



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>September 2, 2016</p>	<p>No. I16-009 (R15-024)</p> <p>Re: Private schools and POST certified employees gun carry law</p>
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To: Steven B. Yarbrough
Arizona State Senate

Questions Presented

1. Is there any state law or other prohibition that prevents private schools from permitting trained firearm handling persons who are not POST certified school employees from carrying concealed weapons on campus?
2. Are private schools in Arizona permitted to have firearms secured on campus which are available only to trained firearm handling non POST certified employees?

Summary Answer¹

1. State and federal law do not prohibit an individual that holds an Arizona Concealed Carry Weapons Permit from carrying a concealed handgun on private school grounds

¹ This opinion is limited to the question whether private schools may permit firearms on campus. It does not consider the extent to which such schools may choose to bar firearms as an exercise of their private property rights. *See e.g. GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1264 (11th Cir. 2012) (“Quite simply, there is no constitutional infirmity when a private property owner exercises his, her, or its—in the case of a place of worship—right to control who may enter, and whether that invited guest can be armed.”).

in Arizona. Additionally, State and federal law permit individuals to possess firearms in school zones for use in a program approved by the private school.

2. Yes. Private schools in Arizona may have firearms secured on campus.

Background

From its adoption, Arizona's Constitution has explicitly recognized the individual right to armed self-defense. Ariz. Const. art. 2, § 26 ("The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired . . ."). Indeed, the Arizona Constitutional Convention rejected a provision stating that "[t]he Legislature shall have the power to regulate the wearing of arms to prevent crime," indicating that the drafters intended a robust individual right to carry free from the Legislature's infringement. John S. Goff, ed., *The Records of the Arizona Constitutional Convention of 1910* 678–79 (1991). Still, prior to 1994, the general public was prohibited from carrying a concealed weapon in Arizona. *See State v. Moerman*, 182 Ariz. 255, 259 (App. 1994) (discussing the history of Arizona's restriction of concealed carry). Peace officers, regulated by the Arizona Peace Officer Standards and Training Board (POST), who are POST certified have been exempt from this regulation. *See Arizona Revised Statutes (A.R.S.) § 41-1822; Arizona Administrative Code (A.A.C.) R13-4-101, et seq.* (2016). Permitted concealed carry for the general public was enacted as A.R.S. § 13-3112, in response to appellate decisions upholding convictions against process servers who were carrying concealed weapons for protection on the job. *See Moerman*, 182 Ariz. At 259; *Dano v. Collins*, 166 Ariz. 322, 324 (App. 1990). Between 1994 and 2010, Arizona citizens who wanted to carry a concealed weapon were required to obtain a Concealed Carry Weapons Permit ("CCW"). In 2010, the Arizona Legislature passed legislation known as "constitutional carry," allowing all individuals who have open carry firearm rights the freedom to carry concealed even without an

Arizona CCW. *See* 2010 Ariz. Sess. Laws ch. 59. Although State law allows individuals to carry concealed without a permit, Arizona continues to offer CCWs.² Licensure provides certain benefits to the individual, including reciprocity for concealed carry with other states. Per the Arizona Department of Public Safety, as of June 26, 2016, there were 273,186 active CCWs. Ariz. Dep’t of Public Safety, *Statistics: Concealed Weapons Permits*, available at azdps.gov/services/concealed_weapons/statistics/ (last visited July 1, 2016).

The Federal Gun Free School Zones Act (“GFSZA”) makes it unlawful for “any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe is a school zone.” 18 U.S.C. § 922(q)(2)(A). The GFSZA does not distinguish between private and public schools and defines a school zone as either “in or on the grounds of a public, parochial or private school” or “within a distance of 1,000 from the grounds of a public, parochial or private school.” *Id.* at (a)(25). The GFSZA’s prohibition against knowingly possessing a firearm in a school zone does not apply to the possession of a firearm “if the individual possessing the firearm is licensed to do so by the State in which the school zone is located . . . and the law of the State . . . requires that, before an individual obtains such a license, the law enforcement authorities of the State . . . verify that the individual is qualified under law to receive the license.” *Id.* at (q)(2)(B)(ii). Finally, the GFSZA’s prohibition against knowingly possessing a firearm in

² Among other criteria, eligible applicants for an Arizona CCW must be twenty-one years of age or older (with some exceptions for nineteen and twenty year olds with military service), must not be under indictment for a felony offense, must not be a felon (with some exceptions for the conviction being set aside), must not suffer from mental illness, must not be a prohibited possessor pursuant to A.R.S. § 13-3101(A)(7), and must complete a firearms safety training program pursuant to A.R.S. § 13-3112(N). Ariz. Dep’t of Public Safety, *Obtain A New Concealed Weapons Permit*, available at azdps.gov/services/concealed_weapons/permits/obtain/ (last visited July 1, 2016).

a school zone also does not apply to possession of a firearm “by an individual for use in a program approved by a school in the school zone.” *Id.* at (q)(2)(B)(iv).

Under Arizona law, a person commits “misconduct involving weapons” by knowingly “possessing a deadly weapon on school grounds.” A.R.S. § 13-3102(A)(12). As with the GFSZA, “school grounds” under this statute includes private schools. *See* A.R.S. § 13-3102(N)(4) (defining school as “a public or nonpublic kindergarten program, common school or high school” and school grounds as “in, or on the grounds of, a school”). Arizona law also includes exemptions for “[a] person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States,” *Id.* at 3102(C)(4), and possession of a “firearm for use on the school grounds in a program approved by a school,”³ *Id.* at 3102(I)(2).

Analysis

1. Arizona CCW permittees are not legally prohibited from carrying a concealed handgun on private school grounds in Arizona. Individuals may also carry a firearm under a program approved by a private school.

With regard to federal law, the GFSZA exempts individuals “licensed . . . by the State” from the blanket prohibition of knowing possession of a firearm in school zones. *Id.* at (q)(2)(B)(ii). The meaning of “licensed” possession in the GFSZA is not explicitly defined in the statute, but that term includes both POST certification and state-issued CCWs if “the law of the State . . . [requires verification] that the individual is qualified under law to receive the license.” *United States v. Tait*, 202 F.3d 1320, 1324 (11th Cir. 2000). In *Tait*, the Eleventh Circuit held that a defendant’s possession of a firearm in a school zone was not subject to prosecution under the GFSZA because he held an Alabama CCW permit. *Id.* at 1323–25.

³ Separate considerations may apply to public schools. *See* A.R.S. § 15-341(A)(23) (the governing board of a public school district shall “prescribe and enforce policies and procedures that prohibit a person from carrying or possessing a weapon on school grounds unless the person is a peace officer or has obtained specific authorization from the school administrator.”).

Arizona's CCWs are only issued to applicants who are not "prohibited possessor[s] under state or federal law." A.A.C. R13-9-201(A). Accordingly, the GFSZA does not prohibit Arizona CCW permittees from carrying weapons on private school grounds.

Additionally, the GFSZA exempts firearms possessed by an individual for use in a program approved by a school. 18 U.S.C. § 922(q)(2)(B)(iv). Thus, if an Arizona private school were to initiate a program enrolling trained firearm handling persons in a program through which these persons would be allowed to carry concealed in the school zone, the GFSZA's prohibitions would not apply to those enrolled individuals.

The analysis is much the same under Arizona law. While there is a general prohibition for possessing a deadly weapon on school grounds, including private school grounds, A.R.S. § 13-3102(A)(12), those who are "licensed, authorized or permitted" to carry firearms under State or federal law are exempt, *id.* at 3102(C)(4). POST certification and an Arizona CCW are two such State permits. Accordingly, Arizona law does not prohibit CCW permittees from carrying concealed weapons on private school campuses.

Additionally, Arizona law exempts firearms possessed by an individual for use in a program approved by a school. *Id.* at 3102(I)(2). Thus, if an Arizona private school were to initiate a program enrolling trained firearm handling persons in a program through which these persons would be allowed to carry concealed on school grounds, Arizona's prohibitions would not apply to those enrolled individuals.

2. State and federal law do not prohibit the storage of firearms on private school campuses.

Nothing in federal or State law prohibits the secured storage of firearms on private school campuses in Arizona. As discussed above, federal and State prohibitions do not apply to firearms possessed for use in a program approved by a school, 18 U.S.C. at (q)(2)(B)(iv); A.R.S.

§ 13-3102(I)(2). An Arizona private school could initiate a program in which they securely store firearms on campus and provide access to trained firearm handling employees. While POST certification and CCW permitting are two forms of firearm handling training, the school's program could choose to enroll additional employees who lack those certifications.

Conclusion

Arizona CCW permittees may carry concealed firearms onto private school grounds and otherwise properly store them on school property. Individuals may also possess a firearm on private school campuses pursuant to a program approved by the school. Private schools may also securely store firearms on campus that trained firearm handling employees may access.

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