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OPINION NO. 2017-15

PUBLIC EMPLOYEES; CONCEALED
FIREARMS; PUBLIC BUILDINGS:

Pursuant to NRS 202.3673, the holder of a concealed firearms permit may not be prohibited from carrying a concealed firearm in a public building in which he or she is employed; conditions or restrictions on such carry will be scrutinized for whether they amount to a denial of the authorization granted under that section.

Mr. Damon Haycock
Executive Officer
State of Nevada
Public Employees' Benefits Program
901 S. Stewart Street, Suite 1001
Carson City, Nevada 89701

Dear Mr. Haycock:

In your capacity as the Executive Officer of the Public Employees' Benefits Program (PEBP), you have requested an opinion from the Office of the Attorney General regarding Nevada firearms law as it pertains to PEBP employees who hold permits to carry concealed firearms. Your question concerns the scope of your authority, if any, to impose conditions or restrictions on their ability to carry concealed firearms while on PEBP's premises in the Bryan Building in Carson City.

QUESTION PRESENTED

What if any conditions or restrictions may PEBP's Executive Officer impose upon employees who hold concealed carry permits and desire to carry concealed firearms while at their workplace in the Bryan Building?

SUMMARY ANSWER

PEBP's Executive Officer may not prohibit a PEBP employee from carrying a concealed firearm while on PEBP's premises if the employee holds a valid permit to carry concealed firearms and otherwise adheres to all federal, state and local laws governing the possession and use of firearms generally. The plain language of NRS 202.3673(1) provides without qualification that holders of permits to carry concealed firearms "may carry" their firearms on the premises where they are employed, negating any authority on the part of the employer to impose conditions of employment that would effectively deny employees the ability to carry concealed firearms in accordance with this statutory authorization.

ANALYSIS

In 1995, the Legislature enacted a bill stating that a person holding a permit "*must not carry a concealed firearm into, inter alia, (a)ny . . . building owned or occupied by the Federal Government, the state or local government.*" Act of July 7, 1995, ch. 713, § 8, 1995 Nev. Stat. 2725 (S.B. 299). This prohibition was "not applicable to an employee of the facility . . . while on the premises of that facility." *Id.* Formerly codified at NRS 202.3673, these provisions were amended in 1999 by A.B. 166 of the 70th Session of the Nevada Legislature. Act of June 9, 1999, ch. 539, § 1, 1999 Nev. Stat. 2767 (A.B. 166). As amended by A.B. 166, NRS 202.3673 now states, "a permittee *may carry a concealed firearm* while the permittee is on the premises of any public building." NRS 202.3673(1) (emphasis added.). Since the 1995 version of the law established an exception to a criminal prohibition, exempting qualifying employees from criminal prosecution only, the exception did not necessarily preclude the imposition of civil or administrative prohibitions based in employment or state personnel law. By contrast, the law as amended after 1995 contains an affirmative grant of authority that operates independently of any criminal prohibition, subject only to a few narrow exceptions. *See* NRS 202.3673(2)-(3).

More specifically, the statute as amended after 1995 prohibits the possession of concealed firearms in certain public buildings such as public airports and buildings used by the university system and public schools. NRS 202.3673(2)-(3). Applicable to the Bryan Building, it also prohibits the possession of concealed firearms in other public buildings with a "no firearms allowed" sign at each public entrance. NRS 202.3673(3)(b). Although the signage exception applies to the general public, it has no application to permittees employed in that public building. NRS 202.3673(4)(c). Accordingly, NRS 202.3673(1) grants to permittees unqualified authority to carry concealed firearms in certain public buildings where they are employed.

Thus, the 1999 legislation changed the language of NRS 202.3673 from a qualified criminal prohibition against the possession of concealed firearms in public buildings, to an affirmative grant of authority to specified persons holding concealed carry firearms permits. Among those persons are public employees who work in certain public buildings, including the Bryan Building, where the possession of concealed firearms is otherwise prohibited due to the posting of prohibitory signage. While NRS 202.3673 was amended in 2007 to add childcare facilities to the list of buildings where concealed firearms are generally prohibited notwithstanding the presence or absence of signage, the 1999 version of the law has remained the same in all other significant respects. See Act of June 13, 2007, ch. 418, § 2, 2007 Nev. Stat. 1914-15 (S.B. 354).

When a statute is clear on its face, a court is required to apply its plain meaning. *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). NRS 202.3673(1), as it has been worded since 1999, uses the verb "may," which generally expresses "ability, competence, liberty, permission, possibility, probability or contingency." BLACK'S LAW DICTIONARY, (5th ed. 1979) 883. "May carry" expresses liberty or permission to carry. See also, *Butler v. State*, 120 Nev. 879, 893, 102 P.3d 71, 81 (2004) (legislative use of "may" is typically construed as a permissive grant of authority).

A plain reading of NRS 202.3673(1) is that it grants permission, without qualification, to employees with permits to carry concealed weapons at the public buildings where they are employed, excepting child care facilities, public schools, public airports, and buildings owned by the Nevada System of Higher Education. In stating that permittees "may carry" concealed firearms in their places of employment (other than those places already noted), the statute does three things: (1) it makes inapplicable any criminal sanction that would otherwise apply to a member of the general public; (2) it precludes denial

of entry to a permittee employed in the building who is carrying a concealed weapon; and, relevant here, (3) it denies state and local employers the authority to prohibit the possession of concealed firearms on premises by employees who are permittees.

As amended by A.B. 166, the current version of NRS 202.3673 contrasts sharply with the pre-1999 version of the statute. Having only exempted permittees from criminal prosecution, the former version of the statute could not be reasonably construed to supersede possible workplace rules restricting concealed carry. By inserting "may carry" into NRS 202.3673(1), A.B. 166 effected a material change in the statute that takes precedence over possible workplace rules and restrictions. *See Utter v. Casey*, 81 Nev. 268, 274, 401 P.2d 684, 688 (1965) (any material change in the language of the original act is presumed to indicate a change in legal rights).

A review of the legislative history of A.B. 166 supports this conclusion. As introduced, A.B. 166 (1999) simply broadened the categories of public buildings in which concealed carry was authorized, without adding the "may carry" language that currently appears in the statute. Testifying as to the purpose of the bill, Assemblyman Hettrick, the primary sponsor, noted that studies showed that limiting concealed carry reduced, rather than increased, safety, which he opined would be true in the case of public buildings because a "criminal would most likely go to a public building where, by existing state law, you would be guaranteed a person was not carrying a weapon" *Hearing on A.B. 166 Before the Assembly Committee on Judiciary*, 1999 Leg., 70th Sess. 10 (February 26, 1999). After hearing this testimony on the purpose of the bill, the legislature amended A.B. 166 to add the "may carry" language, thus implicitly endorsing concealed carry as a deterrent to would-be assailants.

Applying its plain meaning, this grant of authority to carry concealed firearms supplants the authority of the employer to adopt or enforce personnel rules prohibiting qualifying employees from carrying concealed firearms in the workplace. An example of such a rule is NAC 284.650(20), a regulation that authorizes the discipline of employees for "(c)arrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority." This regulation predates the 1999 legislation, and ostensibly remains unaffected insofar as it regulates open carry in the work place. Insofar as the regulation purports to prohibit qualifying employees from carrying concealed firearms in the workplace, it is without force or effect because it conflicts with NRS 202.3673. *See State, Division of Insurance v. State Farm Mutual Automobile*

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Insurance Co., 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (holding that conflict between a statute and regulation rendered the regulation invalid).

CONCLUSION

By authorizing PEBP's employees who hold valid permits to carry concealed firearms in the Bryan Building, NRS 202.3673(1) precludes PEBP's Executive Officer from adopting or enforcing conditions or restrictions on employment-related activities that would have the effect of denying those employees the authority granted to them under that section of the statute.

Sincerely,
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By: 

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