapter 31 of Title 23.” Article 4, of course, is the “Law Abiding Citizens’ Self-Defense Act of 1996”. Former Subsection (12) had referenced Article 3, which is the Article on pistol permits. See, § 23-21-110 et seq. In other words, it could be argued that receipt of a Concealed Weapons Permit (CWP), pursuant to § 23-21-210 et seq., entitles one to carry a concealed weapon “about the person”;

Representative Knotts

Page 6

October 9, 1998

inasmuch as § 16-23-20 (12) uses the term "pistol" rather than "concealed weapon" and expressly references the permit received under Article 4 of Chapter 31 of Title 23, it is, at the very least, arguable that the CWP permit allows the permittee to carry the weapon in a handbag or briefcase in addition to being authorized to carry the weapon hidden in his or her clothing. In view of the fact that such probably constitutes carrying the weapon "about the person", it can clearly be argued that such is authorized to a permittee, notwithstanding the definition of "concealable weapon" in § 23-21-210 (5).

In addition, at least three other opinions of this Office have concluded that it does not violate the pistol law (§ 16-23-20) to carry a pistol in a handbag or briefcase. See, Op. Atty. Gen. May 22, 1944; Op. Atty. Gen., February 20, 1976; 1963.Op. Atty. Gen No. 1704. These opinions rely upon the old South Carolina Supreme Court case, State v. Weston, 108 S.C. 283, which construed the phrase "about the person" as follows:

[t]he evidence shows that the defendant did not carry **about his person**, either concealed or unconcealed, the pistol, but that the pistol was taken about and placed in his satchel or suitcase. There is an entire failure on the part of the evidence adduced to convict the defendant of the charge made against him.

Thus, in view so § 23-31-215 (O) (3)'s statement that the "Law Abiding Citizens Self-Defense Act of 1996" does not require a permit for "carrying a concealable weapon in a manner not prohibited by law", it could again be argued that the General Assembly was cognizant of these authorities, and thus did not intend to prohibit a CWP permittee from carrying a "concealable weapon" in a handbag or briefcase. Attempting to reconcile all of these various conflicts, leads me to the single conclusion that the General Assembly intended that carrying a "concealable weapon" in a handbag or briefcase could be considered as acting in "self-defense, defense of others , and the protection of real or personal property."

Accordingly, while the "Law Abiding Citizens Self-Defense Act of 1996" does define a "concealable weapon" as a firearm "carried in a manner hidden from public view in normal wear of clothing", the law, taken as a whole, is not so clear that I would advise making a case against any CWP permittee who carries a concealable weapon in a handbag, purse or briefcase. Indeed, given the ambiguities in the Act with respect to this question, it is not unreasonable to read the exception for "self-defense, defense of others, and the protection of real or personal property" as protecting the permittee who finds it necessary to carry the weapon in a handbag or briefcase over which he or she maintains control. Moreover, it

Representative Knotts

Page 7

October 9, 1998

seems incongruous to conclude, on one hand, that it is a violation of the pistol law to carry a handgun in a purse without a permit, but that it is also a violation of the CWP permit law for a permittee to so carry a pistol. Sections 23-21-217 and 16-23-20 (12), again, appear to protect the permittee in this regard.

It may well be that the General Assembly was concerned with handguns taken by criminals who snatch purses or steal briefcases. This is a valid concern and it may have been part of the Legislator's thinking in framing the definition of "concealable weapon". A purse snatcher would have easy access to a pistol in the pocketbook of a CWP permit holder.

However, in view of the principle that penal provisions must be strictly construed, I would conclude that, as presently written, the Act is not sufficiently clear to warrant cases being made against the valid holder of a CWP permit who carries a "concealable weapon" in a purse, handbag or briefcase over which he or she maintains control. The General Assembly may wish to clarify the law in this regard, but I would advise against SLED attempting to make a case in this situation based upon the present law.

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