



3. If a permit holder carries a firearm into an alcohol serving establishment that does not meet the definition of a restaurant, for example, the establishment's primary or principal business is the sale of alcoholic beverages as opposed to "meals" the permit holder is not lawfully carrying under the exception set forth in T.C.A. § 39-17-1305(c) and is subject to criminal prosecution (for committing a Class A misdemeanor) under T.C.A. § 39-17-1305(a). *Tenn. Atty. Gen Op. 00-020 (February 15, 2000); Petitioners' Brief in Reply to Defendant's Response Brief, p. 4, et seq.*

**RESPONSE:**

4. It is the burden of the accused permit holder to show that he or she fell within the ambit of the exception contained in the new law. *Petitioners' Brief in Reply to Defendant's Response Brief, p. 4, et seq.*

**RESPONSE:**

5. An alcohol serving establishment that violates the liquor license law, for example by deriving more revenue from alcohol sales than from meals sales, is usually only fined and is still allowed to operate and be open to the public for business. *Petitioners' Brief in reply to Defendant's Response Brief; Affidavit of Shari Danielle Elks, the Executive Director of the Tennessee Alcoholic Beverage Commission (TABC) with verified records attached for food sales below 50% for past 5 years (Exhibit C) and copies of reports for violations for food sales below 50% for the past two years (Exhibit D).*

**RESPONSE:**

6. Alcohol-serving establishments are open to the public yet do not meet the definition of restaurants under T.C.A. 39-17-105(c). *Affidavit of Shari Danielle Elks, the Executive Director of the Tennessee Alcoholic Beverage Commission (TABC) with verified records attached for food sales below 50% for past 5 years (Exhibit C) and copies of reports for violations for food sales below 50% for the past two years (Exhibit D); Affidavit of Christopher Smith with Exhibits.*

**RESPONSE:**

7. A restaurant establishment owner has no control of the preferences of their customers. While it may be the licensee's intent for the establishment to be a restaurant, in fact the establishment's true legal purpose may be that of a bar through no act of the owner. *Affidavit of Sam Sanchez.*

**RESPONSE:**

8. An establishment may be in violation of the language of T.C.A. § 39-17-1305(c) but still be in operation as a restaurant *Affidavit of Shari Danielle Elks, the Executive Director of the Tennessee Alcoholic Beverage Commission (TABC) with verified records attached for food sales below 50% for past 5 years (Exhibit C) and copies of reports for violations for food sales below 50% for the past two years (Exhibit D).*

**RESPONSE:**

9. The intent of the challenged law was to charge permit holders who entered "true" bars that don't meet the standards and definitions for a restaurant under § 39-17-1305 with a Class A misdemeanor. *Legislative History Tapes filed*

*herein, cited and discussed in Petitioners' Supplemental Brief: Re Legislative History and Count IX, especially ] Representative McCord statement of the "problem", February 19, 2009 House Handgun Study Subcommittee hearing on the House version of the bill [HB 092] available at : <http://bit.ly/WU9cd>*

**RESPONSE:**

10. Permit holders have no notice or way to determine if an establishment is a restaurant or a bar (whether its principal purpose is serving meals) as there is no distinction by licensing laws law or notice. *Tenn. Atty. Gen Op. 00-020 (February 15, 2000); Affidavits of John Doe handgun carry permit holders on file herein; Petitioners' Brief in Reply to Defendant's Response Brief passim.*

**RESPONSE:**

11. A permit holder could never know with reasonable certainty if the principal business of the premises is the serving of meals conducted on at least 5 days a week as the recent amendment to § 39-17-1305 requires. *Tenn. Atty. Gen Op. 00-020 (February 15, 2000); Affidavits of John Doe handgun carry permit holders on file herein; Petitioners' Brief in Reply to Defendant's Response Brief passim; Affidavit of Shari Danielle Elks, the Executive Director of the Tennessee Alcoholic Beverage Commission (TABC) with verified records attached for food sales below 50% for past 5 years (Exhibit C) and copies of reports for violations for food sales below 50% for the past two years (Exhibit D).; Affidavit of Christopher Smith with Exhibits.*

**RESPONSE:**

12. The Tennessee Attorney General has *already* opined that a principal or primary purpose limitation is subject to constitutional attack as unconstitutionally vague as applied to firearms carry by handgun owners. Tenn. Atty. Gen Op. 00-020 (February 15, 2000).

**RESPONSE:**

13. Congress imposed upon employers a general duty to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” *General duty clause of the Occupational Safety and Health Act of 1970 (Act)*, 29 U.S.C. 654(a)(1).

**RESPONSE:**

14. OSHA developed an enforcement policy with regard to workplace violence as early as 1992 in a letter of interpretation that stated: “In a workplace where the risk of violence and serious personal injury are significant enough to be ‘recognized hazards,’ the general duty clause would require the employer to take feasible steps to minimize those risks. Failure of an employer to implement feasible means of abatement of these hazards could result in the finding of an OSH Act violation. *Available at:* <http://bit.ly/19r2ZI>

**RESPONSE:**

15. Firearms in bars and restaurants that serve alcohol are a “recognized hazard” to health, life and safety of wait staff, bartenders, employees, security staff and owners that is distinguishable from the general

hazards of guns. (“It has been stated in several opinions of this Court that alcohol and firearms are a volatile combination as someone will likely be hurt.” *State v. Parker*, 932 S.W.2d 945, 957 (Tenn.Cr.App.,1996); see also *United States v. Prescott*, 599 F.2d 103 (5th Cir. 1979) (discussing the “volatile mixture” of alcohol and firearms); *Affidavit of Joshua Ryan Prather*.

**RESPONSE:**

16. T.C.A. § 39-17-1305 contains no exception or provision concerning “posting” premises to prohibit firearms carry. *T.C.A. § 39-17-1305*

**RESPONSE:**

17. T.C.A. § 39-17-1359 permits, *inter alia*, but does not require, property owners to “post” notices that firearms are not permitted on the owner’s property. *T.C.A. § 39-17-1359*.

**RESPONSE:**

18. By permitting private persons (restaurant owners) to determine whether to allow or apply the § 1305(c) “exception” for handgun carry by permit holders to the general criminal liability set forth in T.C.A. § 39-17-1305(a), Public Chapter 339 (T.C.A. § 39-17-1305(c) is an unlawful and unconstitutional delegation of the police powers of the state. *Opinion of the Shelby County Attorney (July 10, 2009)* (Public Chapter 339 is an unconstitutional delegation of police or legislative power to private parties); *American Chariot v. City of Memphis*, 164 S.W.3d 600 (Tenn.Ct.App.,2004).

**RESPONSE:**

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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