



ALAN WILSON
ATTORNEY GENERAL

August 24, 2021

Lieutenant Thomas M. Aiken
Furman Police Department
3300 Poinsett Highway
Greenville, SC 29613

Dear Lieutenant Aiken:

You have requested an opinion from this Office regarding the prohibition of firearms on the Furman University ("Furman") campus. You explain that Furman is a private university and that there are signs at all entrances prohibiting the possession of any and all firearms on university property. The signs state "NO FIREARMS PERMITTED ON UNIVERSITY PROPERTY."

You direct our attention to sections 16-23-420 and 23-31-220 of the South Carolina Code of Laws, noting that they "appear to overlap each other." Each of your questions will be addressed below.

LAW/ANALYSIS

Section 16-23-420 applies specifically to firearms on property owned by a private or public university:

- (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

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(B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm

(D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of the buildings is also exempted from the provisions of this section

S.C. Code Ann. § 16-23-420 (1976 Code, as amended).¹

In your letter, you also mention section 23-31-220, which is located in the “Law Abiding Citizens Self-Defense Act of 1996” (“Act”), S.C. Code Ann. § 23-31-205 et seq. (1976 Code, as amended). The Act provides for the issuance of concealed weapon permits. Pursuant to section 23-31-220, a private property owner has the right to prohibit the carrying of a concealable weapon on his property:

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

(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 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 owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises

S.C. Code Ann. § 23-31-220 (1976 Code, as amended).² A sign prohibiting concealable weapons must comply with the requirements of section 23-31-235.

¹ Section 16-23-420(E) provides that “the terms ‘premises’ and ‘property’ do not include state or locally owned or maintained roads, streets, or rights-of-way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public university , which are open full time to public vehicular traffic” Because you inform us that Furman is not a pass through university and does not have any state or local roads, section 16-23-420(E) is not applicable.

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A permit holder is not authorized to carry a concealable weapon into certain places. See S.C. Code Ann. § 23-31-215(M) (1976 Code, as amended). Emphasizing a private property owner's right to exclude a concealable weapon from his property, included in the prohibited places is a "place clearly marked with a sign prohibiting the carrying of a concealable weapon on the premises pursuant to Sections 23-31-220 and 23-31-235," unless the property owner has given express written consent. Id.

In addition to prohibiting concealable weapons in particular places, section 23-31-215(M) provides that "[n]othing contained in this subsection may be construed to alter or affect the provisions of Sections 16-23-420 . . ." Id. In a prior opinion, we explained:

[p]ursuant to Section 23-31-215(M), the Act makes clear that the existing statutory prohibitions whereby firearms may not be possessed are preserved. These include statutes prohibiting the possession of firearms on the capitol grounds, public buildings, school property . . .

Op. S.C. Atty. Gen., 1996 WL 549578 (Aug. 23, 1996). See also Ops. S.C. Atty. Gen., 2012 WL 1260182 (April 2, 2012); 1996 WL 599441 (Sept. 20, 1996); 2012 WL 1385562 (April 12, 2012). It is therefore our opinion that section 16-23-420 is applicable to and must be complied with by Furman. While Furman may choose to post signs regarding firearms possession, nothing in the text of section 16-23-420 requires signage in order for the prohibition to apply.

We will now address each of your questions.

- 1) Are the signs posted by Furman in compliance with South Carolina statutes 23-31-220 and 23-31-235?

As explained above, section 16-23-420 does not include any language regarding signs. Additionally, this Office is not empowered to investigate or determine factual questions. See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989) ("[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.") You have informed us, however, that the Furman Police Department has already obtained a legal opinion from the SLED Office of Regulatory Services regarding the signs.

- 2) Does the term "firearms" include rifles and shotguns?

² The prohibition of concealed weapons does not apply to law enforcement officers. See S.C. Code Ann. § 23-31-220.

We believe that the term “firearms” in section 16-23-420 includes rifles and shotguns. In Chapter 23 of Title 16, a weapon is defined as:

Except for the provisions relating to rifles and shotguns in Section 16-23-460, as used in this chapter, “weapon” means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.

S.C. Code Ann. § 16-23-405(A) (1976 Code, as amended). Because section 16-23-420 is located in Chapter 23 of Title 16, a rifle and a shotgun are included in the meaning of a “firearm.”

To be clear, rifles and shotguns generally are not regulated by South Carolina’s law related to pistols and concealable weapons. Section 16-23-420 is one of the rare statutes that addresses both “a firearm of any kind” in one sentence and “a concealed weapon” in another.

3) Can Furman prohibit all firearms from being brought onto and/or possessed on university property, including the legal possession of firearms in closed compartments of vehicles?

The provisions of section 16-23-420 are applicable to and must be complied with by Furman. Pursuant to section 16-23-420(A), the possession of all firearms is prohibited on private or public university property without the authorization of university officials, with certain exceptions. These exceptions include:

The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public . . . university . . . do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

S.C. Code Ann. § 16-23-420(A).

The plain meaning of the statute is that, notwithstanding a prohibition of firearms on property belonging to a university without the university’s permission, a person with a concealed weapon permit is allowed to carry a weapon on private or public university property if the weapon is inside an attended or locked motor vehicle and is secured in certain enclosed places.

This interpretation is supported by the title of the 2009 act that amended section 16-23-420(A). It is well settled that the title or caption of an act may be considered to aid in the construction of a statute and to show the intent of the Legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972); University of S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). The title of the 2009 act stated:

AN ACT TO AMEND SECTION 16-23-420, AS AMENDED, RELATING TO THE PROHIBITION ON THE CARRYING OR DISPLAYING OF FIREARMS IN PUBLIC BUILDINGS AND ADJACENT AREAS, SO AS TO PROVIDE AN EXCEPTION ON SCHOOL PROPERTY FOR PERSONS WHO ARE AUTHORIZED TO CARRY A CONCEALED WEAPON WHEN THE WEAPON IS INSIDE A MOTOR VEHICLE AND SECURED.

2009 S.C. Acts 32.

We believe that a court would hold that this statutory right is an exception to the prohibition of firearms on Furman property. Based upon the language of section 16-23-420(A) and the 2009 act, it is clear that Furman cannot prohibit a person with a concealed weapon permit from carrying a weapon on Furman property if the weapon is inside an attended or locked motor vehicle and is secured in the enclosed places which are named in section 16-23-420(A). However, a person is prohibited from entering Furman property and displaying, brandishing, or threatening others with a firearm. See S.C. Code Ann. § 16-23-420(B).

You have asked our opinion on a 2019 arrest of an Uber driver for possessing a firearm on Furman property. You inform us that the magistrate dismissed the charge against the Uber driver and the solicitor's office concurred in the result. We cannot answer this question. As explained in our response to question number 1, we are not authorized to investigate or determine facts in a legal opinion. See Op. S.C. Atty. Gen., 1989 WL 406130. Furthermore, South Carolina law does not permit this Office to issue an opinion which attempts to supersede or reverse any order of a court or other judicial body. Orr v. Clyburn, 277 S.C. 536, 290 S.E.2d 804 (1928); S.C. Const, art I, § 8; S.C. Const, art V.

- 4) The Governor signed the Open Carry Act which goes into effect August 15, 2021. Does this law conflict in any way with the current signage and no firearms policy on the Furman property?

The Legislature recently enacted the "Open Carry with Training Act ("Open Carry Act")," which will go into effect on August 15, 2021. See 2021 S.C. Acts 66. Statutes in the "Law Abiding Citizens Self-Defense Act of 1996," S.C. Code Ann. § 23-31-205 et seq. (1976 Code, as amended), have been amended by the Open Carry Act to provide that a person who possesses a concealed weapon permit can carry a concealable weapon openly or concealed on or about his

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person. However, section 16-23-420 was not amended, including the requirement that a CWP holder must keep any weapon inside an attended or locked motor vehicle.³ S.C. Code Ann. § 16-23-420(A). Therefore, it appears that the Open Carry amendment did not affect the rights of CWP holders on campus.

CONCLUSION

As a private university, Furman falls under the provisions of section 16-23-420 of the South Carolina Code of Laws, which does not include a signage requirement. See S.C. Code Ann. § 16-23-420 (1976 Code, as amended). Based upon the language of section 16-23-420(A) and the 2009 act which amended it (2009 S.C. Acts 32), it is clear that Furman cannot prohibit a person with a concealed weapon permit from possessing a weapon on Furman property if the weapon is inside an attended or locked motor vehicle and is secured in the enclosed places which are named in section 16-23-420(A). It appears the Open Carry amendment did not affect this particular right of CWP holders on campus. Id. Also, any person still is prohibited from entering Furman property and displaying, brandishing, or threatening others with a firearm. See S.C. Code Ann. § 16-23-420(B).

Where section 16-23-420 prohibits possession of “a firearm of any kind” on school property, we believe that includes rifles and shotguns. To be clear, rifles and shotguns generally are not regulated by South Carolina’s law related to pistols and concealable weapons. Section 16-23-420 is one of the rare statutes that addresses both “a firearm of any kind” in one sentence and “a concealed weapon” in another.

This Office has reiterated in numerous opinions that it strongly supports the Second Amendment of the United States Constitution and the right of citizens to keep and bear arms, and we affirm that position. See Op. S.C. Atty. Gen., 2015 WL 4596713 (July 20, 2015).

Sincerely,



Elinor V. Lister
Assistant Attorney General

³ We recognize that there is pending legislation on section 16-23-420, which will not be discussed in this opinion. See 2021 H.B. 3096 (April 8, 2021).

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REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General