



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-062

February 9, 2018

The Honorable Bill Sample
State Senator
2340 North Highway 7
Hot Springs Village, AR 71909

Dear Senator Sample:

This is in response to your request for an opinion regarding Act 562 of 2017, which creates an enhanced licensing scheme for the carrying of concealed firearms and otherwise amends the privileges associated with concealed-carry licenses.¹ You ask two questions concerning the effect of Act 562 on public facilities where alcohol is served or consumed. I have slightly paraphrased the questions as follows:

- 1) Can a publicly owned building or facility that is licensed to dispense alcoholic beverages as described at Ark. Code Ann. § 5-73-306(11) prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

- 2) Can a publicly owned building or facility where beer or light wine is consumed, as described at Ark. Code Ann. § 5-73-306(12), prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

¹ The enhanced licensing scheme will be codified at Ark. Code Ann. § 5-73-322(g). Acts 2017, No. 562, § 6. Act 562 takes effect on September 1, 2017. *Id.* at § 8.

RESPONSE

The answer to both of these questions is “yes,” in my opinion. But before analyzing your specific questions, it will be beneficial to state the general rules governing concealed firearms in places where alcohol is served or consumed:

1. A “conventional” concealed-carry license does not authorize possession of a concealed firearm in any building or facility licensed to dispense alcohol, or in any building or facility where beer or light wine is consumed on the premises.
2. An “enhanced” concealed-carry license does not authorize possession of a concealed firearm in any building or facility licensed to dispense alcohol (or in any place where beer or light wine is consumed) where the establishment has posted a written notice banning concealed firearms.

DISCUSSION

Question 1: Can a publicly owned building or facility that is licensed to dispense alcoholic beverages as described at Ark. Code Ann. § 5-73-306(11) prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

Yes. By means of a posted, written notice, a publicly owned building or facility licensed under Ark. Code Ann. § 5-73-306(11) to dispense alcoholic beverages² may prohibit individuals with concealed-carry licenses from possessing concealed firearms on the premises. A posted notice would be effective with respect to holders of enhanced concealed-carry licenses, as well as holders of conventional licenses. I reach this conclusion based on the plain language of Act 562 of 2017 (“Act”) and the concealed-carry statutes it amends.³

Your question is one of statutory interpretation, and so the primary task is to “give effect to the intent of the General Assembly” by construing Act 562 “just as it

² Ark. Code Ann. § 5-73-306(11) pertains to “portion[s] of an establishment, *except a restaurant as defined in § 3-5-1202*, licensed to dispense alcoholic beverages” (emphasis added). Throughout this opinion, reference to establishments licensed to dispense alcoholic beverages specifically excludes all “restaurant[s] as defined in § 3-5-1202.”

³ The regulations promulgated by the Arkansas State Police and Alcoholic Beverage Control further support this conclusion.

reads.”⁴ To the extent the Act “conveys a clear and definite meaning, there is no need to resort to the rules of statutory construction.”⁵ But if the Act is ambiguous—for example, if sections pertaining to the same subject matter are “internally inconsistent”⁶—then the inconsistencies are resolved by “giv[ing] effect to the specific statute over the general.”⁷ And in all events, Act 562 “must be read in ... context and with a view to [its] place in the overall statutory scheme”⁸ governing concealed firearms.

Enhanced Concealed-Carry License Under Act 562

The “enhanced” license referred to in the Act’s title⁹ is defined in Section 6, which amends the Arkansas Code as it relates to possession of concealed firearms at institutions of higher learning:

A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Department of Arkansas State Police. ... A licensee who completes a training course under this subsection shall be given a concealed carry endorsement ... that the person is permitted to possess and carry a concealed handgun in the buildings and on

⁴ *Brock v. Townsell*, 2009 Ark. 224, *9, 309 S.W.3d 179, 185-86 (2009) (internal citations omitted).

⁵ *Id.* (noting that a court must “construe[] the statute so that no word is left void, superfluous, or insignificant,” such that if possible, “meaning and effect are given to every word.”).

⁶ *ACW, Inc. v. Weiss*, 329 Ark. 302, 312-13, 947 S.W.2d 770, 775 (1997) (internal citations omitted).

⁷ *Searcy Farm Supply, LLC v. Merchants & Planters Bank*, 369 Ark. 487, 492, 256 S.W.3d 496, 501 (2007).

⁸ *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) (internal quotations omitted); *accord Weiss*, 329 Ark. at 312-13, 947 S.W.2d at 775 (“[O]ur review now turns to an examination of the whole Act, reconciling provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part.”).

⁹ Acts 2017, No. 562 (“For An Act To Be Entitled ‘An Act ... Concerning Other Privileges Associated With an Enhanced License to Carry a Concealed Handgun.’”).

the grounds of a public university, public college, or community college.¹⁰

The Act then states that the holder of an enhanced license “is exempted from the prohibitions and restrictions on ... [c]arrying a [concealed handgun] in a publicly owned building or facility under § 5-73-122 ... and ... [c]arrying a concealed handgun in a prohibited place listed under § 5-73-306(7)-(12), (14), (15), and (17).”¹¹ The list of “prohibited place[s]” includes establishments licensed to dispense alcoholic beverages on the premises.¹²

Under Act 562, it is no longer punishable as a crime for enhanced-license holders to carry concealed firearms in certain public areas (like public universities, colleges, and community colleges).¹³ For this reason, the Act has created confusion about whether concealed firearms can be carried in other places—namely, establishments licensed to dispense alcoholic beverages.

¹⁰ *Id.*, § 6 (amending subsection (g) of Ark. Code Ann. § 5-73-322 (“Concealed handguns in a university, college, or community college building.”)).

¹¹ Acts 2017, No. 562, § 6 (adding the quoted language as subsection (h) of Ark. Code Ann. § 5-73-322); *cf.* Acts 2017, No. 562, § 1 (amending Ark. Code Ann. § 5-73-122(a)(3)(D) to state that for certain locations, “this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds ... [i]f the person has completed the required training and received a concealed carry endorsement under § 5-73-322(g).”).

¹² *See* Ark. Code Ann. § 5-73-306(11). Prior to Act 562, Ark. Code Ann. § 5-73-306 provided that “[n]o license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun” into certain locations. Ark. Code Ann. § 5-73-306 (“Prohibited places.”). Section 5-73-306 enumerated a total of 17 locations where concealed-carry license holders were prohibited from carrying a concealed handgun, regardless of whether a written notice banning handguns was posted. And a licensee’s “[f]ailure to comply ... is a ground(s) for suspension and/or revocation of the Arkansas concealed handgun carry license.” Ark. Admin. Code § 130.00.8-7.0 (“Failure to Comply with Concealed Handgun Carry License Restrictions.”).

¹³ *See* Acts 2017, No. 562, § 1 (amending Ark. Code Ann. § 5-73-122(a)(3)(D) to state that “this subsection does not apply to a person carrying or possessing a firearm or other deadly weapon in a publicly owned building ... [i]f the person has ... received a concealed carry endorsement under § 5-73-322(g).”). However, a number of criminal statutes could apply to an individual carrying a concealed firearm (or a firearm in plain view). *See* Op. Att’y Gen. 2015-064 (cautioning that “any person who carries a weapon should be aware that a law enforcement officer might inquire into that person’s purpose.”); Addendum to Op. Att’y Gen. 2015-064 (“Principal Laws Limiting Open Carry of Handguns.”).

Indeed, Act 562 exempts holders of enhanced concealed-carry licenses “from the prohibitions ... on ... [c]arrying a concealed handgun in a prohibited place listed” at § 5-73-306(11)(A),¹⁴ which corresponds to an “establishment ... licensed to dispense alcoholic beverages ... on the premises.”¹⁵ But the Act also creates subsection 306(11)(B), which prohibits:

[a] person with a concealed carry endorsement under § 5-73-322(g) ... who is carrying a concealed handgun [from] enter[ing] an establishment under this section if the establishment ... places a written notice as permitted under subdivision (18) of this section ... prohibiting a person with a license to possess a concealed handgun at the physical location.¹⁶

Reading these sections together such that “no word is left void, superfluous, or insignificant,”¹⁷ I conclude that a publicly owned facility licensed to dispense alcohol may post a written notice in order to prevent individuals with enhanced concealed-carry licenses from possessing concealed firearms on the premises. According to Act 562, such a written notice is specifically effective as to “person[s] with a concealed carry endorsement under § 5-73-322(g).”¹⁸ And “the more specific prevails over the more general” when two statutes address the same subject matter.¹⁹ Thus, the authority to post a written notice supersedes an enhanced-license holder’s general privilege to carry a concealed firearm in “certain prohibited place[s],” including establishments that are licensed to dispense alcoholic beverages.²⁰ It is important to note an enhanced license *does not* entitle its holder to carry a concealed firearm in an alcohol-dispensing

¹⁴ Acts 2017, No. 562, § 6 (creating subdivision codified as Ark. Code Ann. § 5-73-322(h)(2)).

¹⁵ *Id.* at § 3 (creating subdivision codified as Ark. Code Ann. § 5-73-306(11)(A)).

¹⁶ *Id.* (creating subdivision codified as Ark. Code Ann. § 5-73-306(11)(B)).

¹⁷ *Brock*, 2009 Ark. 224 at *9, 309 S.W.3d 185-86.

¹⁸ Acts 2017, No. 562, § 3 (codified as Ark. Code Ann. § 5-73-306(11)(B)).

¹⁹ *Benton v. Gunter*, 342 Ark. 543, 546, 29 S.W.3d 719, 720-21 (2000).

²⁰ Acts 2017, No. 562, § 6 (creating subdivision codified as Ark. Code Ann. § 5-73-322(h)(2)).

establishment that has *posted a notice prohibiting handguns*.²¹ This written notice would be effective for both publicly and privately owned alcohol-dispensing establishments.²²

However, legislation concurrent with Act 562 indicates that a *privately* owned alcohol-dispensing establishment is not limited to written notices. Act 859 of 2017 further modifies § 5-73-306(11) such that facilities licensed to dispense alcohol “owned or operated by a private entity ... may provide written or verbal notification ... that carrying of a concealed handgun is prohibited.”²³ Thus, a privately owned alcohol-dispensing facility can prohibit firearms by verbal warning or written notice.

Conventional Concealed-Carry License Under Act 562

A public building or facility licensed to dispense alcohol may, by means of the same written notice, prohibit concealed firearms carried by conventional-license holders. Furthermore, although Act 562 established “privileges associated with an enhanced license to carry a concealed handgun,”²⁴ it left in place the statutory limitations on conventional concealed-carry licenses. These limitations include the prohibition on firearms in a public facility generally, including associated

²¹ See Ark. Code Ann. § 5-73-306(11)(B). Prior to Act 562, it was unnecessary for places listed at Ark. Code Ann. §§ 5-73-306(1)-(17) to post written notices in order to prevent concealed firearms on the premises. These places were simply prohibited to concealed firearms.

²² Regulations addressing firearms and alcohol do not distinguish in any way between public and private entities. And just as Act 562 authorizes an alcohol-dispensing establishment to post a written notice prohibiting handguns, the alcohol-dispensing permit itself may be “cancelled, suspended, [or] revoked” if the permittee “allowed, or knew, or reasonably should have known, that any person without a possessory or proprietary interest in the permitted outlet was in possession of a weapon on the permitted premises.” Ark. Code Ann. § 5-73-306(11); Ark. Admin. Code § 006.02.1-1.79(33). Likewise, the State Police cannot issue a concealed-carry license in the first place if the applicant “chronically or habitually use[s] an alcoholic beverage.” Ark. Admin. Code § 130.00.8-4.0(j). Finally, the concealed-carry license must be revoked if the State Police are notified “that a licensee has been found guilty or has pleaded guilty or ‘nolo contendere’ to an alcohol-related offense committed while carrying a handgun.” *Id.* at § 130.00.8-9.0(a)(3).

²³ Acts 2017, No. 859, § 6 (enacting Ark. Code Ann. § 5-73-306(19)). See also *id.* at § 4 (stating that privately owned establishments may “either place[] a written notice as permitted under subdivision (18) of this section or provide[] notice under subdivision (19) of this section ...”).

²⁴ Acts 2017, No. 562 (Title).

criminal penalties;²⁵ the prohibition on firearms in an alcohol-dispensing facility specifically (one of the places into which “[n]o license to carry a concealed handgun ... authorizes any person to carry a concealed handgun”);²⁶ and the residual authority of the “person or entity exercising control over the physical location of the place” to post a written notice prohibiting possession of concealed firearms.²⁷ In light of these statutes, it is my opinion that holders of conventional licenses may not carry a concealed firearm in a publicly owned alcohol-dispensing facility, whether or not that facility has posted a written notice under § 5-73-306(11)(B) and (18).

Question 2: Can a publicly owned building or facility where beer or light wine is consumed, as described at Ark. Code Ann. § 5-73-306(12), prohibit individuals with concealed-carry licenses (including enhanced licenses under Ark. Code Ann. § 5-73-322(g)) from possessing concealed firearms on the premises?

Yes. Act 562 treats facilities where beer or light wine is consumed identically to facilities licensed to dispense alcohol.²⁸ In my opinion, a written notice would be effective in prohibiting enhanced-license holders from possessing concealed firearms in a public building or facility where “beer or light wine is consumed on the premises.”²⁹ And conventional-license holders could not possess a concealed firearm in such a facility, with or without a written notice.³⁰

Act 562 splits subsection 306(12) into subparts, just as it did with subsection 306(11). The first part of subsection 306(12) states that a conventional concealed-carry license does not “authorize[] any person to carry a concealed handgun into

²⁵ Ark. Code Ann. § 5-73-122.

²⁶ Ark. Code Ann. § 5-73-306(11)(A); *but see id.* at § 306(11)(B) (regarding the necessity of a written notice to prohibit concealed firearms carried by holders of an enhanced license).

²⁷ *Id.* at § 306(18).

²⁸ Ark. Code Ann. § 5-73-306(12) pertains to “portion[s] of an establishment, *except a restaurant as defined in § 3-5-1202*, where beer or light wine is consumed on the premises... .” (emphasis added). Reference in this opinion to establishments where beer or light wine is consumed on the premises specifically excludes all “restaurant[s] as defined in § 3-5-1202.”

²⁹ *See id.* at § 306(12)(A).

³⁰ *Id.*

... an establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises.”³¹ And Act 562 specifically adds the following to the second part of subsection 306(12):

A person with a concealed carry endorsement under § 5-73-322(g) and who is carrying a concealed handgun may not enter an establishment under this section if the establishment places a written notice as permitted under subdivision (18) of this section prohibiting a person with a license to possess a concealed handgun at the physical location.³²

Thus, a written notice posted in an establishment where beer or light wine is consumed would deny entry to “[a] person with a concealed carry endorsement under § 5-73-322(g) who is carrying a concealed handgun.”³³ A written notice would likewise prohibit holders of a conventional concealed-carry license from entering the premises with a concealed firearm.³⁴ The authority to post written notices applies regardless of whether the establishment has public or private ownership.³⁵

Sincerely,



LESLIE RUTLEDGE
Attorney General

³¹ Acts 2017, No. 562, § 3 (enacting Ark. Code Ann. § 5-73-306(12)(A)).

³² Acts 2017, No. 562, § 3 (enacting Ark. Code Ann. § 5-73-306(12)(B)).

³³ *Id.*; see also n.15 and accompanying text, *supra*.

³⁴ See Ark. Code Ann. § 5-73-306(18); *cf. id.* at § 306(12)(A) (“No license to carry a concealed handgun ... authorizes any person to carry a concealed handgun into ... [a]ny portion of an establishment ... where beer or light wine is consumed on the premises.”).

³⁵ *Id.* at §§ 306(12)(A), (18); see also Acts 2017, No. 859, § 4 (stating that private establishments under subsection 306(12) may provide written or “verbal notification ... that carrying of a concealed handgun is prohibited.”) (enacting Ark. Code Ann. § 5-73-306(19)).