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September 20, 2016

ATTORNEY GENERAL OPINION NO. 2016-15

Dr. Blake Flanders
President and CEO
Kansas Board of Regents
1000 SW Jackson, Suite 250
Topeka, KS 66612

Re: State Departments; Public Officers and Employees–Firearms–Personal and Family Protection Act; Restrictions on Carrying Concealed Handgun; Concealed Handguns in Public Buildings and Areas; Authorization for Restricted Access Entrances

Synopsis: A state university may not ban concealed carry within a university building by designating the entire building as a restricted access building. The Personal and Family Protection Act (PFPA) only allows employees and persons who obtain authorization pursuant to K.S.A. 2016 Supp. 75-7c20(d)(2)(A) through (C) to enter a state or municipal building through a restricted access entrance without passing through security measures at public entrances. A state university may adopt rules governing the manner in which concealed handguns are carried within university buildings. Cited herein: K.S.A. 2015 Supp. 75-7c20; K.S.A. 2016 Supp. 75-7c01; 75-7c10; 75-7c17; 75-7c20; K.A.R. 16-11-7.

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Dear Dr. Flanders:

As the President and CEO of the Kansas Board of Regents, you ask our opinion on two questions concerning the Personal and Family Protection Act (PFPA),[1] commonly

[1] K.S.A. 2016 Supp. 75-7c01 *et seq*.

known as the Kansas concealed carry law. In particular, you ask about the impact of 2016 House Bill 2502 (HB 2502),[2] which amended various provisions of the PFPA.

Your questions are as follows:

1. Do Kansas concealed carry laws, including 2016 HB 2502, permit a state university to adopt and enforce a policy of prohibiting concealed carry in a building or area of a building that is considered and treated as restricted access and wherein entry is only permitted to individuals who have been preauthorized to enter such restricted buildings or restricted areas of buildings (such as dorms, labs or class rooms) using a university issued ID card, key, keycode, swipe card, or other similar device? If so, may that prohibition be adopted based upon possession of such security devices such as keys, swipe cards, etc., without requiring that each such individual also go through the pre-screening procedures set forth in 2016 HB 2052(d)(2)(A)-(C)?

2. Do Kansas concealed carry laws, including 2016 HB 2502, permit a state university to adopt and enforce policies designed to promote safety by preventing accidental discharge when carrying concealed? For example, may a university impose a requirement that persons keep their weapons in a holster while carrying concealed, require semiautomatic handguns to be carried without a chambered round of ammunition, require that those carrying a concealed carry revolver do so with the hammer resting on an empty cylinder, require that any safety mechanism existing on the weapon [be] engaged, etc.?

Before we address your questions, we begin with some background on the PFPA. K.S.A. 2016 Supp. 75-7c20(a) and (b) establish the general rules concerning concealed carry inside state buildings or public areas of such buildings:

> (a) The carrying of a concealed handgun shall not be prohibited in any public area of any state or municipal building unless such public area has adequate security measures to ensure that no weapons are permitted to be carried into such public area and the public area is conspicuously posted with either permanent or temporary signage approved by the governing body, or the chief administrative officer, if no governing body exists, in accordance with K.S.A. 2015 Supp. 75-7c10, and amendments thereto.
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> (b) The carrying of a concealed handgun shall not be prohibited throughout any state or municipal building in its entirety unless such building has adequate security measures at all public access entrances to ensure that no weapons are permitted to be carried into such building and

[2] L. 2016, Ch. 86.

> the building is conspicuously posted in accordance with K.S.A. 2015 Supp. 75-7c10, and amendments thereto.

In other words, concealed carry generally must be allowed inside a state or municipal building, or any public area within the building, unless the building provides adequate security measures[3] at public entrances and signs are posted indicating that concealed carry is not permitted in the entire building or a public area of the building. State university buildings that are owned or leased by the state university are considered "state or municipal buildings" for the purposes of the PFPA.[4]

The PFPA allows a state university to exempt a university building from the provisions of K.S.A. 2016 Supp. 75-7c20 until July 1, 2017.[5] During an exemption period, a state university may prohibit concealed carry inside a building simply by posting certain signage at all exterior entrances to the building.[6] After the exemption period expires, the building is required to comply with K.S.A. 2016 Supp. 75-7c20.

Your first question centers on the 2016 amendments to the PFPA. Prior to the enactment of HB 2502, K.S.A. 2015 Supp. 75-7c20(d) allowed "authorized personnel" to carry a concealed handgun into a state or municipal building with adequate security measures so long as that person entered through a "restricted access entrance."[7] The term "authorized personnel" was not defined at that time, but "restricted access entrance" was defined as "an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel."[8] Under this provision, an employee could bypass security measures at the public entrance to the building and carry a concealed handgun into the building through a restricted access entrance. Adequate security measures are not required to be installed at restricted access entrances.[9]

The first part of your first question asks whether concealed carry may be banned within an entire building, or public area thereof, simply by designating the building or area as "restricted access." In our opinion, the answer is no. As noted above, K.S.A. 2016 Supp. 75-7c20(a) and (b) state that concealed carry may not be banned inside a state or

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[3] The PFPA defines "adequate security measures" as "the use of electronic equipment and armed personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, or any public area thereof, 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 or public area by members of the public." K.S.A. 2016 Supp. 75-7c20(m)(1). Prior to July 1, 2016, security personnel were not required to be armed. *See* K.S.A. 2015 Supp. 75-7c20(m)(1).

[4] K.S.A. 2016 Supp. 75-7c20(m)(7)(A) ("'State or municipal building' means a building owned or leased by such public entity").

[5] K.S.A. 2016 Supp. 75-7c20(j)(5).

[6] K.S.A. 2016 Supp. 75-7c10(a). *See also* K.A.R. 16-11-7.

[7] "It shall not be a violation of the [PFPA] for a person to carry a concealed handgun into a state or municipal building so long as that person has authority to enter through a restricted access entrance into such building which provides adequate security measures." K.S.A. 2015 Supp. 75-7c20(d).

[8] K.S.A. 2015 Supp. 75-7c20(m)(3).

[9] K.S.A. 2016 Supp. 75-7c20(m)(1).

municipal building, or within in public area of such building, unless adequate security measures are in place at all public entrances and the building or public area is posted as prohibiting concealed carry. The only other means by which concealed carry may be banned within a state or municipal building in its entirety is through the exercise of an exemption period, or if K.S.A. 2016 Supp. 75-7c20 expressly does not apply to the building or portion thereof.[10] Simply designating a building or public area thereof as "restricted access" is not enough to authorize a state agency to prohibit concealed carry within that building or public area and would appear to be squarely contrary to the legislature's intent.

The second part of your first question concerns the new screening procedure created by HB 2502, which allows a public entity to authorize a person, who is *not* an employee of that public entity, to bypass adequate security measures at public entrances to the building and instead enter through a restricted access entrance. This new language, now found in K.S.A. 2016 Supp. 75-7c20(d), states in relevant part:

> (2) Any person, who is not an employee of the state or a municipality and is not otherwise authorized to enter a state or municipal building through a restricted access entrance, shall be authorized to enter through a restricted access entrance, provided such person:
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> (A) Is authorized by the chief law enforcement officer, governing body, or the chief administrative officer, if no governing body exists, to enter such state or municipal building through a restricted access entrance;
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> (B) is issued an identification card by the chief law enforcement officer, governing body, or the chief administrative officer, if no governing body exists, which includes such person's photograph, name and any other identifying information deemed necessary by the issuing entity, and which states on the identification card that such person is authorized to enter such building through a restricted access entrance; and
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> (C) executes an affidavit or other notarized statement that such person acknowledges that certain firearms and weapons may be prohibited in such building and that violating any such regulations may result in the revocation of such person's authority to enter such building through a restricted access entrance. . . .

In the interest of brevity, we will refer to the procedure described in these paragraphs as the "screening process." A person authorized through this screening process to enter a state or municipal building through a restricted access entrance may avoid security measures otherwise required for public visitors to the building. However, "[s]uch

[10] *See* K.S.A. 2016 Supp. 75-7c20(g), (h) and (k). Secure areas of a corrections facility, jail facility or law enforcement agency; courtrooms and ancillary courtrooms; and buildings located on the grounds of the Kansas State School for the Deaf and the Kansas State School for the Blind are not required to comply with K.S.A. 2016 Supp. 75-7c20.

authorization does not permit the individual to carry a concealed weapon into a public building, which has adequate security measures . . . and which is conspicuously posted [as prohibiting concealed carry]."[11]

In addition to creating the new screening process, HB 2502 added a definition of "authorized personnel" to clarify who is eligible to use a restricted access entrance. As noted above, previously that term was not defined by the PFPA. HB 2502 defined "authorized personnel" as follows: "*employees of a state agency . . . and any person granted authorization pursuant to [the screening process],* who are authorized to enter a state or municipal building through a restricted access entrance."[12]

Your question focuses on the following language of K.S.A. 2016 Supp. 75-7c20(d)(2):

> Any person, who is not an employee of the state or a municipality *and is not otherwise authorized* to enter a state or municipal building through a restricted access entrance, shall be authorized to enter through a restricted access entrance, provided such person [is authorized via the screening process].[13]

In your letter, you suggest that the legislature's inclusion of the phrase "not otherwise authorized" indicates that a person may be authorized to enter through a restricted access entrance even if that person is *not* an employee of the public agency or authorized via the new screening process. In other words, you suggest that HB 2502 created *three* categories of persons who may be authorized to use a restricted access entrance: employees; persons granted authorization under the screening process; and those persons who are "otherwise authorized." Concerning the third, "otherwise authorized" category of persons, you further ask, "how and by whom may such authorization be conferred?"

To answer your question, we consider the plain language of K.S.A. 2016 Supp. 75-7c20. Our analysis is guided by the rules of statutory interpretation:

> The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it. . . . However, even if the language of the statute is clear, we must still consider various provisions of an act in pari materia with a view of reconciling and bringing those provisions into workable harmony if possible. Additionally, we must construe statutes to avoid unreasonable or

[11] K.S.A. 2016 Supp. 75-7c20(d)(2).
[12] K.S.A. 2016 Supp. 75-7c20(m)(2) (emphasis added).
[13] Emphasis added.

> absurd results, and we presume the legislature does not intend to enact useless or meaningless legislation.[14]

Reading the provisions of K.S.A. 2016 Supp. 75-7c20(d)(2) together with the other provisions of the PFPA, we believe the meaning of "otherwise authorized" is clear. Instead of creating a third category of persons eligible to use a restricted access entrance, we believe it merely refers to persons who have already received authorization under the new screening process. We reach this conclusion for two reasons.

First, the unambiguous definitions of "restricted access entrance" and "authorized personnel" make it clear that for the purposes of the PFPA, only "employees of a state agency . . . and any person granted authorization pursuant to [the screening process]" are eligible to bypass adequate security measures at public entrances to a building. Neither of those definitions expressly refers to, or implies, a third category of "otherwise authorized" persons. To read a third category into those definitions would be to "read into a statute something not readily found in it," in contravention of the rules of statutory interpretation.[15]

Second, creating a third category of persons eligible to bypass security measures, without establishing rules for determining which persons qualify for that category, would be inconsistent with the legislative intent expressed in other provisions of the PFPA. The PFPA includes specific rules limiting the ability of state agencies to restrict or prohibit concealed carry inside a public building. The legislature has defined the types of security measures that must be in place;[16] required security personnel to be armed;[17] defined the types of weapons that such security measures must detect and restrict;[18] established a procedure for a public agency to temporarily exempt a building from the requirements of K.S.A. 2016 Supp. 75-7c20;[19] and prescribed the placement and content of signage that must be in place.[20] By doing so, the legislature removed the ability of state agencies to decide those detailed matters for themselves.

An example of this legislative trend is found within K.S.A. 2016 Supp. 75-7c20(d)(2) itself. The legislature could have authorized public agencies to develop their own screening procedures but chose instead to require the uniform process established in subsections (d)(2)(A) through (C) of that statute. Although K.S.A. 2016 Supp. 75-7c20(d)(2) allows a state agency "[to] develop criteria for approval of individuals . . . to enter the state or municipal building through a restricted access entrance," it also limits the criteria that may be used: "[a]n individual who has been issued a concealed carry

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[14] *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 918 (2013), quoting *Stewart Title of the Midwest v. Reece & Nichols Realtors,* 294 Kan. 553, 564–65 (2012) (internal citations omitted).
[15] *Id*.
[16] K.S.A. 2016 Supp. 75-7c20(m)(1).
[17] K.S.A. 2016 Supp. 75-7c20(m)(1).
[18] K.S.A. 2016 Supp. 75-7c20(m)(8).
[19] K.S.A. 2016 Supp. 75-7c20(i).
[20] K.S.A. 2016 Supp. 75-7c10(j).

permit by the state of Kansas shall not be required to submit to another state and national criminal records check before issuance and renewal of such authorization."

The legislature has also declared the public policy of the state to include ensuring that "no honest, law-abiding person who qualifies under the provisions of [the PFPA] is subjectively or arbitrarily denied the person's rights."[21] In our opinion, reading K.S.A. 2016 Supp. 75-7c20(d)(2) to give public agencies carte blanche to craft their own rules as to who may bypass security measures is inconsistent with that public policy and also ignores the other provisions of the PFPA, which consistently limit the means by which public agencies may restrict concealed carry.

In short, we believe that the provisions of the PFPA, when read together, do not support an interpretation of HB 2502 that would allow a state university to create its own system of authorizing select persons to use a restricted access entrance. If a state university wishes to allow non-employees, such as students, to use a restricted access entrance, the university must require those persons to follow the screening process prescribed by K.S.A. 2016 Supp. 75-7c20(d)(2)(A) through (C).

Your second question asks whether Kansas law permits a state university to adopt rules to govern the manner of carrying a concealed handgun on campus. We believe the answer to this question is yes.

In Attorney General Opinion No. 2016-9 we considered the application of the PFPA to state medical care facilities. In that opinion, we noted:

> With respect to state facilities, K.S.A. 2015 Supp. 75-7c20 generally requires concealed carry to be allowed inside a state building unless the building is exempt or provides adequate security measures and signage. But neither the PFPA nor any other provision of law restricts the *state* government from adopting rules to govern the manner of carrying or storing a concealed handgun *once the handgun is inside a state-owned or leased building*.
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> We therefore believe that under current law, a *state* agency may regulate the carrying or storage of a concealed handgun by patients and other members of the public while inside a state facility. In the absence of a statute to the contrary, we believe the state may require, for example, that concealed handguns carried inside state facilities be holstered or unloaded, or it may prohibit patients from carrying a concealed handgun into an x-ray room. Medical personnel may also require that a patient remove a concealed handgun from his or her person before medications or procedures are provided.

[21] K.S.A. 2016 Supp. 75-7c17(a).

We believe the same analysis applies to your second question; the 2016 amendments to the PFPA do not alter our conclusion in Attorney General Opinion No. 2016-9. It is our opinion that a state university may create rules governing the manner of carrying a concealed handgun within campus buildings in the absence of a statute removing or limiting its authority to do so. However, we would caution that any such rules must be consistent with the PFPA.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Attorney General

/s/Sarah Fertig

Sarah Fertig
Assistant Attorney General

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