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ATTORNEY GENERAL

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Dear Ms. Johnson:

We received your request for an expedited opinion on certain questions related to the lawfulness of carrying a firearm with a concealed weapons permit in South Carolina State Parks. This expedited opinion sets out our Office's understanding of your questions and our response.

Issue (as quoted from your letter):

1. Does the prohibition against firearms in public buildings (S.C. Code § 16-23-420) apply to park buildings? And if so, does the prohibition extend to cover the entire park "premises" since the purposes of the buildings and land are the same, and park premises are essentially the "campuses" on which park buildings are housed?
2. Does the express right to carry in S.C. Code § 51-3-145(G) take precedence over S.C. Code Ann. § 23-31-220 and/or S.C. Code Ann. § 51-3-70 giving public employers and the park the right to make decisions regarding firearms and their premises?
3. Consistent with the recent Supreme Court holding in *New York State Rifle & Pistol Association v. Bruen*, and based on historical precedent, might South Carolina Parks be considered "sensitive places" for restricting the right to carry firearms?

We understand that your question was precipitated by recent amendments to the South Carolina Code which permit a person with a CWP to carry a concealable weapons openly on their person. *See, e.g.,* S.C. Code Ann. § 23-31-210(5).

Law/Analysis:

We address each of these questions in turn, reiterating that this is an expedited opinion and should be read in the context of other prior opinions of this Office on the topic.

1. **Does the prohibition against firearms in public buildings found in S.C. Code § 16-23-420 apply to park buildings, and does the prohibition extend to cover the entire park "premises"?**

As an initial matter, the question of whether subsection 16-23-420(A) prohibits possession of a firearm in a particular building involves questions of fact which cannot be resolved by a legal opinion of this Office. However, as a general matter, we observe without opining that where SCDPRT owns a building located within a state park, it appears that such a building would fit the statutory description. We understand that the essential question here is whether the statutory prohibition extends to the entire park "premises." For the reasons discussed below, we believe it does not.

The current version of section 16-23-420 reads in relevant part:

> (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.
>
> (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.
>
> . . .
>
> (F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any

> premises, property, or building that is part of an interstate highway rest area facility.

S.C. Code Ann. § 16-23-420. We reiterate that the quoted text above is from the current version of the statute.

A previous version of subsection 16-23-420(A), effective from 1993 until amendment in 1996, provided as follows, in relevant part:

> It is unlawful for a person to carry into a private or public school, college or university building, or any publicly owned building, or have in his possession in the area immediately adjacent to these buildings, a firearm of any kind, without the express permission of the authorities in charge of the buildings.

Act 184 § 47, 1993 S.C. Acts 3291; *see also Op. S.C. Att'y Gen.*, 1995 WL 803362 (April 6, 1995) (opining on several questions related to the meaning of "adjacent" in this prior version of section 16-23-420). Thereafter, from 1996 until amendment in 2002, the subsection read:

> It is unlawful for a person to carry onto any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or any publicly-owned building a firearm of any kind, without the express permission of the authorities in charge of the premises or property.

Act 464, 1996 S.C. Acts 3672-73. A prior opinion of our Office discussed this version of the statute when faced with the question of whether the Department of Corrections could prohibit employees from having a pistol secured in the glove compartment, console or trunk of their vehicle. *Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000). We concluded that the Department could not do so, in part based on our construction of section 16-23-420:

> While this provision is somewhat awkwardly worded a careful reading makes it evident that the first part of the phrase used relates to educational or school property and that only the portion "any publicly-owned building" has any relevance to the situation at hand. However, obviously, the firearm is not being carried into a "publicly-owned building" in this instance, but remains secured in the glove compartment, console or trunk pursuant to § 16-23-20(9). Thus, this provision is not applicable here.

Id. Thus, as of the year 2000 our Office had observed that the statute distinguishes between school premises and public buildings in general.

Thereafter, the subsection was amended again in 2002, and the quoted text was altered by the addition of the word, "into": "[i]t is unlawful for a person to carry onto any premises or property [of] a private or public school, . . . or into any publicly owned building . . . ." *See* Act 274, 2002 S.C. Acts 2703-05 (emphasis added). Subsequent amendments gave us the current version, which prohibits possession "in any publicly owned building."

In summary: a previous version of subsection 16-23-420(A) prohibited possession of a firearm in "any publicly owned building, or . . . in the area immediately adjacent to these buildings." Thereafter, the General Assembly amended this code section to the current version by removing the reference to adjacent areas, and replacing it with two categorical prohibitions on firearm possession: first, "on any premises or property" of a school or college; and second, "in any publicly owned building" generally. S.C. Code Ann. § 16-23-420(A) (2015) (emphasis added).

In effect, the General Assembly expanded the prohibition with respect to a school or college so as to include "any premises or property," and not merely adjacent areas. The preposition of direction "on" naturally refers to a person's presence on the premises or property, and does not require entry into a building. Conversely, the General Assembly also narrowed the prohibition with respect to a "publicly owned building" using the preposition of direction "in," so as to apply only "in any publicly owned building." *See discussion supra.* Our Office observed that this statute created two distinct categorical prohibitions in our 2000 opinion, and that distinction was clarified and confirmed by subsequent amendment. *See Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000).

We acknowledge that several arguments of varying merit could be made both for and against construing section 16-23-420(A) to prohibit possession of a firearm on property around a publicly owned building which is not a school or university. For the purposes of this expedited opinion, we simply quote the South Carolina Supreme Court: "[i]n seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing." *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

As explained above, the plain language of section 16-23-420(A) previously prohibited firearm possession without permission "in the area immediately adjacent to" a public building, but now only prohibits possession "in any publicly owned building." If we were to construe the

prohibition to extend to the premises around a publicly owned building which is not a school of some kind, then in effect we would be reading the "area immediately adjacent" language back into the statute, as if the legislature's amendment accomplished nothing. Such a construction cannot stand. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Instead, a court faced with this question would construe the language in question so as to prohibit possession "in any publicly owned building," and not to extend to the surrounding premises unless they qualified as a "premises or property owned, operated, or controlled by a private or public school, college, university, technical college, [or] other post-secondary institution." *See id.* & S.C. Code Ann. § 16-23-420(A); *see also Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000) (opining that the Department of Corrections could not prohibit employees from having a pistol secured in the glove compartment, console or trunk of their vehicle).

2. **Does the express right to carry in S.C. Code § 51-3-145(G) take precedence over S.C. Code Ann. § 23-31-220 and/or S.C. Code Ann. § 51-3-70 which give public employers and the park the right to make decisions regarding firearms and their premises?**

For the reasons discussed below, we believe a court most likely would hold that the specific provisions of subsection 51-3-145(G) control over the general provisions found in sections 23-31-220 and 51-3-70.

Section 23-31-220 reads in full:

> (A) Nothing 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, whether concealed or openly carried, 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, whether concealed or openly carried, upon his premises.

(B) 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, whether concealed or openly carried, not be brought upon the premises or into the work place. A person who brings a concealable weapon, whether concealed or openly carried, 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).

(C) In addition to the provisions of subsection (B), a public or private employer or the owner of a business may post a sign regarding the prohibition or allowance on those premises of concealable weapons, whether concealed or openly carried, which may be unique to that business.

S.C. Code Ann. § 23-31-220 (2007).

Section 51-3-70 reads in full:

The Department of Parks, Recreation and Tourism may make such rules and regulations as it deems advisable for the protection, preservation, operation, use and maintenance and for the most beneficial service to the general public of the State parks in this State and as may be necessary to carry out the purposes of this chapter.

Section 51-3-145 reads in relevant part:

It shall be unlawful for any person to commit any of the following acts at any park or facility under the jurisdiction of the Department of Parks, Recreation and Tourism:

. . .

(G) Possessing any firearm, airgun, explosive, or firework except by duly authorized park personnel, law enforcement officers, or persons using areas specifically designated by the department for use of firearms, airguns, fireworks,

> or explosives. Licensed hunters may have firearms in their possession during hunting seasons provided that such firearms are unloaded and carried in a case or the trunk of a vehicle except that in designated game management areas where hunting is permitted, licensed hunters may use firearms for hunting in the manner authorized by law. This subsection shall not apply to a person carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23, and the concealable weapon and its ammunition.

S.C. Code Ann. § 51-3-145

Initially, we note that our Office has opined in the past on the construction of section 23-31-220. *See, e.g., Op. S.C. Att'y Gen.*, 2010 WL 5578965 (December 7, 2010). Our Office addressed this statute at length in a 2010 opinion related to CWP carry in county parks, which also overruled a 2009 opinion reaching a different conclusion. *Id.* There we reasoned:

> [W]e think that in reading Section 23-31-220(2), the prior 2009 opinion should have allowed for no distinction between private property owners and "persons in legal possession or control." In our view, the better reading is that the provisions of subsection (2) noting "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" should be read together so as to only be applicable to private property owners. Subsection (1) of Section 23-31-220 clearly distinguishes between a public and a private employer. Subsection (2) simply states that "the right of a private property owner or person in legal possession or control" may allow or ban the carrying of a concealable weapon "upon his premises." In our opinion there is no distinction broadening subsection (2) beyond its applicability to private property owners so as to include a local governing body.

Id. We refer the reader to our 2010 for a fuller discussion of the issues therein. For our purposes here, the essential point is that our Office construed subsection 23-31-220(A)(2) to apply to private property owners only. *Id.*

To the extent that our 2010 opinion may not fully resolve this question with respect to a state agency, we find additional support in the principle of statutory construction that "where a specific statute and a general statute concerning the same subject matter are inconsistent with one another, the specific statute will usually control." *Op. S.C. Att'y Gen.*, 2007 WL 655620 (February 16, 2007) (internal citations omitted). Furthermore, sections 23-31-220 and 51-3-145(G) are in pari materia, in that they both relate to the same subject of whether CWP holders

may carry a concealable weapon in a particular place. Similarly, section 51-3-70 and 51-3-145(G) both relate to the same subject of rules for good order and conduct within state parks. Our Office has previously opined that "all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law, and so the meaning and effect of one statute must be determined with reference to that of other statutes in pari materia so as to construe them together into one integrated system of law. *Op. S.C. Att'y Gen.*, 1975 WL 28886 (June 5, 1975) (citing *Fishburne v. Fishburne*, 171 S.C. 408, 172 S.E. 426 (1932)).

Section 51-3-70 is a general grant of rulemaking authority to your Department. Similarly, section 23-31-220 is a general statute relating to the power of employers or property owners to restrict CWP holders from carrying in certain circumstances. Also, by its express terms, section 23-31-220 begins by clarifying the scope of this statute: "[n]othing contained in this article [Article 4, Chapter 31, Title 23] shall in any way be construed to limit . . . ."

By contrast, subsection 51-3-145(G) is a specific statute addressing firearms in state parks, in that it expressly prohibits possession of a firearm by a member of the public except in specific, delineated circumstances. Furthermore, this subsection contains a specific caveat: "this subsection shall not apply to a person carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23, and the concealable weapon and its ammunition." S.C. Code Ann. § 51-3-145(G) (Supp. 2021).

The obvious effect of this language is that CWP holders have been granted a special statutory exemption from the restrictions in subsection 51-3-145(G) which otherwise would facially preclude them carrying a concealable weapon in state parks outside of designated areas. *See id.* Moreover, this caveat was tailored for CWP carry: while subsection 51-3-145(G) begins by proscribing possession of "any firearm," presumably including rifles and shotguns, the caveat for CWP holders applies concealable weapons as defined in the CWP code specifically – e.g., pistols. *Id., cf.* S.C. Code Ann. § 23-31-210 (defining "concealable weapon"). By including this carve-out, the General Assembly plainly intended that CWP holders would be able to lawfully carry concealable weapons in South Carolina state parks. *See id.* While the language does not necessarily grant this right in explicit terms, any contrary construction of this statute would frustrate the obvious, specific intent of the General Assembly in codifying this subsection.

Our Office has opined previously that "A state agency is powerless to prohibit that which the State authorizes, directs, requires, licenses, or expressly permits." *Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000) (citing *Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928)). Here, a court may well find that subsection 51-3-145(G) effectively authorizes and permits CWP carry of concealable weapons in state parks. While this is not the only possible

construction, we believe that this is the best reading of the statute in that it is consistent with the text and it gives full effect to the obvious legislative intent.

3. **Consistent with the recent Supreme Court holding in *New York State Rifle & Pistol Association v. Bruen*, and based on historical precedent, might South Carolina Parks be considered "sensitive places" for restricting the right to carry firearms?**

Our Office cannot offer any guidance on this question beyond a discussion of the *Bruen* case, which we undertake here.

As you reference in your letter, less than two months ago the United States Supreme Court decided the case of *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court expounded on how laws might restrict carrying firearms in "sensitive places" consistent with the Second Amendment:

> To determine whether a firearm regulation is consistent with the Second Amendment, *Heller* and *McDonald* point toward at least two relevant metrics: first, whether modern and historical regulations impose a comparable burden on the right of armed self-defense, and second, whether that regulatory burden is comparably justified. Because "individual self-defense is 'the central component' of the Second Amendment right," these two metrics are "'central'" considerations when engaging in an analogical inquiry. *McDonald*, 561 U.S. at 767, 130 S.Ct. 3020 (quoting *Heller*, 554 U.S. at 599, 128 S.Ct. 2783).
>
> To be clear, even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. For example, courts can use analogies to "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" to determine whether modern regulations are constitutionally permissible. Id., at 626, 128 S.Ct. 2783. . . .
>
> Having made the constitutional standard endorsed in *Heller* more explicit, the Court applies that standard to New York's proper-cause requirement.

Bruen, 142 S.Ct. at 2118. Thus, while the Court in *Bruen* cited prior jurisprudence as precedent for the "sensitive places" test, the Court also observed that it was making the standard "more explicit."

The Court in *Bruen* expressly declined to "comprehensively define 'sensitive places' in [that] case." *Bruen,* 142 S.Ct. at 2133. Our Office anticipates that the "sensitive places" standard will be the subject of future litigation and judicial decisions. We expect that this generally will take the form of challenges to existing or future statutes, and we generally defer to the General Assembly to determine, in the first instance, whether a particular place is sufficiently "sensitive" to justify prohibiting firearms. Once this constitutional standard has been developed in future case law, we may be able to offer additional guidance.

At this time, however, an advisory opinion of this Office cannot offer any more guidance than that set out by the United States Supreme Court in *Bruen.* Accordingly, we simply quote further from the *Bruen* opinion here for your convenient reference:

> To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." *Drummond v. Robinson*, 9 F.4th 217, 226 (CA3 2021). On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.
>
> Consider, for example, *Heller's* discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U.S. at 626, 128 S.Ct. 2783. Although the historical record yields relatively few 18th- and 19th-century "sensitive places" where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. *See* D. Kopel & J. Greenlee, The "Sensitive Places" Doctrine, 13 Charleston L. Rev. 205, 229–236, 244–247 (2018); *see also* Brief for Independent Institute as Amicus Curiae 11–17. We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.

> Although we have no occasion to comprehensively define "sensitive places" in this case, we do think respondents err in their attempt to characterize New York's proper-cause requirement as a "sensitive-place" law. In their view, "sensitive places" where the government may lawfully disarm law-abiding citizens include all "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available." Brief for Respondents 34. It is true that people sometimes congregate in "sensitive places," and it is likewise true that law enforcement professionals are usually presumptively available in those locations. But expanding the category of "sensitive places" simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" far too broadly. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. *See* Part III–B, infra. Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" simply because it is crowded and protected generally by the New York City Police Department.

Bruen, 142 S.Ct. at 2133-34.

Conclusion:

In conclusion, we reiterate that this is an expedited opinion and should be read in the context of other prior opinions of this Office and other applicable law. Also, the question of whether a particular action is lawful involves questions of fact which cannot be resolved by a legal opinion of this Office. Our Office's longstanding policy is to defer to magistrates in their determinations of probable cause, and to local law enforcement officers and solicitors in deciding what charges to bring and which cases to prosecute. *See, e.g., Op. S.C. Att'y Gen.*, 2017 WL 5053042 (October 24, 2017). Our goal here is aid your Department and the citizens of this State in understanding the law in this area as well as possible, and not to comment on a particular set of facts.

With that caveat, we answer your questions as follows in this expedited opinion:

First, the question of whether subsection 16-23-420(A) prohibits possession of a firearm in a particular building involves questions of fact which cannot be resolved by a legal opinion of this Office. However, as a general matter, we observe without opining that where SCDPRT owns a building located within a state park, it appears that such a building would fit the statutory

description. *See* S.C. Code Ann. § 16-23-420(A) (2015). We understand that the essential question here is whether the statutory prohibition extends to the entire park "premises." We believe it does not, because otherwise we effectively would be reading previous language regarding adjacent areas back into the statute, as if the legislature's more recent amendments accomplished nothing. Such a construction cannot stand. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

Second, we believe a court most likely would hold that the specific right to carry a concealable weapons pursuant to 51-3-145(G) controls over the general provisions found in sections 23-31-220 and 51-3-70. While subsection 51-3-145(G) begins by limiting possession of "any firearm," presumably including rifles and shotguns, it also contains a caveat for CWP holders applies concealable weapons as defined in the CWP code specifically – e.g., pistols. *Id., cf.* S.C. Code Ann. § 23-31-210 (defining "concealable weapon"). The General Assembly plainly intended that CWP holders would be able to lawfully carry concealable weapons in South Carolina state parks. *See id.* While the language does not necessarily grant this right in explicit terms, any contrary construction of this statute would frustrate the obvious, specific intent of the General Assembly in codifying this subsection. Our Office has opined previously that "A state agency is powerless to prohibit that which the State authorizes, directs, requires, licenses, or expressly permits." *Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000) (citing *Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928)).

Finally, our Office cannot offer any guidance on the "sensitive place" standard at this time, beyond a discussion of the United States Supreme Court decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). The Court in *Bruen* expressly declined to "comprehensively define 'sensitive places.'" *Bruen,* 142 S.Ct. at 2133. Our Office anticipates that the "sensitive places" standard will be the subject of future litigation and judicial decisions. We expect that this will take the form of challenges to existing or future statutes, and we generally defer to the General Assembly to determine, in the first instance, whether a particular place is sufficiently "sensitive" to justify prohibiting firearms. Once this constitutional standard has been developed in future case law, we may be able to offer additional guidance.

In summary, the practical result of the law discussed in this expedited opinion is this: we believe a court would rule that a person who holds a valid CWP may carry their concealable weapon, consistent with other applicable law, outdoors in a South Carolina state park. That person may not bring their concealable weapon into a publicly owned building on state park property without express permission. This rule applies to pistols; long guns which do not fit the

definition of a concealable weapon - such as rifles and shotguns - are governed by the general provisions of section 51-3-145(G) and other applicable rules.

We recognize that there are numerous policy-based arguments both for and against this result – some of which you discuss in your letter. It is the province of the General Assembly to weigh such arguments, to decide how to resolve them, and to pass laws to give them effect. Conversely, an advisory opinion of this Office seeks simply to answer legal questions related to those laws as accurately as possible. Our role is to describe the law as it is; the legislature's role is to mold the law into what it should be.

This Office has reiterated in numerous opinions that it strongly supports the Second Amendment and the right of citizens to keep and bear arms. *See, e.g., Op S.C. Att'y Gen.*, 2015 WL 4596713 (July 20, 2015); *see also D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

Sincerely,

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REVIEWED AND APPROVED BY:

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