

September 8, 2011 Advisory Letter---Concealed Handgun Carry Act

September 8, 2011

Honorable Lemuel L. Martinez
District Attorney
13th Judicial District
515 W. High Street
P.O. Box 637
Grants, NM 87020

Re: Opinion Request--Concealed Handgun Carry Act

Dear Mr. Martinez:

You have requested our advice on whether the District Attorney's Office of the Thirteenth Judicial District may prohibit the carrying of concealed handguns by persons who enter the Office's premises. You indicate that your Office is relocating from quarters in the county courthouse to a separate county building, mostly dedicated to the district attorney's functions. You state that security is a major concern and that authority to ban concealed handguns is required.

We believe that you have the authority to ban firearms generally, including concealed handguns, if you reasonably conclude that adequate and proper security requires imposing such a condition as a requirement for members of the public generally to access the District Attorney's Office and personnel or other persons located in the Office.

The Concealed Handgun Carry Act, NMSA 1978, Sections 29-19-1 to -14 (2003, as amended through 2005), is a licensing act. It provides a mechanism by which individuals may become licensed to carry concealed handguns. "Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun into or on premises where to do so would be in violation of state or federal law." See *id.* § 29-19-8(A). The Act expressly disallows concealed handguns on school and preschool premises. See *id.* § 29-19-8(B) and (C). The Act expressly invalidates a license on tribal land, unless authorized by the governing body of the tribe, and in courthouses or court facilities, unless authorized by the presiding judicial officer. See *id.* §§ 29-19-10 and -11. The Act requires the Department of Public Safety to promulgate rules that, among other things, authorize private property owners to prohibit the carrying of a concealed handgun on their property. See *id.* § 29-19-12(C).

As noted above, the Act contains a broad exception for circumstances in which the law would operate to exclude permission to carry concealed handguns. See NMSA 1978, § 29-19-8(A). We believe the proper exercise of regulatory authority by a governmental agency could come within the terms of that exception. See, *e.g.*, Rule 4.3.11.8 NMAC

(state fair commission's rules pertaining to its open air market require that all persons adhere to the state fair's rule prohibiting deadly weapons); Rule 4.3.1.19 NMAC (state fair commission's "deadly weapons prohibited" rule provides: "No person shall enter the New Mexico state fairgrounds bearing or otherwise possessing any deadly weapon, whether concealed or not"). See also Rule 8.16.2.29(l) NMAC (licensed child care centers must not allow firearms on the premises); Rule 19.5.2.20 NMAC (state parks and recreation rule prohibits park visitors from possessing firearms, including concealed firearms, with a cartridge in any portion of the mechanism except during hunting seasons or in authorized areas; excluding on duty law enforcement officials).

Additionally, New Mexico's trespass statute, as it pertains to state government land, might apply to disallow the carrying of firearms, including concealed handguns. NMSA 1978, Section 30-14-1(C) (1995) provides:

Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.[1]

In State v. McCormick, 100 N.M. 657, 674 P.2d 1117 (1984), the New Mexico Supreme Court upheld the trespass conviction of an individual who had been arrested along with several other Waste Isolation Pilot Plant protestors. The protestors had been advised that they might demonstrate but could not enter a specified buffer zone, which had been established to avoid disruption to the work area of the project's site. The protestors nonetheless entered the buffer zone and were convicted of trespassing.

The McCormick court upheld the convictions and also observed that the legislature enacted, in 1975, amendments to the trespass statute to deal specifically with trespass on lands owned by the state or any of its political subdivisions. 100 N.M. at 660. The authority and ability of the state or a political subdivision to consent to entry by others, and to establish reasonable conditions to consenting to enter, upon lands that the state or political subdivisions own is necessarily implied by the trespass statute, and the exercise of that authority may lawfully be enforced by the trespass statute. As in McCormick, where the demonstrators were permitted to occupy the government's property but under conditions disabling them from entering a buffer zone to avoid disruption to the work area, the government may, we believe, institute measures to safeguard workplace security. Conditions to consenting to entry may include security measures that the state or political subdivisions reasonably believe to be necessary for the safety and security of persons and personnel.

Counties are under a statutory duty to provide adequate quarters for the operation of the district court. See NMSA 1978, Section 34-6-24 (1988). Under this statute, the provision by the county of adequate security for the courthouse may be deemed necessary. See N.M. Att'y Gen. Op. No. 79-4 (1979). Similarly, counties are under a statutory duty to provide adequate quarters for the operation of the district attorney. See NMSA 1978, Section 36-1-8.1 (1980). By analogy, this duty includes the provision of

adequate security. In the exercise of reasonable discretion, prohibiting the carrying of firearms, including concealed handguns, could be a necessary incident of providing adequate security. In the case of courthouses specifically, the legislature recognizes that adequate security measures may include a prohibition on concealed handguns, as determined by the presiding judge. See NMSA 1978, § 29-19-11 (providing that a “concealed handgun carry license shall not be valid in a courthouse or court facility, unless authorized by the presiding judicial officer”). It does not appear unreasonable that adequate security measures for district attorney’s offices might include this prohibition as well.

To do so would be in step with federal and other state law-making bodies. For instance, 18 U.S.C. Section 930(e)(1) prohibits, with certain exceptions pertaining to law enforcement officers and members of the Armed Services, the possession of a firearm in a federal court facility. The term “Federal court facility” is defined at Section 930(g)(3), in part, as: “The courtroom, judges’ chambers, witness rooms... [and] the United States Attorney....” Pennsylvania has a similar law prohibiting the possession of firearms in court facilities, which include the district attorney’s offices. See 18 Pa. C.S. § 913(a)(1).

To summarize, we conclude that the Thirteenth Judicial District Attorney’s Office may implement reasonable security measures that include a prohibition on the carrying of firearms, including concealed handguns. As in McCormick, if members of the public are properly advised of a prohibition respecting the carrying of firearms as a condition to gain entrance to the offices of the District Attorney, the trespass statute could be used for enforcement purposes. To this end, it would be important that you, as District Attorney, have a clear understanding with Sandoval County regarding who is the “custodian” of the property for purposes of Section 30-14-1(C). If necessary, a contractual provision to that effect might be included in the District Attorney’s Office lease or other occupancy document. The Sandoval County Commission might also be requested to take the appropriate formal action in that regard.

Your request to us was for a formal Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ANDREA R. BUZZARD
Assistant Attorney General

[1] The applicable Uniform Jury Instruction concerning criminal trespass, 14-1402, provides, as elements, that the defendant entered or remained without permission and that the defendant knew or should have known that permission to enter or remain had been denied or withdrawn.