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16-004

NO. STATE OF NEBRASKA
OFFICIAL
FEB 22 2016
DEPT. OF JUSTICE

DOUGLAS J. PETERSON
ATTORNEY GENERAL

SUBJECT: Whether L.B. 60 (2015) changes current law as it pertains to possession of firearms at a school.

REQUESTED BY: Senator Bill Kintner, Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
John L. Jelkin, Assistant Attorney General

You have requested an opinion of the Attorney General regarding L.B. 60. This legislation, introduced by you in the 2015 legislative session, seeks "to clarify and delineate when and where personal firearms of employees may be possessed and stored in their personal vehicles when at work."

Our analysis follows each of the specific questions which have been posed.

1. "Is the current Policy on Possession of Concealed Weapons and Firearms, found on page 220 and 221 of the University of Nebraska Board of Regents Policies as expressed in RP-6, 4.8 (enclosed) and summarized by their representative in the enclosed letter to the Legislative Judiciary Committee on January 21, 2015, and expressed by University Police on their website (enclosed) in compliance with all exemptions in Neb. Rev. Stat. Sec. 28-1204.04 and Sec. 69-2441(3)?"

It has been the longstanding policy of the Attorney General to decline opinion requests from state senators seeking an interpretation of existing statutes. *See* Op. Att'y Gen. No. 157 (December 20, 1985). Accordingly, we respectfully decline to provide an opinion with respect to your first question concerning state law as it relates to the policies of the University of Nebraska.

2. "Does L.B. 60 (2015), through exemption of Neb. Rev. Stat. Sec. 28-1204.04 (Cum. Supp. 2014) in subsection (6), maintain the current law as it pertains to possession of firearms at a school?"

Stated alternatively, you have asked whether subsection (6) of L.B. 60 (2015) maintains the current law as it pertains to possession of firearms at a school. Simply stated, the answer appears to be "Yes."

L.B. 60 (2015) seeks to prevent any business entity, owner, manager, or legal possessor of real property, or public or private employer from establishing, maintaining or enforcing a policy or rule that prohibits a person's transportation or storage of a firearm or ammunition if the firearm or ammunition is: (1) kept from ordinary observation, locked within the trunk or glove box, in the interior of a privately owned car or a container securely affixed to such vehicle; and (2) the privately owned vehicle is operated or parked in a location which is open to the public.

Subsection (6) of L.B. 60 (2015) provides that this section does not apply if:

(a) The person operating the motor vehicle is:

(i) Prohibited from possessing, receiving, or transporting firearms under Neb. Rev. Stat. § 28-1206, or 18 U.S.C. 922. [Possession of a deadly weapon by a convicted felon, or by court order, or other prohibited person];
(ii) In violation of Neb. Rev. Stat. § 28-1202. [Carrying a concealed weapon];
(iii) In violation of Neb. Rev. Stat. § 28-1203. [Transportation or possession of machine guns, short rifles or short shotguns];
(iv) In violation of Neb. Rev. Stat. § 28-1204. [Unlawful possession of a handgun];
(v) In violation of Neb. Rev. Stat. § 28-1204.04. [Unlawful possession of a firearm at a school, with exceptions];
(vi) In violation of Neb. Rev. Stat. § 28-1207. [Possession of a defaced firearm];
(vii) In violation of Neb. Rev. Stat. § 28-1212.03. [Possession, receipt or disposal of a stolen firearm]; or,
(viii) In violation of Neb. Rev. Stat. § 37-522. [Loaded shotgun on highway];

L.B. 60 Subsection (6) (2015) (emphasis added).

The Second Amendment to the United States Constitution provides:

> A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Additionally, the Nebraska Constitution guarantees the right to bear arms. Neb. Const. Art. 1, § 1. However, the federal courts have recognized that the right to keep and bear arms is not absolute. *See District of Columbia v. Heller,* 554 U.S. 570 (2008), *United States v. Cody*, 460 F.2d 34 (8th Cir. 1972). Rather, the right to bear arms is subject to reasonable regulation. *State v. Comeau*, 233 Neb. 907, 448 N.W.2d 595 (1989); *State v. LaChapelle*, 234 Neb. 458, 451 N.W.2d 458 (1990).

Neb. Rev. Stat. § 28-1204.04 (2014) is the statute that prohibits possession of a firearm in a school, on school grounds, in a school owned vehicle, or at a school-sponsored activity or athletic event. The statute also contains a number of exceptions, including possession of a concealed handgun by a valid permit holder under the Concealed Handgun Permit Act. In this regard, Neb. Rev. Stat. § 28-1204.04(i)(h) allows the permit holder to carry the firearm in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area open to the public and used by the school, if prior to exiting the vehicle, the handgun is locked inside the glove box, trunk or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law.

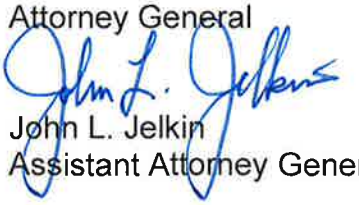
We could find no cases or other statutes which alter, amend, modify, or otherwise change the provisions of Neb. Rev. Stat. § 28-1204.04 (2014). Because the provisions of Neb. Rev. Stat. § 28-1204.04 (2014) are specifically named and declared as exempt from L.B. 60 (2015), it appears that current law, as it pertains to the possession of firearms at a school, is unchanged by L.B. 60 (2015).

CONCLUSION

The answer to the question as to whether subsection (6) of L.B. 60 (2015) maintains the current law as it pertains to possession of firearms at a school appears to be in the affirmative. The express exemption of Neb. Rev. Stat. § 28-1204.04 from L.B. 60 (2015) operates to leave unchanged the current state of the law with respect to firearms at a school.

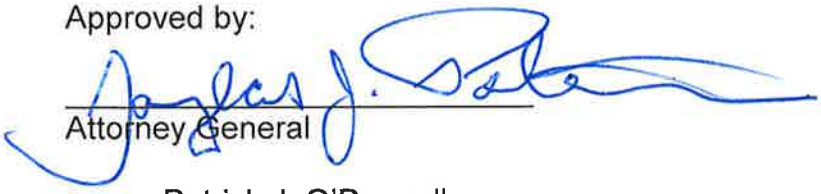
Sincerely yours,

DOUGLAS J. PETERSON
Attorney General



John L. Jelkin
Assistant Attorney General

Approved by:



Attorney General

pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

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