Private Security Guards -- Schools -- Firearms

Number: AGO 2014-13

Date: November 21, 2014

Subject:
Private Security Guards -- Schools -- Firearms

Mr. Rick Mills
Superintendent
School District of Manatee County
Post Office Box 9069
Bradenton, Florida 34205

Dear Mr. Mills:

You ask substantially the following question:

May a school district employ private security guards who carry firearms pursuant to section 790.115, Florida Statutes?

In sum:

Section 790.115, Florida Statutes, operates as an exemption from the prohibition against the possession of firearms and weapons on school property and specifically provides that firearms may be allowed in support of an approved school sanctioned activity, but does not define what constitutes "in support of" or an "approved school sanctioned activity." Absent a legislative definition of these terms, it would appear to be within the authority of a school district to make a determination of whether the use of armed private security guards would be in support of an approved school sanctioned activity.

District school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts.[1] Among other duties, district school boards must provide for "proper attention to health, safety, and other matters relating to the welfare of students[.]"[2]

On several occasions, this office has commented upon the home rule authority of school boards.[3] In Attorney General Opinion 86-45, this office discussed the variant of home rule power conferred on school boards and stated that "it has been the position of this office that the 1983 amendment (now section 1001.32[2], Florida Statutes) conferred on school boards a variant of 'home-rule power,' and that a district school board may exercise any power for school purposes in the operation, control, and supervision of the free public schools in its district except as expressly prohibited by the State Constitution or general law."[4]

The Legislature, however, has preempted the entire area of firearms regulation[5] and generally prohibits the possession of weapons on school property. Section 790.115(2)(a), Florida Statutes,

states:

"A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:
1. In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
2. In a case to a career center having a firearms training range; or
3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, 'school' means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic." (e.s.)

The plain language of the statute prohibits the possession of a firearm on school property unless: it is in a case and being carried to an approved firearms program, class, or function; or in a case and being carried to a firearms training range; or in a vehicle pursuant to section 790.25(5), Florida Statutes, which recognizes the right of a person 18 years of age or older to possess a weapon within the interior of a private conveyance, without a license, if the weapon is securely encased or is otherwise not readily accessible for immediate use; or when authorized in support of school-sanctioned activities.

I am not aware of, nor has my attention been drawn to, a legislative definition of "school-sanctioned activities." Absent a statutory definition or legislative intent that it be defined in another manner, the plain and ordinary meaning of the term may be used.[6] The term "school" is defined to mean "an organization of students for instructional purposes on an elementary, middle, or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education."[7] To "sanction" is "explicit permission or recognition by one in authority that gives validity to the act of another person or body."[8]

Given the school board’s authority to operate and control the public schools within the school district, it would appear that a school board may determine those activities which are to be considered "in support of an approved school-sanctioned activity" and grant the authority to possess weapons in support of the such activities.[9] Regrettably, this office may not make such a determination on behalf of the school board.

Section 1006.12, Florida Statutes, prescribes the program whereby a school district may have school resource officers and/or school safety officers present on school campuses to provide security. The statute provides that school resource officers shall be certified law enforcement officers under Chapter 943, Florida Statutes, who are employed by a law enforcement agency, with the powers of the law enforcement officer continuing throughout the officer’s tenure as a school resource officer.[10] A school safety officer also must be a certified law enforcement officer, but may be employed either by a law enforcement agency or by the district school

board.[11] If a school safety officer is employed by the district school board, then the district school board is the employing agency for purposes of Chapter 943, Florida Statutes, and must comply with the provisions of that statute.[12] The statute specifically provides that a school safety officer may carry weapons when performing his or her official duties.[13]

Thus, the Legislature has provided authority for school districts to work with local law enforcement in providing school resource officers and school safety officers, recognizing that in both instances such officers must be certified law enforcement officers. Both are allowed to carry firearms on a school campus. Section 790.115, Florida Statutes, operates as an exemption from the prohibition against the possession of weapons and firearms on campus when authorized in support of approved school-sanctioned activities. There is no restriction in section 790.115, Florida Statutes, that such authorized use may only be by certified law enforcement officers, school resource officers or school safety officers.[14] While the programs in section 1006.12, Florida Statutes, serve as a means to provide armed security personnel on a school campus, I cannot conclude that it prohibits a school board from making the determination that the hiring of armed security guards for school campuses within the district is in support of school-sanctioned activities.

Accordingly, it is my opinion that a school district may exercise its home rule authority to determine whether the use of armed security guards may be "in support of an approved school-sanctioned activity."

Sincerely,

Pam Bondi
Attorney General

PB/tals

---

[1] *See* s. 4, Art. IX, Fla. Const., and s. 1003.02, Fla. Stat.

[2] *See* s. 1003.02(1), Fla. Stat.

[3] *See* Ops. Att'y Gen. Fla. 86-45 (1986), 84-95 (1984), and 84-58 (1984).

[4] *See* s. 1001.32(2), Fla. Stat., stating: "In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law."

[5] *See* Ch. 2011-109, Laws of Fla., amending s. 790.33, Fla. Stat., to clarify and reorganize the provisions of that statute preempting to the state the entire field of regulation of firearms. Section 790.33(1), Fla. Stat., provides:

"PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and

ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void."

[6] *See, e.g., Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (absent statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, 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] Section 1003.01(2), Fla. Stat.

[8] Webster's Third New International Dictionary (1981 unabridged ed.), p. 2009.

[9] *See also* s. 1001.30, Fla. Stat., recognizing that school officials of the district are delegated the responsibility for the actual operation and administration of all schools within a district.

[10] Section 1006.12(1)(a), Fla. Stat.

[11] Section 1006.12(2)(a), Fla. Stat.

[12] *Id.*

[13] Section 1006.12(2)(c), Fla. Stat.

[14] Section 790.115(3), Fla. Stat., states that the section does not apply to law enforcement officers, so to read the exemption for authorized use to only apply to certified law enforcement officers would render the language in subsection (3) meaningless.