ALAN WILSON
ATTORNEY GENERAL

July 9, 2024

The Honorable Shane Martin
Member
South Carolina Senate
P.O. Box 575
Pauline, SC 29374

Dear Senator Martin:

We received your letter requesting an Attorney General's opinion regarding whether section 16-23-420 of the South Carolina Code (2015 & Act No. 111, 2024 S.C. Acts __), prohibits a person from carrying a firearm in a publicly owned parking lot or publicly owned parking garage. You specifically ask whether the phrase "any premises or property owned, operated, or controlled by," as used in section 16-23-420(A), applies to publicly owned buildings? Further, if this phrase does not apply to publicly owned buildings, does a publicly owned parking lot or publicly owned parking garage fall within the definition of "publicly owned building" under section 16-23-420(A)?

We address each of your questions in turn.

Law/Analysis

We begin by noting this Office is unable to determine facts in an advisory opinion. As we have stated in prior opinions, "[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." Op. S.C. Att'y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att'y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of facts, we cannot render an opinion as to whether section 16-23-420(A) prohibits possession of a firearm in a particular building or the legality of a particular action. *See* Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. August 15, 2022).

Section 16-23-420 provides in relevant part:

> (A) It is unlawful for a person to possess a firearm[1] of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to when the firearm remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.
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> (B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.
>
> . . . .
>
> (F) This section does not apply to a person when upon any premises, property, or building that is part of an interstate highway rest area facility.

S.C. Code Ann. § 16-23-420(A)-(B), (F).

First, as to whether the phrase "any premises or property owned, operated, or controlled by" modifies the term "publicly owned building," this Office has previously opined the prohibition of firearms in any publicly owned building under section 16-23-420(A) does not extend to the building's surrounding premises unless it is owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution. Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. August 15, 2022). I am enclosing a copy of a previous opinion of this Office dated August 15, 2022, wherein we explained:

> In summary: a previous version of subsection 16-23-420(A) prohibited possession of a firearm in "any publicly owned building, or . . . in the area immediately adjacent to these buildings." Thereafter, the General Assembly amended this code section to the current version by removing the reference to adjacent areas, and replacing it with two categorical prohibitions on firearm possession: first, "on any premises or

[1] S.C. Code Ann. § 16-23-405(A) (2015) ("Except for the provisions relating to rifles and shotguns in Section 16-23-460, as used in this chapter, 'weapon' means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.").

property" of a school or college; and second, "in any publicly owned building" generally. S.C. Code Ann. § 16-23-420(A) (2015) (emphasis added).

In effect, the General Assembly expanded the prohibition with respect to a school or college so as to include "any premises or property," and not merely adjacent areas. The preposition of direction "on" naturally refers to a person's presence on the premises or property, and does not require entry into a building. Conversely, the General Assembly also narrowed the prohibition with respect to a "publicly owned building" using the preposition of direction "in," so as to apply only "in any publicly owned building." *See discussion supra.* Our Office observed that this statute created two distinct categorical prohibitions in our 2000 opinion, and that distinction was clarified and confirmed by subsequent amendment. *See Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000).

We acknowledge that several arguments of varying merit could be made both for and against construing section 16-23-420(A) to prohibit possession of a firearm on property around a publicly owned building which is not a school or university. For the purposes of this expedited opinion, we simply quote the South Carolina Supreme Court: "[i]n seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing." *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

As explained above, the plain language of section 16-23-420(A) previously prohibited firearm possession without permission "in the area immediately adjacent to" a public building, but now only prohibits possession "in any publicly owned building." If we were to construe the prohibition to extend to the premises around a publicly owned building which is not a school of some kind, then in effect we would be reading the "area immediately adjacent" language back into the statute, as if the legislature's amendment accomplished nothing. Such a construction cannot stand. *See State ex rel McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Instead, a court faced with this question would construe the language in question so as to prohibit possession "in any publicly owned building," and not to extend to the surrounding premises unless they qualified as a "premises or property owned, operated, or controlled by a private or public school, college, university, technical college, [or] other post-secondary institution." *See id.* & S.C. Code Ann. § 16-23-420(A); *see also Op. S.C. Att'y Gen.*, 2000 WL 773737 (March 8, 2000) (opining that the Department of Corrections could not prohibit employees from having a pistol secured in the glove compartment, console or trunk of their vehicle).

Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. August 15, 2022).

It is the policy of this Office that when a prior opinion governs, we will not issue a new opinion and will presume that the prior opinion is correct. We will not reverse a prior opinion unless such prior opinion is clearly erroneous, or the applicable law has changed. Op. S.C. Att'y Gen., 1986 WL 289899 (S.C.A.G. October 3, 1986). As noted in your letter, section 16-23-420 was amended by the South Carolina Constitutional Carry/Second Amendment Preservation Act of 2024 (the 2024 Act); however, the General Assembly did not alter the language pertinent to the analysis in our 2022 opinion. Accordingly, we reaffirm our prior determination that a court would likely find the prohibition against firearms *in* any publicly owned building under section 16-23-420(A) does not extend to the building's surrounding premises unless it is owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution.

Second, as to whether the prohibition of firearms in publicly owned buildings extends to a public parking lot or public parking garage under section 16-23-420(A), we understand your question is whether a parking lot or parking garage is encompassed under the term "building" as used in the statute. Our State courts have not addressed this question. As such, we must rely on the rules of statutory construction to discern the intent of the General Assembly. *See* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."). "[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "If, however, the language of the statute gives rise to doubt or uncertainty as to legislative intent, the construing court looks to the statute's language as a whole in light of its manifest purpose." Ex parte Cannon, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009). "The construing court may additionally look to the legislative history when determining the legislative intent." Id. "[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." Beaufort Cnty. v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

"When confronted with an undefined term, the court must interpret it in accordance with its usual and customary meaning." Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc., 418 S.C. 186, 204, 791 S.E.2d 321, 331 (Ct. App. 2016) (quoting Hughes v. W. Carolina Reg'l Sewer Auth., 386 S.C. 641, 646, 689 S.E.2d 638, 641 (Ct. App. 2010)). "The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." Flowers v. Giep, 436 S.C. 281, 287, 871 S.E.2d 604, 607 (Ct. App. 2021) (quoting Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008)). "However, [a] court will consider the language of the particular clause in which the term appears and also its meaning in conjunction with the purpose of the whole statute." Miller Constr. Co., LLC, 418 S.C. at 204-05, 791 S.E.2d at 331 (quoting Hughes, 386 S.C. at 646, 689 S.E.2d at 641)). "Statutes, as a whole, must receive practical, reasonable, and fair

interpretation, consonant with the purpose, design, and policy of lawmakers." Original Blue Ribbon Taxi Corp., 380 S.C. at 609, 670 S.E.2d at 678 (quoting TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). "[C]ourts will reject an interpretation leading to an absurd result clearly unintended by the legislature." Id. at 608, 670 S.E.2d at 678.

Chapter 23 of Title 16 does not define the term building; therefore, we must interpret it in accordance with its usual and customary meaning. Black's Law Dictionary defines a building as "[a] structure with walls and a roof, esp. a permanent structure." BUILDING, Black's Law Dictionary (11th ed. 2019). We believe it is plain a parking lot would not be considered a building in accordance with its usual and customary meaning. *See* Miller Constr. Co., LLC, 418 S.C. at 204, 791 S.E.2d at 331 ("When confronted with an undefined term, the court must interpret it in accordance with its usual and customary meaning." (quoting Hughes, 386 S.C. at 646, 689 S.E.2d at 641). Accordingly, we believe a court would find the prohibition of firearms in publicly owned buildings under section 16-23-420 does not encompass publicly owned parking lots. *See* Flowers, 436 S.C. at 287, 871 S.E.2d at 607 ("The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." (quoting Original Blue Ribbon Taxi Corp., 380 S.C. at 608, 670 S.E.2d at 678)).

As to whether a parking garage qualifies as a building as used in section 16-23-420(A), we believe this is a closer question. Black's Law Dictionary does not define the term "parking garage"; however, Merriam-Webster English Dictionary defines a parking garage as "a building in which people usually pay to park their cars, trucks, etc." https://www.merriam-webster.com/dictionary/parking%20garage (last visited June 12, 2024). Despite this definition's use of the word building, we nevertheless believe a court would likely find a parking garage would not be considered a building under this statute because to hold otherwise would lead to a result clearly unintended by the General Assembly. *See* Original Blue Ribbon Taxi Corp., 380 S.C. at 608, 670 S.E.2d at 678 ("[C]ourts will reject an interpretation leading to an absurd result clearly unintended by the legislature."). Like a parking lot, a parking garage's primary purpose is to provide parking for vehicles. To interpret the plain language of the statute as encompassing parking garages in the term building while excluding parking lots would result in an inconsistent application of the firearm prohibition in publicly owned buildings. *See* Miller Constr. Co., LLC, 418 S.C. at 204-05, 791 S.E.2d at 331 ("[A] court will consider the language of the particular clause in which the term appears and also its meaning in conjunction with the purpose of the whole statute." (quoting Hughes, 386 S.C. at 646, 689 S.E.2d at 641).

Moreover, section 16-23-20(D) of the South Carolina Code (Act No. 111, 2024 S.C. Acts __) expressly grants a person legally possessing a firearm to store it anywhere in a vehicle, whether occupied or unoccupied. S.C. Code Ann. § 16-23-20(D) ("Notwithstanding any provision in this section, a person who is not otherwise prohibited by law from carrying a firearm may lawfully store a firearm anywhere in a vehicle whether occupied or unoccupied."). Construing this statute together with the firearm prohibition in publicly owned buildings, we believe a court would hold these two statutes can be read harmoniously by finding the term building does not encompass

parking garages. *See* Beaufort Cnty., 395 S.C. at 371, 718 S.E.2d at 435 ("[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). Based on the foregoing, we believe a court would likely find the prohibition of firearms in publicly owned buildings under section 16-23-420(A) does not encompass publicly owned parking garages.

Conclusion

Initially, this Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, "[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." Op. S.C. Att'y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att'y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of facts, we cannot render an opinion as to whether section 16-23-420(A) prohibits possession of a firearm in a particular building or the legality of a particular action. *See* Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. August 15, 2022). Furthermore, it is this Office's longstanding policy "to defer to magistrates in their determinations of probable cause, and to local law enforcement officers and solicitors in deciding what charges to bring and which cases to prosecute." Op. S.C. Att'y Gen., 2017 WL 5053042 (S.C.A.G. Oct. 24, 2017).

First, we reaffirm this Office's prior determination that a court would likely find the prohibition against firearms *in* any publicly owned building under section 16-23-420(A) does not extend to the building's surrounding premises unless it is owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution. Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. August 15, 2022); *see* Op. S.C. Att'y Gen., 1986 WL 289899 (S.C.A.G. October 3, 1986) (providing it is the policy of this Office that when a prior opinion governs, this Office will not issue a new opinion and will presume that the prior opinion is correct unless such prior opinion is clearly erroneous, or the applicable law has changed).

Second, our courts have yet to address the term "publicly owned building" under section 16-23-420(A). However, we believe it is plain a parking lot would not be considered a building in accordance with the usual and customary meaning of the term "building." *See* Miller Constr. Co., LLC, 418 S.C. at 204, 791 S.E.2d at 331 ("When confronted with an undefined term, the court must interpret it in accordance with its usual and customary meaning." (quoting Hughes, 386 S.C. at 646, 689 S.E.2d at 641). Accordingly, we believe a court would find the prohibition of firearms in publicly owned buildings under section 16-23-420(A) does not encompass publicly owned parking lots. *See* Flowers, 436 S.C. at 287, 871 S.E.2d at 607 ("The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." (quoting Original Blue Ribbon Taxi Corp., 380 S.C. at 608, 670 S.E.2d at 678)).

As to whether a parking garage qualifies as a building as used in section 16-23-420(A), we believe a court would likely find a parking garage would not be considered a building under this statute

because to hold otherwise would lead to a result clearly unintended by the General Assembly. *See* Original Blue Ribbon Taxi Corp., 380 S.C. at 608, 670 S.E.2d at 678 ("[C]ourts will reject an interpretation leading to an absurd result clearly unintended by the legislature.")). To interpret the plain language of the statute as encompassing parking garages in the term building while excluding parking lots would result in an inconsistent application of the firearm prohibition in publicly owned buildings. *See* Miller Constr. Co., LLC, 418 S.C. at 204-05, 791 S.E.2d at 331 ("[A] court will consider the language of the particular clause in which the term appears and also its meaning in conjunction with the purpose of the whole statute." (quoting Hughes, 386 S.C. at 646, 689 S.E.2d at 641)). Moreover, the express provision under section 16-23-20(D) allowing a person legally possessing a firearm to store it anywhere in a vehicle, whether occupied or unoccupied, must be construed together with the firearm prohibition in public buildings under section 16-23-420(A). *See* Beaufort Cnty., 395 S.C. at 371, 718 S.E.2d at 435 ("[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). Therefore, we believe a court would likely find the prohibition of firearms in publicly owned buildings under section 16-23-420(A) does not encompass publicly owned parking garages.

This Office has reiterated in numerous opinions that it strongly supports the Second Amendment and the right of citizens to keep and bear arms. *See e.g.*, Op S.C. Att'y Gen., 2015 WL 4596713 (S.C.A.G. July 20, 2015); Op. S.C. Att'y Gen., 2022 WL 3650096 (S.C.A.G. Aug. 15, 2022); *see also* D.C. v. Heller, 554 U.S. 570 (2008); McDonald v. Chicago, 561 U.S. 742 (2010); New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022). If the General Assembly wishes to broaden the scope of the firearm prohibition under section 16-23-420(A), such as encompassed in your questions or in any other area, it would be a matter for the Legislature to do so expressly through legislation.

Sincerely,

Elizabeth McCann

Elizabeth McCann
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

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