



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2018-002

June 15, 2018

The Honorable Linda Collins-Smith
State Senator
P. O. Box 90
Pocahontas, AR 72455-0090

Dear Senator Collins-Smith:

You have requested my opinion as to whether there is a provision of Arkansas law that *expressly* provides a penalty for carrying a concealed handgun without a license. There is no such provision. There are of course express penalties associated with carrying a concealed handgun into certain limited locations. But I understand your question to focus only on the more generic situation of an average citizen walking down a public sidewalk with a concealed handgun.

It is incredibly important for Arkansans to have a complete and accurate picture regarding the potential consequences of carrying a concealed handgun without a concealed-carry license. Given the current state of the law, it is not entirely clear whether it is lawful to carry a concealed handgun without a concealed-carry license. Moreover, and relatedly, it is not entirely clear whether carrying a concealed handgun without a concealed-carry license will expose a citizen to conviction for “the offense of carrying a weapon.”¹ Legislative clarification is certainly warranted.

As I explained in Attorney General Opinion 2015-064, the existence of the concealed-carry statutory regime suggests that having a concealed-carry license is the lawful way to carry a concealed handgun in Arkansas.² Indeed, one statute in

¹ Ark. Code Ann. § 5-73-120(a) (Repl. 2016).

² Limited exceptions do exist, however. For example, it is generally permissible to conceal a handgun in one’s car while “upon a journey” without a concealed-carry license. Ark. Code Ann.

that regime even acknowledges that a concealed-carry license represents the “legal means to carry a concealed handgun....”³

Moreover, as I explained in Opinion 2015-064, current caselaw from the Arkansas Supreme Court indicates that courts might apply a presumption that a person carrying a concealed handgun without a concealed-carry license has the intent “to attempt to unlawfully employ the ... handgun as a weapon against a person.”⁴ To be clear, I am not stating that I agree with the application of this presumption, but it is my responsibility to alert Arkansans that current court precedent suggests the presumption might be used. This presumption, if applied, could expose the person to arrest and conviction under section 5-73-120 (entitled “Carrying a weapon”).

Indeed, section 5-73-120 implies that carrying a concealed handgun without a concealed-carry license could expose a person to arrest and conviction for the “offense of carrying a weapon.” The statute explicitly states that it is “*permissible* to carry” if the person “is in possession of a concealed handgun and has a valid license to carry a concealed handgun ... and is not in a prohibited place....”⁵ But the statute does not say the same about carrying a concealed handgun *without* a concealed-carry license. A court might imply from the statutory language that carrying a concealed handgun without a concealed-carry license is not “permissible” and thus shows the intent necessary to violate section 5-73-120(a).

Of course, a person arrested for a violation of section 5-73-120(a) could argue that the fact he was carrying a concealed handgun without a concealed-carry license does not justify a presumption that he had the intent “to attempt to unlawfully employ the ... handgun as a weapon against a person.” But it is my responsibility to advise that, based on the current state of precedent from the Arkansas Supreme Court, there is a real chance such an argument could fail, and the courts will apply a (rebuttable) presumption of mal-intent. Or, at least, the courts will allow the carrying of a concealed handgun without a concealed-carry license to be used as evidence of mal-intent. Given the foregoing, the courts may also conclude that carrying a concealed handgun without a concealed-carry license provides

§ 5-73-120(c)(4) (Repl. 2016). The term “upon a journey” is a term of art, which is described in Opinion 2015-064.

³ Ark. Code Ann. § 5-73-310(7) (Repl. 2016).

⁴ Ark. Code Ann. § 5-73-120(a)

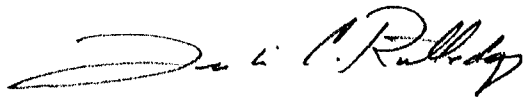
⁵ *Id.* at § 5-73-120(c)(8).

reasonable suspicion (and potentially probable cause) for a law-enforcement officer to detain a citizen and make inquiries regarding his intent.

As I pointed out in 2015, legislators can easily change or clarify the law. Legislators can, by a vote of the General Assembly, make absolutely clear that a person may lawfully possess a concealed handgun in Arkansas without obtaining a concealed-carry license, and make absolutely clear that carrying a concealed handgun without obtaining a concealed-carry license is not at all relevant to the offense set forth in section 5-73-120(a). Arkansans would benefit from additional legislative clarity in this area.⁶

It is imperative that law-abiding Arkansans are fully informed of their rights and that those rights not be infringed. It is equally important that the brave men and women in law enforcement have a clear understanding of current law in order to determine an individual's intent so that the officers may continue to promote public safety and hold those accountable who violate the law. Confusion surrounding how, when and where an individual may lawfully, freely exercise his or her Second Amendment right to bear arms has increased since the law was changed in 2013. Although confusion of this issue has remained since 2013, the legislature has not passed language during either the 2015 or 2017 legislative sessions to clarify the law. As Attorney General, I will continue to ask the legislature to do so, and I will work with them to ensure any law passed will be constitutional.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁶ I have not been asked to opine on the constitutionality of our concealed-carry regime. As a general matter, I will note that the Second Amendment's right to keep and bear arms must be respected. In my opinion, the state must allow either (1) open carry without a license, (2) concealed carry without a license, or (3) both. As I explained in Attorney General Opinion 2015-064, Arkansas allows open carry without a license.