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ATTORNEY GENERAL OPINION NO. 2014- 02

The Honorable Jim Howell
State Representative, District 81
125 East Buckthorn Road
Derby, KS 67037

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act

Synopsis: The Personal and Family Protection Act (PFPA) does not prohibit a county from demanding disclosure of an employee's concealed carry licensure status in order to verify whether the employee is entitled to certain protections available only to concealed carry licensees. The PFPA does not prohibit a county from making a record of an employee's licensure status, but such record must remain confidential and may not be disclosed. A county may discipline an employee for refusing to disclose his or her licensure status for the purpose of determining whether the employee may lawfully carry a concealed handgun into the employee's work place. Lastly, it is unlikely that a Kansas or federal court would recognize a county employee's claim for discrimination on the basis of concealed carry licensure status. Cited herein: K.S.A. 44-1001; 44-1111; 44-1125; 45-215; K.S.A. 2013 Supp. 45-221; 75-7c01; 75-7c06; K.S.A. 2012 Supp. 75-7c10; K.S.A. 2013 Supp. 75-7c10; 75-7c17; 75-7c20; 75-6102; 42 U.S.C. § 1983; 42 U.S.C. § 2000e-2; 42 U.S.C. § 12112.

* * *

Dear Representative Howell:

As State Representative for the 81st District, you ask our opinion concerning guidance that Sedgwick County has provided to supervisors of county employees regarding County Policy No. 4.505, which was amended following the passage of 2013 Senate

Substitute for House Bill 2052.¹ That bill amended various provisions of the Personal and Family Protection Act (PFPA),² commonly known as the concealed carry law.

You quote such guidance as stating:

Supervisors have the right to inquire as to whether their employees are carrying a handgun in the workplace or whether they intend to carry a handgun in the workplace. Supervisors may ask to see the employee's license and document the license status in the employee's personnel records. No copies of the licenses shall be made or maintained by the County. Supervisors may ask employees to show the license on an annual basis.

We address your questions in order.

1. *May a county require its employees to disclose their concealed carry licensure status?*

In our opinion, the answer is yes. K.S.A. 2012 Supp. 75-7c10(b)(1) allowed any public employer to restrict or prohibit by personnel policies a county employee licensed under the PFPA from carrying a concealed handgun while on the premises of the employer's business or while engaged in the duties of the person's employment. However, following the amendments to that statute during the 2013 legislative session, the ability of a public employer to restrict or prohibit concealed carry by employees is now "[s]ubject to the provisions of K.S.A. 75-7c20, and amendments thereto."³ K.S.A. 2013 Supp. 75-7c20(c) states:

No state agency or municipality⁴ shall prohibit an employee who is licensed to carry a concealed handgun under the provisions of the personal and family protection act from carrying such concealed handgun at the employee's work place unless the building has adequate security measures⁵ and the building is conspicuously posted in accordance with K.S.A. 75-7c10, and amendments thereto.

Thus, K.S.A. 2013 Supp. 75-7c10(b)(1) and 75-7c20(c) allow a county to restrict or prohibit by personnel policies an employee licensed under the PFPA from carrying a

¹ L. 2013, Ch. 105.

² K.S.A. 2013 Supp. 75-7c01 *et seq.*

³ K.S.A. 2013 Supp. 75-7c10(b)(1).

⁴ "The terms 'municipality' and 'municipal' are interchangeable and have the same meaning as the term 'municipality' is defined in K.S.A 75-6102, and amendments thereto, but does not include school districts." K.S.A. 2013 Supp. 75-7c20(l)(2).

⁵ "Adequate security measures' means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public." K.S.A. 2013 Supp. 75-7c20(l)(1).

concealed handgun into that employee's work place *only if* the building has adequate security measures and is posted as prohibiting concealed carry.

Additionally, notwithstanding any personnel policies prohibiting the carry of concealed handguns into a county building, it is not a violation of the *PFPA* for a county employee licensed under the *PFPA* to carry a concealed handgun into a county building that provides adequate security measures and is posted as prohibiting concealed handguns so long as that employee possesses a valid concealed carry license and enters through a restricted access entrance.⁶

These new protections for concealed carry apply *only* to state or municipal employees who are licensed to carry concealed handguns. By contrast, a public employee who is *not* licensed to carry concealed handguns may be prohibited by personnel policies from carrying a concealed handgun into the employee's workplace, regardless of whether the building is posted as prohibited concealed carry and whether adequate security measures exist to ensure that no weapons enter the building.⁷

Practically speaking, if a county discovered that one of its employees had carried a concealed handgun into that employee's work place in violation of personnel policies, there would be no way for the county to determine whether that employee was lawfully carrying such handgun without verifying that the employee possesses a current concealed carry license. In our opinion, the *PFPA* does not prohibit a municipality from demanding proof that an employee is authorized to carry a concealed handgun into that employee's workplace by requiring the employee to show his or her concealed carry license.

Records related to persons licensed to carry concealed handguns are confidential and may not be disclosed pursuant to the Kansas Open Records Act (*KORA*),⁸ but such protections only govern the disclosure of such information by a *public agency*.⁹ There is no language in the *PFPA* that grants a concealed carry licensee the right to refuse to disclose his or her licensure status to a public agency employer.

2. *If a county employee discloses that employee's concealed carry license status, may the county maintain a record of the employee's status?*

The *PFPA* does not prohibit a county from creating or maintaining a record related to employees licensed to carry concealed handguns. However, if a county chooses to

⁶ K.S.A. 2013 Supp. 75-7c20(d).

⁷ K.S.A. 2013 Supp. 75-7c10(b)(1).

⁸ K.S.A. 2013 Supp. 75-7c06(b). The Kansas Open Records Act may be found at K.S.A. 45-215 *et seq.*

⁹ See K.S.A. 2013 Supp. 45-221(a)(53) ("Except to the extent otherwise required by law, a public agency shall not be required to disclose . . . Records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 75-7c01 *et seq.*, and amendments thereto, shall not be disclosed unless otherwise required by law.").

create a record of the concealed carry licensure status of an employee, such record may not be disclosed pursuant to the KORA. Further, a person who discloses such record may be subject to criminal charges.¹⁰

3. *If a county employee refuses to disclose that employee's concealed carry licensure status, may the county discipline the employee?*

There is nothing in the PFFA that would protect a county employee from discipline for refusal to disclose his or her concealed carry licensure status. As noted above, the PFFA does not grant concealed carry licensees the right to refuse to disclose their licensure status. Thus, in our opinion, a county employee may be disciplined for refusing to disclose his or her concealed carry licensure status when the disclosure is requested by the county for the purpose of determining whether the employee is authorized to carry a concealed handgun into that employee's work place.

4. *Is there a legal remedy for a county employee who feels discriminated against based on his or her concealed carry licensure status?*

Whether a legal remedy exists for a particular employee depends on the facts of that individual case. However, generally speaking we do not believe that either Kansas or federal law would recognize a claim for discrimination based solely on concealed carry licensure status.

"Kansas historically adheres to the employment-at-will doctrine, which holds that employees and employers may terminate an employment relationship at any time, for any reason, unless there is an express or implied contract governing the employment's duration."¹¹ There are statutory exceptions to the at-will employment rule, including the Kansas Act Against Discrimination,¹² the Kansas Age Discrimination in Employment Act,¹³ and statutes prohibiting discrimination against military personnel.¹⁴ None of these laws apply to concealed carry licensure status.

In addition, the Kansas Supreme Court has identified four exceptions to the rule that an employee may be terminated at will, all of which have been determined by the Court to be "in contravention of recognized state public policy."¹⁵ An employer may not discharge an employee in retaliation for filing a workers compensation claim,¹⁶ whistleblowing,¹⁷ filing a claim under the Federal Employers Liability Act,¹⁸ or exercising a public employee's First Amendment right to free speech on an issue of public concern.¹⁹ None

¹⁰ K.S.A. 2013 Supp. 75-7c06(b).

¹¹ *Campbell v. Husky Hogs, L.L.C.*, 292 Kan. 225, 227 (2011).

¹² K.S.A. 44-1001 *et seq.*

¹³ K.S.A. 44-1111 *et seq.*

¹⁴ K.S.A. 44-1125 *et seq.*

¹⁵ 292 Kan. at 228.

¹⁶ *Anco Constr. Co., Ltd. v. Freeman*, 236 Kan. 626 (1985).

¹⁷ *Palmer v. Brown*, 242 Kan. 893 (1988).

¹⁸ *Hysten v. Burlington Northern Santa Fe Ry. Co.*, 277 Kan. 551 (2004).

¹⁹ *Larson v. Ruskowitz*, 252 Kan. 963 (1993).

of these exceptions apply to an employee who feels discriminated against by virtue of his or her concealed carry licensure status.

Federal equal employment opportunity laws prohibit a county from discriminating against an employee on the basis of the employee's race, color, religion, sex or national origin,²⁰ or on the basis of disability.²¹ Concealed carry licensure status does not fit into any of those categories.

Federal law also prohibits a county from depriving a county employee of "any rights, privileges or immunities secured by the Constitution and laws"²² We have previously opined that an equal protection claim against a county for allowing concealed carry into some polling places but not others would be unlikely to succeed because no court has yet recognized concealed carry licensees as a suspect class, or recognized concealed carry as a fundamental right.²³ For the same reasons, it is our opinion that an equal protection claim under 42 U.S.C. § 1983 also would be unsuccessful.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
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DS:AA:SF:sb

²⁰ 42 U.S.C. § 2000e-2.

²¹ 42 U.S.C. § 12112.

²² 42 U.S.C. § 1983.

²³ Attorney General Opinion No. 2013-20.