

Office of the Attorney General
State of LOUISIANA

Opinion No. 78-795
June 19, 1978

FIREARMS & FIREWORKS 47-A R.S. 14:95.1, 40:1379.1 Acts 1956, No. 345, s 1, 1958, No. 2 1958, No. 379, ss 1, 3, 1968, No. 647, s 1, 1975, No. 492

The carrying of an exposed handgun is not illegal, except as provided in LSA-R.S. 14:94.1. Parishes and/or Municipalities may not enact ordinances regulating the carrying of illegal handguns because the state has pre-empted the legislative control and has implicitly authorized the carrying of unconcealed weapons.

Honorable James H. Brown, Jr.
State Senator
32nd District
Baton Rouge, LOUISIANA 70804

Dear Senator Brown:

Your request for an opinion of the Attorney General has been forwarded to the undersigned for disposition. Your questions, as I appreciate them, are:

1. Is it legal to carry an exposed handgun?
2. Do Parishes and/or Municipalities have the power to regulate the carrying of exposed handguns?

LSA-R.S. 14:95 provides as follows:

s 95 Illegal carrying of weapon

A. Illegal carrying of weapon is:

- (1) The intentional concealment of any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, on one's person; or
- (2) The ownership, possession, custody or use of any firearm, or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; or
- (3) The ownership, possession, custody or use of any tools, or dynamite, or nitroglycerine, or explosives, or other instrumentality customarily used by thieves or burglars at any time by any person with the intent to commit a crime; or
- (4) The manufacture, ownership, possession, custody or use of any switchblade knife, spring knife or other knife or similar instrument having a blade which may be automatically unfolded or extended from a handle by the manipulation of a button, switch, latch or similar contrivance.

B. Whoever commits the crime of illegal carrying of weapons shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

C. On a second conviction, the offender shall be imprisoned with or without hard labor for not more than five years.

D. On third and subsequent convictions, the offender shall be imprisoned with or without hard labor for not more than ten years without benefit of parole, probation, or suspension of sentence.

E. The enhanced penalty upon second, third, and subsequent convictions shall not be applicable in cases where more than five years have elapsed since the expiration of the maximum sentence or sentences, of the previous conviction or convictions, and the time of the commission of the last offense for which he has been convicted; the sentence to be imposed in such event shall be the same as may be imposed upon a first conviction.

F. The provisions of this Section except Paragraph (4) of Sub-section (A) shall not apply to sheriffs and their deputies, state and city police, constables and town marshals, or persons vested with police power when in the actual discharge of official duties. (Amended by Acts 1956, No. 345, s 1; Acts 1958, No. 21, s 1; Acts 1958, No. 379, ss 1, 3; Acts 1968, No. 647, s 1, emerg. eff. July 20, 1968; Acts 1975, No. 492.) (Emphasis supplied)

In *State vs Fluker*, 311 So.2d 863 (1975), the defendant had been arrested for carrying a handgun in a holster on his hip. The weapon was exposed except for that portion in the holster, and it was fully recognizable as a weapon. The LOUISIANA Supreme Court, in reversing Fluker's conviction, stated that 'by making the offense of concealment a crime of specific intent, the legislature has abandoned the old rule that a partially hidden weapon is a concealed weapon in favor of a more realistic proscription that contemplates that a weapon, although not in 'full open view,' is nonetheless not a concealed weapon, if it is sufficiently exposed to reveal its identity.

If the weapon is carried in a manner that reveals its identity, its carrier cannot be presumed to have intended to conceal it and, accordingly, is not in violation of the statute The appropriate test to be applied in prosecutions for illegal carrying of weapons is whether, under the facts and circumstances of the case as disclosed by the evidence, the manner in which defendant carried the weapon revealed an intent to conceal its identity.'

Therefore, the carrying of an exposed handgun is not illegal, except as provided in LSA-R.S. 14:95.1.

LSA-R.S. 14:95.1 provides:

s 95.1 Possession of firearm or carrying concealed weapon by a person convicted of certain felonies

A. It is unlawful for any person who has been convicted of first or second degree murder, manslaughter, aggravated battery, aggravated or simple rape,

aggravated kidnapping, aggravated arson, aggravated or simple burglary, armed or simple robbery, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony or any crime defined as an attempt to commit one of the above enumerated offenses under the laws of this state, or who has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which if committed in this state, would be one of the above enumerated crimes, to possess a firearm or carry a concealed weapon.

B. Whoever is found guilty of violating the provisions of this Section shall be imprisoned at hard labor for not less than three nor more than ten years. If such conviction is for the crime of carrying a concealed weapon, such sentence shall be without the benefit of probation, parole, or suspension of sentence and be fined not less than one thousand dollars nor more than five thousand dollars.

C. Except as otherwise specifically provided, this Section shall not apply to the following cases:

(1) The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies shall not apply to any person who has not been convicted of any felony for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

(2) Upon completion of sentence, probation, parole, or suspension of sentence the convicted felon shall have the right to apply to the sheriff of the parish in which he resides, or in the case of Orleans Parish the superintendent of police, for a permit to possess firearms. The felon shall be entitled to possess the firearm upon the issuing of the permit.

(3) The sheriff or superintendent of police, as the case may be, shall immediately notify the Department of Public Safety, in writing, of the issuance of each permit granted under this Section. Added by Acts 1975, No. 492, s 2.

In answer to your second question it can be analogized that when the State provides that it is unlawful for a person to carry a concealed weapon, LSA-R.S. 14:95 A (1), unless they hold a bonafide law enforcement commission, R.S. 14:95(F) or possess a concealed handgun permit, R.S. 40:1379.1, it is equivalent to stating that it is lawful to carry an exposed weapon (firearm).

In *City of Shreveport V. Curry* and *City of Shreveport V. Bukhett*, 357 S.2d 1078, (LA. 1978) which held that a city ordinance proscribing frog gigging out of season was unconstitutional as not being a reasonable exercise of Police Power and as such a violation of the defendant's right to due process; the Court stated in dicta that '. . . a municipal ordinance which goes further in its prohibitions than a state statute is valid so long as it does not forbid what the state legislature has expressly or implicitly authorized . . .'

(Emphasis supplied)

It is the opinion of this office that the state statutes aforementioned have the purpose of establishing a general scheme to control weapons (handguns) and

that a fair reading of those statutes show this would constitute an area in which the state has pre-empted the legislative control and has implicitly authorized the carrying of unconcealed weapons.

Therefore, an ordinance enacted by a Parish and/or Municipality regulating the carrying of exposed handguns would be without effect as being in conflict with State Law.

We hope this opinion has adequately answered your questions. If we may be of any further assistance in this or any other matter, please do not hesitate to call upon us.

With kind regards, I am

Sincerely

William J. Guste, Jr.
Attorney General

By: L. J. Hymel Jr.
Assistant Attorney General
La. Atty. Gen. Op. No. 78-795, 1978 WL 32078 (La.A.G.)
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