

New Legal Opinion Creates Confusion Over Tennessee “Guns in Trunks” Law

[William S. Rutchow](#) | January 22, 2014

On May 28, 2013, the Tennessee Attorney General issued an [opinion](#) that determined that Tennessee’s new “guns in trunks” law did not prohibit an employer from discharging an employee for having a weapon in his or her vehicle while parked on the employer’s property. On January 13, 2014, the Office of Legal Services (OLS) of the General Assembly for Tennessee issued its own [opinion](#) in response to a question from Tennessee Lieutenant Governor Ron Ramsey as to whether the new law needed to be amended to prohibit employers from firing employees in such situations. The OLS concluded that the law did not need to be amended.

The two opinions agree on several points:

1. The law applies only to gun owners with proper permits.
2. The gun must be stored in a vehicle owned by the permit holder (i.e., the law does not permit guns to be stored in company trucks).
3. The gun must be stored out of sight in a locked vehicle (i.e., “in trunks”).
4. The gun must stay in the trunk—the law does not protect a permit holder who removes the gun from the vehicle in a parking area in which weapons are otherwise prohibited.

The single area of disagreement between the two opinions is on whether an employer can discharge an employee who is a valid permit holder and has a gun locked in his or her trunk on the employer’s property. The primary basis for this disagreement comes down to the difference in how the two opinions interpret the interplay between two criminal statutes: T.C.A. §39-17-1313 (the statute authorizing guns in trunks) and § 39-17-1359 (the statute that allows property owners to prohibit weapons on their property and makes it a criminal offense for even a permit holder to have a weapon on a property that is displaying appropriate signs prohibiting weapons).

The key issue involves an amendment to T.C.A. §39-17-1359, which added the following language “except as provided in T.C.A. § 39-17-1313.” Both opinions agree that based on this language, it is no longer a crime for a permit holder to have a gun in his or her trunk even if the vehicle is parked on property that is posted as prohibiting weapons. As for the question of whether an employer can still fire an employee for activity that is no longer a crime, the Attorney General took a relatively straightforward approach, best summarized by this quote from the Attorney General’s May 28, 2013 opinion:

Chapter 16 by its terms *only decriminalizes the carrying and storage of firearms* and firearm ammunition in a permit holder’s privately owned motor vehicles in public and private parking areas under defined circumstances. (Emphasis added)

One of those defined circumstances is when the employee has a gun in his or her trunk on the employer’s premises. Section 39-17-1359 generally provides that if a property owner complies with the notice posting provisions in the statute, someone who brings a weapon onto the property is guilty of a Class B misdemeanor. According to the Attorney General, when the two criminal statutes are read together, the new guns in trunks law would protect a gun permit holder from criminal prosecution for having a gun in a vehicle parked on another’s property, but does no more than that. The property owner still has the right to place conditions on access to his or her property by any lawful means other than criminal prosecution. According to the Attorney General, what that means for an employer is that the employer can maintain work rules (up to and including discharge) prohibiting weapons anywhere on the employer’s premises, including the employee’s vehicle.

The Attorney General’s opinion is consistent with prior Tennessee law. For example, before the legislature acted to ban smoking in most indoor spaces, individuals could smoke in various indoor locations—including at work—without being criminally prosecuted. Such freedom

from criminal prosecution did not prohibit an employer from adopting work rules that prohibited smoking on the employer's premises and disciplining employees who violated those rules.

The new OLS opinion takes a much broader and at times strained view of the two statutes. While noting the Attorney General's opinion in a footnote, the OLS opinion does not directly address the Attorney General's reasoning according to which the law does not impact an employer's right to discharge employees. The OLS views the decriminalization of guns in trunks, not as a limitation, but as a gateway to allowing permit holders to maintain guns in their vehicles regardless of the rights of the owner of the property where their vehicles are parked.

Again, although the two statutes deal with criminal offenses, the OLS opinion has read into the statutes a much broader meaning:

With respect to the question of how Chapter 16 affects the employer-employee relationship, the change to Tenn. Code Ann. §39-17-1359 protects a person complying with the provisions of Tenn. Code Ann. §39-17-1313 from *negative repercussions, including those that are employment related.* (Emphasis added.)

Thus, according to the OLS, the decriminalization of a gun permit holder's actions (keeping a gun in his or her trunk at work) also protects the permit holder from the operation of the employer's work rules. Taking a stance that is directly contrary to the Attorney General's conclusion, the OLS opines that an employee who is fired for such activity would be able to maintain an action against his or her employer for wrongful discharge in violation of public policy.

As stated above, both opinions agree that the "guns in trunks" law is limited to situations in which a permit holder stores a gun in a vehicle owned by the permit holder. Thus, employers can clearly continue to prohibit employees from storing guns in vehicles owned by the employer. A situation that is not addressed in either opinion is whether employers can prohibit employees from carrying weapons in the employees' own vehicles when using those vehicles for work purposes (as delivery drivers might do). The answer would appear to be that employers can continue to prohibit such activity. First, the law is limited by its express language to weapons stored in vehicles in "parking areas." Second, even the OLS opinion acknowledges that the law is an extension of permit holders' right to carry a weapon at home or "to and from work"—not a right to carry a weapon while working.

The OLS opinion concedes that its interpretation is not definitive. The OLS opinion has muddied the waters for employers seeking to enforce workplace violence rules and to prohibit the presence of guns on their property. One thing is clear: it will now take a court challenge to clarify the law as the legislature appears unlikely to amend the statute to address the still open question of whether employers can lawfully fire an employee who has a gun in his or her vehicle at work.

William S. Rutchow is a shareholder in the Nashville office of Ogletree Deakins.

January 22 | TAGS: [carrying and storage of firearms](#), [Chapter 16](#), [Class B misdemeanor](#), [criminal offense](#), [criminal prosecution](#), [criminal statutes](#), [decriminalize](#), [discharging an employee](#), [disciplining employees](#), [employer's property](#), [firearm ammunition](#), [firing employees](#), [gun](#), [gun owners](#), [guns in trunks law](#), [negative repercussions](#), [notice posting provisions](#), [Office of Legal Services of the General Assembly for Tennessee](#), [OLS](#), [opinion](#), [parked vehicle](#), [signs prohibiting weapons](#), [T.C.A. § 39-17- 1359](#), [T.C.A. §39-17-1313](#), [Tennessee](#), [Tennessee Attorney General](#), [Tennessee law](#), [Tennessee Lieutenant Governor Ron Ramsey](#), [vehicle owned by the permit holder](#), [violation of public policy](#), [weapon](#), [workplace violence rules](#), [wrongful discharge](#).

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