2015-005

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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October 7, 2015

VIA CERTIFIED MAIL

[redacted]

Re: McKelvey Park, Creation Plantation Park, and Councill School

Dear [redacted]

On August 14, 2015, my Office received your petition under Ala. Code §13A-11-61.3 regarding a possible violation of Alabama Law by the City of Dadeville and the Tallapoosa County Board of Education. Specifically, you alleged that McKelvey Park, Creation Plantation Park, and Councill Middle School have posted signs prohibiting firearms.

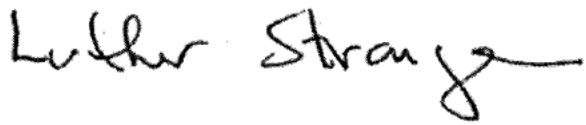
My Office's investigation confirmed that the City of Dadeville posted these signs at McKelvey Park and Creation Plantation Park. I asked the City of Dadeville to explain its legal justification for prohibiting weapons at these parks. The City reviewed a redacted copy of your petition and the relevant portions of Alabama law and agreed that the signs were not compliant with state law. My Office has confirmed that the City has removed these signs from McKelvey Park and Creation Plantation Park. Because the City of Dadeville is now compliant with Alabama law, I have determined not to bring an enforcement action under Ala. Code § 13A-11-61.3.

The investigation also confirmed that the Tallapoosa County Board of Education posted the signs at Councill Middle School and that they promulgate and enforce such firearms policies. The Tallapoosa County Board of Education relies upon Ala. Code § 16-1-24.1(a) in support of its position of "prohibiting all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrumentality on school property." They also cited Attorney General Opinion 2014-044 as it specifies that Ala. Code § 13A-11-61.3 does not modify or rescind the requirements of Ala. Code § 16-1-24.1. I have enclosed a copy of Attorney General Opinion 2014-044 for your reference. Because the Tallapoosa County Board of Education has authority

under Ala. Code § 16-1-24.1 to prohibit firearms at Councill Middle School, I have determined not to file suit.

A redacted copy of this letter will be posted to my Office's website, in compliance with the statutory requirement that I "publicly state in writing the justification for the determination not to file suit." Ala. Code § 13A-11-61.3(f)(3).

Sincerely,



Luther Strange
Attorney General

LS: alb
Enclosure

2014-044

STATE OF ALABAMA
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February 28, 2014

Honorable Alan T. Lee
Superintendent and Ex-Officio Secretary
Baldwin County Board of Education
2600 North Hand Avenue
Bay Minette, Alabama 36507

Education, Boards of – Schools – Weapons – Firearms

A policy adopted by a local school board pursuant to section 16-1-24.1(a) of the Code of Alabama must prohibit all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property.

Act 2013-283 does not modify or rescind the requirements of section 16-1-24.1(a) of the Code.

A board of education that has not previously adopted an express policy prohibiting all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property is required to do so.

Dear Superintendent Lee:

This opinion of the Attorney General is issued in response to your request on behalf of the Baldwin County Board of Education.

QUESTIONS

(1) Does section 16-1-24.1(a) of the Code of Alabama prohibit all persons except law enforcement personnel from possessing firearms on school campuses?

(2) Does Act 2013-283 modify or rescind the requirements of section 16-1-24.1(a) of the Code?

(3) May a board of education that has not previously adopted an express policy prohibiting firearms enact such a policy pursuant to section 16-1-24.1(a) of the Code?

FACTS AND ANALYSIS

According to your request, the Baldwin County Board of Education ("Board") does not have an express policy prohibiting weapons on school campuses. The Board is now considering the adoption of such a policy but questions whether Act 2013-283 ("Act"), effective August 1, 2013, prohibits it from doing so.

Section 7(a) of the Act states as follows:

> The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitutions of the State of Alabama and the United States. This section is to be liberally construed to accomplish its purpose.

2013 Ala. Acts No. 2013-283, § 7(a).

Despite this sweeping declaration, the Act is replete with exceptions for gun prohibition where firearms are otherwise prohibited by state or federal statute. For instance, section 2 of the Act, amending section 13A-11-73 of the Code, includes the language "except as otherwise prohibited by law. . . ." *Id.* at § 2. Similarly, the amendments in the Act to section 13A-11-75 of the Code contain the proviso "except as otherwise provided by the laws of this state . . . ." *Id.* Section 6 of the Act states that "in addition to any other place limited or prohibited by state or federal law . . . ." *Id.* at § 6(a). Section 6 also states that "[n]othing in this section shall be construed to authorize the carrying or possession of a firearm where prohibited by federal law." *Id.* at §6(h).

As with other provisions of the Act, section 7, wherein the Legislature expressed its intent to preempt local gun regulation, also evidences the recognition by the Legislature of the statutory authority of other entities to

regulate and prohibit gun possession. Section 7(c) of the Act states the following:

> ***Except as otherwise provided in this act or as expressly authorized by a statute of this state***, the Legislature hereby occupies and preempts the entire field of regulation in this state touching in any way upon firearms, ammunition, and firearm accessories to the complete exclusion of any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.

Id. at § 7(c) (emphasis added).

Additionally, section 7(g) provides that "[t]his section shall not be construed to prevent . . . [a]ny official of a political subdivision, a sheriff, or other law enforcement officer with appropriate authority and jurisdiction from enforcing any law enacted by the legislature." *Id.* at § 7(g).

Thus, if the Board is expressly authorized by a statute of this state to adopt a policy prohibiting weapons on school campuses, it may do so. Alternatively, if the Board, by enacting such a policy, is merely enforcing a law enacted by the Legislature, then it may do so without running afoul of the Act.

Section 16-1-24.1(a) of the Code states as follows:

> The Legislature finds a compelling public interest in ensuring that schools are made safe and drug-free for all students and school employees. The Legislature finds the need for a comprehensive safe school and drug-free school policy to be adopted by the State Board of Education. This policy should establish minimum standards for classes of offenses and prescribe uniform minimum procedures and penalties for those who violate the policies. It is the intent of the Legislature that our schools remain safe and drug-free for all students and school employees. The State Board of Education shall adopt and all local boards of education shall uniformly enforce policies that protect all students and school employees. ***The State Board of Education shall require local school systems to modify their policies, practices or procedures so as to ensure a safe school environment free of illegal drugs, alcohol, or weapons.*** Any rules and regulations adopted by the State Board of Education pursuant to this section shall be exempt from Section 41-22-3(3). ***These***

> ***modifications shall include the formulation of a discipline plan setting forth policies, practices, and procedures dealing with students or other persons who bring illegal drugs, alcohol, or weapons on a school campus.*** The discipline plan shall also include uniform drug-free school policies with uniform penalties.

ALA. CODE § 16-1-24.1(a) (2012) (emphasis added). In interpreting this statute, this Office has stated that ***"[s]ection 16-1-24.1 mandates that local school boards*** maintain a discipline plan, as well as policies, practices, or procedures, to ***ensure a safe school environment free of illegal drugs, alcohol, or weapons***." Opinion to Honorable R. Scott Lewis, Attorney, Baldwin County Board of Education, dated January 31, 2006, A.G. No. 2006-046 at 4 (emphasis added).

Additionally, and in conformity with this legislative mandate, the Alabama State Board of Education has promulgated rules that state, in part, the following:

> Effective with the 1995-96 school year and thereafter, ***local boards of education must***:
>
> . . .
>
> ***Adopt and enforce a uniform policy prohibiting <u>all persons</u>***, other than authorized law enforcement personnel, ***from bringing or possessing any deadly weapon or dangerous instrument on school property*** and prescribing specific penalties for students and school personnel who violate this policy, notwithstanding any criminal penalties which may also be imposed.

ALA. ADMIN CODE r. 290-3-1-.02(1)(b)3 (emphasis added). *See Lambert v. Escambia County Bd. of Educ.*, No. 2120350, 2013 WL 5583739, *cert. pending* (Ala. Civ. App. 2013) (local school boards are required to regulate any unauthorized firearm on school property).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002); *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993); opinion to Honorable Ryan deGraffenried, Jr., Member, Alabama State Legislature, dated February 19, 1993, A.G. No. 93-00112 at 5. "The court looks for the legislative intent in the language of the act; that language may be explained; it cannot be detracted from or added to." *Ala. Indus. Bank v. State ex rel. Avinger*, 286 Ala. 59, 62, 237 So.

2d 108, 110 (1970); *May v. Head*, 96 So. 869, 870 (Ala. 1923). Where a statutory pronouncement is distinct and unequivocal, there remains no room for judicial construction, and the clearly expressed intent of the Legislature must be given effect. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985); *Dumas Bros. Mfg. Co. v. S. Guar. Ins. Co.*, 431 So. 2d 534, 536 (Ala. 1983).

In ascertaining a dubious legislative intent, great weight should be given to the practical effect that a proposed construction will involve. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951); *Worthen v. State*, 189 Ala. 395, 411, 66 So. 686, 691 (1914).

Applying these principles, although it is clear that the Legislature intended to assume "complete control over regulation and policy pertaining to firearms" [2013 Ala. Acts No. 2013-283, § 7(a)], it is just as clear that the Legislature intended to exempt from its oversight areas where firearm regulation is "otherwise provided by a statute of this state" [*id.* at § 7(c)]. The Act does not repeal, modify, or rescind section 16-1-24.1 of the Code. The implied repeal of a statute by another statute is not favored by the courts and will be found only when the two statutes are so repugnant to, or in such conflict with, one another that it is obvious that the Legislature intended to repeal the first statute. *Anniston Urologic Assocs., P.C. v. Kline*, 689 So. 2d 54, 59 (Ala. 1997). Accordingly, it is the opinion of this Office that section 16-1-24.1 continues to mandate that local school boards adopt and enforce "policies, practices, or procedures to ensure a safe school environment free of illegal drugs, alcohol, or weapons." *Lewis* at 4.

CONCLUSION

A policy adopted by a local school board pursuant to section 16-1-24.1(a) of the Code must prohibit all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property.

Act 2013-283 does not modify or rescind the requirements of section 16-1-24.1(a) of the Code.

A board of education that has not previously adopted an express policy prohibiting all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property is required to do so.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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