



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 26, 1997

The Honorable Richard M. Quinn, Jr.
Member, House of Representatives
1600 Gervais Street, Suite A
Columbia, South Carolina 29201

Dear Representative Quinn:

You have sought "clarification on a situation concerning one of my constituents and the Concealed Weapons Law." You note that your constituent, South Carolina Electric and Gas Co. "owns and operates the bus system for the City of Columbia and surrounding area." Further, you indicate that

SCE&G is concerned that persons may attempt to carry concealed weapons onto their buses. They would like to post a notice prohibiting weapons on the buses as part of their place of business. SECTION 9 of the Bill seems to given them that ability and, therefore, gain the protections of the Act.

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. However, the statute goes to considerable lengths to preserve existing law. See, e.g. § 23-31-215 (R). Moreover, Section 23-31-215 (M) specifies a number of instances where the holder of a permit is not authorized to carry a concealable weapon (defined in § 23-31-210 (5)) and imposes criminal penalties for any violation thereof. Section 23-31-220 further provides that

[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).

Several principles of statutory construction are applicable to your inquiry. First and foremost, is the fundamental rule that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. 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). While it is the general rule that penal statutes must be strictly construed, such rule must not be applied in a way which will defeat the obvious intent of the Legislature. State v. Johnson, 16 S.C. 187 (1881). With those principles in mind, the question thus is whether a public conveyance such as a city bus constitutes the "premises or work place" of the employer for purposes of Section 23-31-220. I conclude that it does.

The word "premises" does not have one fixed and definite meaning, but its meaning is to be determined by its context and is dependent on circumstances in which it is used. Gibbons v. Brandt, 170 F.2d 385, 387 (7th Cir.1948). The term "premises" has been held as not limited to realty, but to include automobiles or other vehicles. Howe v. State, 181 P.2d 571 (Okla. 1947). While there is admittedly authority to the contrary, I have located several cases in other jurisdictions where a public conveyance such as a bus or a taxicab was deemed to be the premises, work place, or place of business of the employer for various purposes.

In People v. Marotta, 128 Cal.App.3d Supp. 1, 180 Cal.Reptr. 611 (1981), the Court held that the "place of business" exception to the proscriptions in the penal code against carrying a concealed weapon in a vehicle extended to a taxicab which defendant was operating under a lease at the time of his arrest. There the Court opined as follows:

[i]n any ordinary sense the taxicab here is as much a place of business as a store in a fixed location. This is where the cab driver worked and collected his fees. The driver had no other business location which the cab served to facilitate, such as a store's delivery truck, where the truck is not the location of the enterprise, but merely the means to facilitate the store's business.

Other cases elsewhere also conclude that a taxicab or a mode of public transportation is a "place of business". See, People v. Borrell, 547 N.Y.S.2d 53 (1989) [whether defendant's livery cab is his "place of business" is a jury issue]; People v. Anderson, 344 N.Y.S. 15 (1973) [defendant's gypsy taxicab was a "place of business"]; People v. Santiago, 343 N.Y.S.2d 805 (1971) [possession of a .38 automatic Beretta in a cigar box used to keep the day's receipts, the cigar box being in a taxicab assigned to the defendant for his daily use is in a "place of business"].

Beyond the literal language of the Concealable Weapons law, however, is the legislative intent. While the term "premises" or work place" is not defined in the statute, it is evident that the intent of the General Assembly is to construe this phrase broadly in order to preserve the right of property owners and employers. As referenced above, § 23-31-220 expressly states that "[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 up the premises of the business or work place or while using any machinery, vehicle or equipment owned or operated by the business." (emphasis added). It would obviously distort the meaning of this latter phrase to limit it only to employees

Representative Quinn

Page 4

June 26, 1997

of a business as opposed to invitees or licensees (passengers) who are using or seek to ride upon the company busses. Furthermore, the Legislature has employed the term "fixed" with respect to a place of business in the preexisting pistol law which is preserved in the new Concealable Weapons law. See, § 16-23-20 (8) ["fixed place of business"]; § 23-31-217 [nothing affects § 16-23-20]. The fact that the General Assembly chose here not to require that a "premises or work place" need be "fixed" should be given some significance. Thus, I am of the view that a company operating a city bus line (such as SCE&G) possesses the right under the Act to post the notice authorized by Section 23-31-220 to prohibit permit holders from carrying a concealable weapon upon city buses in the same manner as store owners or other businesses with fixed locations are so authorized.

With kind regards, I am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/ph

REVIEWED AND APPROVED BY:



Zeb C. Williams, III

Deputy Attorney General