



MEETING AGENDA



District 1
Matthew Wilson

District 2
Raevan Howard
Chairperson

District 3
Norman Crow

District 4
Lee Busby
Alternate

District 5
Kip Tyner

District 6
John Faile
Vice Chairperson

District 7
Cassius Lanier
Member

Council Public Safety Committee Meeting Agenda

Tuesday, June 27, 2023 Daugherty Conference Room 4:00 p.m.

TOPIC	PRESENTER	SUPPORTING MATERIAL
Approval of Minutes		
NEW BUSINESS		
1. Office of the City Attorney briefing regarding Attorney General's opinion related to Act 2022-133	Scott Holmes Kim King	2-5
ADJOURN		



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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May 24, 2023

Honorable Scott Holmes
City Attorney
City of Tuscaloosa
2201 University Boulevard
Tuscaloosa, Alabama 35401

Firearms - Pistol Permits - Private Property
- Schools - Tuscaloosa County

Section three of Act 2022-133, now codified in section 13A-11-95 of the Code of Alabama, does not include a penalty, and accordingly, no penalty can be enforced for violating this section.

Act 2022-133 contains no changes regarding whether an individual carrying a concealed firearm can lawfully enter private property despite the posting of signs prohibiting firearms. Private property owners may prohibit firearms on private property.

Dear Mr. Holmes:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Tuscaloosa.

QUESTIONS

(1) What is the penalty for violating section three of Act 2022-133, now codified in section 13A-11-95 of the Code?

(2) Did Act 2022-133 make any changes regarding an individual's ability to enter private property while carrying a concealed firearm despite signs prohibiting firearms on the property?

FACTS AND ANALYSIS

The Alabama Legislature recently enacted Act 2022-133, which allows individuals to carry concealed firearms inside the state of Alabama without a permit, and, in certain circumstances, requires individuals to disclose the possession of a concealed firearm to law enforcement. Specifically, section 13A-11-95 of the Code requires an individual to disclose their possession of a concealed firearm or pistol on their person or in a vehicle occupied by the person if asked by a law enforcement officer, stating as follows:

Any person who knowingly possesses a pistol or firearm concealed on or about his or her person or in a vehicle occupied by the person, and who is asked by a law enforcement officer operating in the line or scope of his or her official duties whether he or she is armed with a concealed pistol or firearm, shall immediately inform the law enforcement officer that the person is in possession of a pistol or firearm.

ALA. CODE § 13A-11-95 (Westlaw 2023).

You ask whether there is a penalty for violating this statute. The plain language of the statute does not include a penalty, and under the established rules of statutory construction, words used in a statute must be given their "natural, plain, ordinary, and commonly understood meaning." *Simons v. State*, 217 So. 3d 16, 24 (Ala. Crim. App. 2016). Alabama courts have consistently held that "[a] criminal statute must be definite and certain with respect to the punishment it is intended to impose." *Smith v State*, 447 So. 2d 1327, 1333 (Ala. Crim. App. 1983), *aff'd*, 447 So. 2d 1334 (Ala. 1984). Additionally, "one is not

to be subjected to a penalty unless the words of the statute plainly impose it.” *Hankins v. State*, 989 So. 2d 610, 616-17 (Ala. Crim. App. 2007); *see also, Ex parte Tulley*, 199 So. 3d 812, 822 (Ala. 2015) (holding that section 13A-11-52 of the Code was unconstitutional on its face and, therefore, unenforceable because it did not provide a punishment). Section 13A-11-95 of the Code does not include a penalty. Therefore, there is no penalty for violating this section, and no penalty can be enforced.

Additionally, section 13A-11-50 of the Code is unlikely to provide a clear punishment for the conduct set forth in section 13A-11-95 of the Code. In *Ex parte Tulley*, 199 So. 3d 812, 822 (Ala. 2015), the Alabama Supreme Court found that section 13A-11-52 of the Code was unconstitutional on its face and could not be enforced under any circumstances because the statute did not provide a punishment. At that time, a version of section 13A-11-50 of the Code existed and set forth the following:

Except as otherwise provided in this Code, a person who carries concealed about his person a bowie knife or knife or instrument of like kind or description or a pistol or firearm of any other kind or an air gun shall, on conviction, be fined not less than \$50.00 nor more than \$500.00, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

ALA. CODE § 13A-11-95 (Westlaw 2015). Although this section provided a general penalty for the unlawful concealment of weapons, it was not a part of the Supreme Court's consideration in *Tulley*, holding section 13A-11-52 of the Code unconstitutional. Section 13A-11-50 of the Code, which was recently amended, now provides that “[a] person who, in violation of this article, carries concealed about his or her person or in a vehicle a pistol or firearm of any other kind shall, on conviction, be guilty of a Class B misdemeanor.” ALA. CODE § 13A-11-95 (Westlaw 2023). Regardless of this language, based on the Supreme Court's analysis in *Tulley*, it is unlikely that the punishment set forth in section 13A-11-50 of the Code would be applicable to section 13A-11-95 of the Code.

You also ask whether Act 2022-133 has made any changes regarding concealed carry permits that would allow an individual carrying a concealed firearm or pistol to enter private property, despite signs prohibiting firearms. Although Act 2022-133 imposed certain changes regarding the requirements of obtaining a concealed carry permit, no changes were made addressing the specific circumstances in which an individual carrying a concealed firearm can legally enter private property. Fundamentally, this question concerns the use of private property and what is allowed on private property. Whether firearms are permitted on private property, however, is a question for the property owner. As

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this Office has previously observed, the owners of private property may choose to forbid firearms on their property, even if the person with the firearm has a permit. Opinion to Honorable Claud E. McCoy Jr., Attorney, Chambers County Commission, dated Jul. 7, 2014, A.G. No. 2014-074. Nothing in Act 2022-133 suggests otherwise. In fact, section seven of Act 2022-133, now codified in section 13A-11-50.1 of the Code, reinforces this right by stating that “[n]othing within Article 3 of Chapter 11 of Title 13A shall be construed to diminish or otherwise affect property rights under state law not within that title.” ALA. CODE § 13A-11-50.1 (Westlaw 2023).

CONCLUSION

Section three of Act 2022-133, now codified in section 13A-11-95 of the Code of Alabama, does not include a penalty. Therefore, no penalty can be enforced for violating this section.

Act 2022-133 contains no changes regarding whether an individual carrying a concealed firearm can lawfully enter private property despite the posting of signs prohibiting firearms. Private property owners may prohibit firearms on private property.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Catherine Kline of my staff.

Sincerely,

STEVE MARSHALL
Attorney General

By:



BEN BAXLEY
Chief, Opinions Division

SM/CK/as
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