



HENRY McMASTER
ATTORNEY GENERAL

December 7, 2010

The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
Laurens, South Carolina 29360

Dear Representative Pitts:

In a letter to this office you asked that we review a prior opinion of this office dated March 5, 2009 dealing with the regulation of concealed weapons in a county park. That opinion construed an ordinance which stated that

[i]t shall be unlawful for any person to commit any of the following acts at or in any Hartwell Lake Recreation Area or any public park, recreation area or facility under the jurisdiction of the county:...

(5) Possessing any firearm, airgun, explosive or firework except by duly authorized park personnel, law enforcement officers or persons using areas specifically designated by the director of the parks and recreation department and or the Corps for use of firearms, airguns, fireworks or explosives.

Reference was also made in that opinion to S.C. Code Ann. § 23-31-510 which states:

[n]o governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

(1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things; or

(2) a landowner discharging a firearm on the landowner's property to protect the landowner's family, employees, the general public, or the landowner's property from animals that the landowner reasonably

believes pose a direct threat or danger to the landowner's property, people on the landowner's property, or the general public. For purposes of this item, the landowner's property must be a parcel of land comprised of at least twenty-five contiguous acres. Any ordinance regulating the discharge of firearms that does not specifically provide for an exclusion pursuant to this item is unenforceable as it pertains to an incident described in this item; otherwise, the ordinance is enforceable.

Also construed was S.C. Code Ann. § 23-31-220 which states:

[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).

The March, 2009 opinion reasoned as follows:

[a]lthough S.C. Code Section 23-31-510 generally prohibits local governing bodies from regulating firearm possession, the statute must be read in conjunction with Section 23-31-220, which gives public or private employers, private property owners, and persons in legal possession or control the right to prohibit the carrying of a concealable weapon on their premises. As Section 23-31-220 states, "[t]he 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.” Assuming that the required notices are posted pursuant to Section 23-31-220, it is our opinion that Oconee County may prohibit the carrying of concealed weapons in County parks.

Upon our further review, we believe the conclusions of the cited opinion must be altered. Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Moreover, as we have emphasized previously, “[t]his office strongly supports the Second Amendment and the citizen’s right to bear arms.” Op. Atty. Gen. dated April 17, 2001.

Upon closer review, we believe that Section 23-31-220 as construed in the cited opinion was not in accord with the intent of the General Assembly in enacting the Concealable Weapons Act. In the opinion, it was stated that

[w]hile local governing bodies are generally prohibited from regulating firearm possession by S.C. Code Section 23-31-510, reading the statute in conjunction with Section 23-31-220, we see that public or private employers, private property owners, and persons in legal possession or control retain the right to prohibit the carrying of a concealable weapon on their premises...Section 23-31-220 clarifies that public or private employers, private property owners, and persons in legal possession or control may prohibit the carrying of a concealable weapon on their premises.

In Nelson v. Ozmint, Op. No. 26894, filed November 22, 2010, the State Supreme Court construed a statute that made an express provision for one set of circumstances but, according to the Court’s reasoning, by omitting such language for another set of circumstances in the provision at issue, the General Assembly intended by such exclusion to make a distinction between the situations addressed by the statute. The Court cited the rule of statutory construction set forth in Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) of “...‘*expressio unius est exclusio alterius*’”

or “*inclusio unius est exclusio alterius*” which holds that “to express or include one thing implies the exclusion of another, or the alternative.”

Applying this rule of construction, we 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. Therefore, in the opinion of this office, the mandate of Section 23-31-510 that “[n]o governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate...(firearms)....” predominates and, as a result, a local governing body, such as a county, may not enact any regulation dealing with the carrying of concealed weapons, such as in a county park. Accordingly, the opinion of March 5, 2009 is superseded and replaced with this opinion.

If there are any questions, please advise.

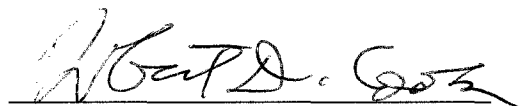
Very truly yours,

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