Ports -- Concealed Weapons -- Firearms

Number: AGO 2015-08

Date: April 20, 2015

Subject:
Ports -- Concealed Weapons -- Firearms

The Honorable Wayne Ivey
Brevard County Sheriff's Office
440 South Babcock Street
Melbourne, Florida 32901

Attn: Charles Ian Nash, General Counsel

RE: LAW ENFORCEMENT – PORTS – CONCEALED WEAPONS – WEAPONS – FIREARMS – whether term "concealed weapons" in statutory prohibition applies to firearms. s. 311.12, Fla. Stat.

Dear Sheriff Ivey:

You have asked for my opinion on substantially the following question:

Whether the phrase "concealed weapon" as used in section 311.12(3)(b), Florida Statutes, includes firearms.

In sum:

The phrase "concealed weapon" as used in section 311.12(3)(b), Florida Statutes, includes firearms.

You have advised this office that the Canaveral Port Authority and the Sheriff have entered into an interlocal agreement providing that seaport security services and law enforcement services will be the responsibility of the Sheriff of Brevard County. After conversations with your office, I understand your question to be whether the phrase "concealed weapon" as used in section 311.12(3)(b), Florida Statutes, includes firearms.[1] The question has arisen because the understanding of this phrase by the Sheriff's Office and the State Attorney's Office differs. The State Attorney's Office has been contacted and joins in your request for an opinion. For the reasons set forth below, it is my opinion that the phrase "concealed weapon" as it is used in section 311.12(3)(b), Florida Statutes, does include firearms.

Section 311.12, Florida Statutes, requires each seaport listed by the Legislature to adopt and maintain a security plan specific to that seaport. The plan is to provide for a secure seaport infrastructure that "promotes the safety and security of state residents and visitors and the flow of legitimate trade and travel."[2] Each of these seaport security plans must designate all secure and restricted areas "as defined by 33 C.F.R. part 105." These areas must be clearly identified

with appropriate signs and markers on the premises.[3] All persons and objects in secure and restricted areas are subject to search by sworn, state-certified law enforcement officers such as those of the Brevard County Sheriff's Office.[4]

Section 311.12(3)(b), Florida Statutes, provides:

"The seaport must provide clear notice of the prohibition against possession of concealed weapons and other contraband material on the premises of the seaport. Any person in a restricted area who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This paragraph does not apply to active-duty certified federal or state law enforcement personnel or persons so designated by the seaport director in writing."

Section 311.12, Florida Statutes, contains no definition of the phrase "concealed weapons," nor does one appear elsewhere within Chapter 311, Florida Statutes.[5] Further, the statute makes no reference to any other provision in the Florida Statutes intended by the Legislature to be used to construe section 311.12, Florida Statutes. A review of legislative history provides no direction as to the Legislature's intent in using these terms.

It is a basic rule of statutory construction that in the absence of a statutory definition, words of common usage are to be construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of a word can be ascertained by referring to a dictionary.[6] To "conceal" is "to hide, withdraw or remove from observation; cover or keep from sight"[7] or "[t]o keep from observation, discovery, or understanding."[8] A weapon is defined as: "any instrument or device for use in attack or defense in combat, fighting, or war, as a sword, rifle, or cannon"[9] or "[a]n instrument or device used to attack another or to defend oneself from attack."[10] Black's Law Dictionary defines a "weapon" as "[a]n instrument used or designed to be used to injure or kill someone" and a "concealed weapon" as "[a] weapon that is carried by a person but that is not visible by ordinary observation."[11] A "firearm" is commonly understood to be "a small arms weapon, as a rifle or pistol, from which a projectile is fired by gunpowder"[12] and "[a] weapon capable of firing a missile, esp. a pistol or rifle."[13] Thus, it appears that a common sense reading of the terms would clearly include a "firearm" within the scope of the broader term "weapon."

There is further evidence that the Legislature intended a firearm to constitute a weapon within the scope of section 311.12, Florida Statutes. The statute itself includes several references to firearms and firearms statutes. Section 311.12(1)(b), Florida Statutes, relating to security standards provides that

"[t]he provisions of s. 790.251 are not superseded, preempted, or otherwise modified in any way by the provisions of this section."

Section 790.251, Florida Statutes, is the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008" and protects the right to keep and bear arms in motor vehicles by delineating the duties of public and private employers. If firearms are not considered "weapons" within the scope of section 311.12, Florida Statutes, there would be no necessity to

establish the relationship of section 790.251.[14]

Further, section 311.12(3)(b), Florida Statutes, includes language making it clear that "[t]his paragraph does not apply to active-duty certified federal or state law enforcement personnel or persons so designated by the seaport director in writing." That is, the prohibition against possession of concealed weapons on the premises of the seaport does not apply to active duty law enforcement personnel. Common sense dictates that the reference to weapons carried by law enforcement personnel is intended to address firearms.

In sum, it is my opinion that the phrase "concealed weapon" as used in section 311.12(3)(b), Florida Statutes, includes firearms.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

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[1] As originally presented, your question is "[w]hether section 311.12(3)(b), Florida Statutes, authorizes the Sheriff and his deputies to arrest individuals for possession of concealed firearms in restricted areas of the seaport and appurtenant facilities owned and operated by the Canaveral Port Authority where the Sheriff and his deputies are lawfully acting in accordance with an agreement between the Sheriff and the Canaveral Port Authority for Seaport Security Services and Law Enforcement Services." As this office does not comment on local agreements or legislation, your question has been reframed.

[2] *See* s. 311.12(2), Fla. Stat.

[3] Section 311.12(3), Fla. Stat.

[4] Section 311.12(3)(a)2., Fla. Stat.

[5] *Compare* s. 790.001(3)(a), Fla. Stat., which defines a "[c]oncealed weapon" to mean "any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person." This statute also defines "[c]oncealed firearm" separately from a "[c]oncealed weapon," but does not exclude a firearm from inclusion within the definition. In fact, the definition of a "[f]irearm" contained in s. 790.001(6), Fla. Stat., describes a firearm as a "weapon." However, for purposes of Ch. 790, Fla. Stat., the definition of a "[w]eapon" excludes a firearm. This distinction appears to relate to the Legislature's attempt to differentiate between penalties imposed for various firearm and weapons crimes. *See e.g.,* s. 790.01, Fla. Stat. (carrying a concealed weapon is a first degree misdemeanor and carrying a concealed firearm is a third degree felony).

[6] *See Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition,

words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary); *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning).

[7] Webster's New Universal Unabridged Dictionary (2003), p. 422.

[8] The American Heritage Dictionary (office ed. 1987), p. 144.

[9] *Supra* n.7 at p. 2153

[10] *Supra* n.8 at p. 771.

[11] Black's Law Dictionary (8th ed. 2004), p. 1624.

[12] Webster's New Universal Unabridged Dictionary (2003), p. 722.

[13] The American Heritage Dictionary (office ed. 1987), p. 264

[14] Provisions enacted by the Legislature must be assumed to have some useful purpose as the Legislature is not presumed to have enacted useless or meaningless legislation. *Smith v. Piezo Technology and Professional Administrators*, 427 So. 2d 182 (Fla. 1983); *Arnold v. Shumpert*, 217 So. 2d 116 (Fla. 1968); Ops. Att'y Gen. Fla. 00-46 (2000) (this office will not presume that the Legislature intended to enact purposeless or useless legislation), 98-83 (1998), and 97-78 (1997).