2016-041

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 20, 2016

VIA CERTIFIED MAIL

[redacted]

Re: City of Southside

Dear [redacted]

On July 7, 2016 my Office received your petition under Ala. Code §13A-11-61.3 regarding a possible violation of Alabama law by the City of Southside. Specifically, you alleged that the Southside Community Center and the City of Southside Library posted signs prohibiting firearms.

My Office's investigation confirmed that the City of Southside posted the signs. I asked the City of Southside to explain its legal justification for prohibiting weapons. The City of Southside reviewed a redacted copy of your petition and the relevant portions of Alabama law and removed these signs posted at the City of Southside Library. The City provided justification for the prohibition of weapons at the Community Center because it is not open to the public without reservation.

Please note that my Office is not addressing the signs to the extent that the Southside Community Center is opened as a polling center. My Office previously addressed the issue of guns in polling places in Opinion 2014-074. For your reference, I have enclosed a copy of the opinion.

Because the City of Southside is compliant with Alabama law, I have determined that there is no further action required under Ala. Code § 13A-11-61.3.

A redacted copy of this letter will be posted to my Office's website, in compliance with the statutory requirement under Ala. Code § 13A-11-61.3(f)(3).

Sincerely,

Luther Strange

Luther Strange
Attorney General

LS: alb
Enclosures

2014-074

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July 7, 2014

Honorable Claud E. McCoy, Jr.
Attorney, Chambers County Commission
Johnson, Caldwell & McCoy
117 North Lanier Avenue, Suite 201
Lanett, Alabama 36863

Polling Places – Firearms – County Commissions – Elections

The Chambers County Commission does not have the authority to prohibit firearms at all polling places.

The designation of a location as a polling place does not transform the location into a courthouse annex for purposes of section 13A-11-61.2 of the Code of Alabama.

Whether firearms may be prohibited in polling places depends on the nature of the location. Private property owners or their authorized representative may prohibit firearms on private property being utilized as a polling place.

Dear Mr. McCoy:

This opinion of the Attorney General is issued in response to your request on behalf of the Chambers County Commission.

QUESTIONS

(1) Can the Chambers County Commission ("Commission"), as the governmental entity establishing the voting situs for state and national elections held in Chambers County, prohibit an

> individual from bringing a firearm into a polling place on election day?
>
> (2) Is a polling place, designated by the Commission, an extension of the courthouse such as to bring this situs into the prohibition enumerated in section 13A-11-61.2 of the Code?
>
> (3) Does section 13A-11-61.2 of the Code prohibit an individual from bringing a firearm into a polling place during the course of an election?

FACTS AND ANALYSIS

As set forth in your request, the Commission is charged with the duty to designate polling places in Chambers County. ALA. CODE § 17-6-4 (2006). This Office is aware that the locations designated as polling places include courthouses, schools, churches, and other privately owned buildings. At a recent election, a citizen carried a firearm into a polling place, and you request the guidance of this Office as to what authority, if any, the Commission has to prohibit firearms in polling places.

In 2013, the Alabama Legislature enacted Act 2013-283 wherein the Legislature clearly stated, as follows, its intent:

> 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), now codified in ALA. CODE § 13A-11-61.3(a) (Supp. 2013).

In your request, you specifically inquire as to whether the Commission has the authority to prohibit an individual from bringing a firearm into a polling place. This Office has previously observed that, despite the clear language of

section 7(a) of Act 2013-283, the Legislature was also clear that it recognized that firearms remain prohibited where otherwise prohibited by state and federal law. Opinion to Honorable Alan T. Lee, Superintendent and Ex-Officio Secretary, Baldwin County Board of Education, dated February 28, 2014, A.G. No. 2014-044.

The authority of the Commission to establish voting precincts and polling places appears in sections 17-6-1 through 17-6-4 of the Code. ALA. CODE §§ 17-6-1 to 17-6-4 (2006). This Office finds no authority within those statutes for the Commission to regulate firearms in polling places. Such authority, pursuant to section 7(a) of Act 2013-283, now codified in section 13A-11-61.3 of the Code, rests with the Legislature. ALA. CODE § 13A-11-61.3(a) (Supp. 2013). Accordingly, the answer to your first question is in the negative.

Your second question essentially asks whether the act of designating locations throughout the county as polling places converts each location into a courthouse annex for the day. Nothing within sections 17-6-1 through 17-6-4 of the Code supports such a conclusion. Moreover, the establishment of a courthouse annex outside the county seat requires an act of the Legislature. Opinion to Honorable Bobby Singleton, Member, Alabama State Senate, dated January 10, 2006, A.G. No. 2006-038; opinion to Honorable Robert A. Wills, Attorney, Baldwin County Commission, dated July 7, 1994, A.G. No. 94-00207. Thus, the answer to your second question is also in the negative.

Finally, your third question asks whether section 13A-11-61.2 of the Code prohibits an individual from bringing a firearm into a polling place. That section, in pertinent part, states the following:

> (a) In addition to any other place limited or prohibited by state or federal law, ***a person, including a person with a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85, may not knowingly possess or carry a firearm in any of the following places without the express permission of a person or entity with authority over the premises***:
>
> > (1) Inside the building of a police, sheriff, or highway patrol station.
> >
> > (2) Inside or on the premises of a prison, jail, halfway house, community corrections facility, or other detention facility for those who

have been charged with or convicted of a criminal or juvenile offense.

(3) Inside or on the premises of a facility which provides inpatient or custodial care of those with psychiatric, mental, or emotional disorders.

(4) ***Inside a courthouse, courthouse annex, a building in which a District Attorney's office is located, or a building in which a county commission or city council is currently having a regularly scheduled or specially called meeting.***

(5) Inside any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education, unless the person has a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85.

(6) Inside any facility hosting a professional athletic event not related to or involving firearms, unless the person has a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85.

(b) Notwithstanding the provisions of subsection (a), a person, including a person with a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85, may not, without the express permission of a person or entity with authority over the premises, knowingly possess or carry a firearm inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including, but not limited to, magnetometers, key cards, biometric screening devices, or turnstiles or other physical barriers.

> (c) The person or entity with authority over the premises set forth in subsections (a)(1)-(6) and subsection (b) shall place a notice at the public entrances of such premises or buildings alerting those entering that firearms are prohibited.

ALA. CODE § 13A-11-61.2 (Supp. 2013) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Nothing in section 13A-11-61.2 of the Code specifically prohibits firearms in polling places.

Polling sites, however, because of their everyday status, may be covered by the provisions of the statute. For instance, courthouses, courthouse annexes, and buildings in which a district attorney's office is located are specifically designated as locations where firearms are prohibited. ALA. CODE § 13A-11-61.2(a)(4) (Supp. 2013). The ordinary business conducted in courthouses and district attorney's offices generally continues on election days. The buildings wherein those activities are conducted were deemed by the Legislature to warrant specific designation as "gun free" buildings, and they do not lose their "gun free" status merely because an election is being conducted at the location.

Additionally, as this Office has recently opined, section 13A-11-61.2 of the Code recognizes that firearms may be prohibited in other locations not expressly covered therein. *Lee* at 2. School boards are required to prohibit all persons, other than authorized law enforcement officers, from possessing deadly weapons and dangerous instruments on school property. *Id.* at 5. A firearm is a deadly weapon. ALA. CODE § 13A-1-2(7) (2006). Accordingly, firearms are prohibited on school property, and the use of a school as a polling place does not alter this prohibition.

In addition to other state and federal statutory firearm prohibitions, firearms may also be prohibited in public buildings if there is compliance with subsections (b) and (c) of section 13A-11-61.2 of the Code. Specifically, firearms may be prohibited in public buildings where: (1) access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards, (2) the use of an additional security barrier, and (3) the posting of notice that firearms are prohibited. ALA. CODE § 13A-11-61.2(b)-(c) (Supp. 2013). Firearms may be prohibited in public buildings if all of these criteria are satisfied. Thus, if, during a regular business

day, firearms are prohibited in the public building being utilized as a polling place, the prohibition continues to exist during the election.

Churches and other private entities often allow their facilities to be used as polling places. These buildings and facilities are privately owned and constitute private property. Section 13A-11-52 of the Code prohibits a person from carrying a pistol on the property of another unless he or she has a valid concealed weapon permit or the consent of the owner of the premises. ALA. CODE § 13A-11-52 (Supp. 2013). This prohibition applies even when the private property has been put to some public use. *Norton v. State*, 11 Ala. App. 216, 65 So. 689 (1914), *cited in Tulley v. Jacksonville*, CR-11-1880, 2014 WL ___ (mem. op.) (Ala. Crim. App. February 28, 2014) (application for rehearing pending). Thus, a citizen carrying a pistol into a polling place without a valid pistol permit or the consent of the owner would be in violation of section 13A-11-52 of the Code. *See E.T. v. State*, 682 So. 2d 508, 509 (Ala. Crim. App. 1996).

The owners of private property may also choose to forbid firearms on their property, even if the person with the firearm has a permit. This is no less true for property that is being used as a polling place. Although the conduct of the election on private property constitutes a public function in which registered voters may participate, such fact does not convert the private property into public property that may be used however the public sees fit. *See Norton v. State*, 11 Ala. 216 (1914); opinion to Honorable Frank H. Riddick, Madison County Probate Judge, dated July 12, 1999, A.G. No. 99-00243; & ALA. CODE § 13A-7-1(4) (2006).

The owner of private premises or another authorized person may revoke the license or privilege of a person to enter or remain on private property. ALA. CODE § 13A-7-1(4) (2006). Therefore, the owner of private property who allows his or her property to be used as a polling place may personally, or by an authorized representative, prohibit firearms on the premises, even with respect to persons who have a permit.

CONCLUSION

The Chambers County Commission does not have the authority to prohibit firearms at all polling places.

The designation of a location as a polling place does not transform the location into a courthouse annex for purposes of section 13A-11-61.2 of the Code.

Whether firearms may be prohibited in polling places depends on the nature of the location. Private property owners or their authorized representative may prohibit firearms on private property being utilized as a polling place.

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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