



TIM GRIFFIN

ATTORNEY GENERAL OF ARKANSAS

Opinion No. 2023-011

April 13, 2023

The Honorable Terry Rice
State Senator
Post Office Box 2195
Waldron, Arkansas 72958

Dear Senator Rice:

I am writing in response to your request for an official opinion regarding carrying a firearm on United States Army Corps of Engineers property. Your correspondence states:

Several Arkansas state parks are located on U.S. Army Corps of Engineers property. While state parks themselves are not firearms restricted, entering through Corps of Engineers' property is restricted.

Given the foregoing, you have asked the following question:

What protections, if any, do the people of Arkansas have while visiting our state parks located on U.S. Army Corps of Engineers property while carrying a firearm?

RESPONSE

While state law does not prohibit people from carrying a firearm in a state park, it might be unlawful for a person to carry a firearm into a building or facility located in a state park. And, under federal law, a person wishing to carry a firearm or other prohibited weapon onto property managed by the U.S. Army Corps of Engineers may do so only if the person (1) is a federal, state, or local law enforcement officer; (2) is using the weapon for hunting or fishing as permitted by federal regulations; (3) is using the weapon at an authorized shooting range; or (4) has written permission from the District Commander.

DISCUSSION

Your question requires an analysis of both state and federal law.

1. State law. Arkansas law does not generally prohibit carrying a firearm in a state park. However, state law does make it illegal for a person who is not law enforcement, security, or military personnel “to knowingly carry or possess a loaded firearm or other deadly weapon in any publicly owned building or facility....”¹ There are a number of exceptions to this restriction,² including an exception for enhanced concealed carry license holders.³ But unless one of these exceptions applies, it would be illegal for a person to knowingly carry or possess a loaded firearm in a building, office, or other facility in an Arkansas state park.

2. Federal law. Federal law prohibits the possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons at U.S. Army Corps of Engineers (USACE) water resources development projects unless:

- (1) They are in the possession of a federal, state, or local law enforcement officer;
- (2) They are being used for hunting or fishing as permitted by the USACE, with devices being unloaded while being transported to and from hunting or fishing sites;
- (3) They are being used at authorized shooting ranges; or
- (4) Written permission has been received from the District Commander.⁴

With certain exceptions, federal law also prohibits the possession of firearms and weapons in posted federal facilities, which would include USACE facilities.⁵ To the extent that state and local laws and ordinances regarding the use and possession of firearms or other weapons do not conflict with federal laws or regulations, those laws and ordinances apply on USACE project property as well.⁶

¹ A.C.A. § 5-73-122(a)(1) (Supp. 2021). The legislature recently expanded the list of individuals who may knowingly carry or possess a loaded firearm or other deadly weapon in a publicly owned building or facility. Under Act 166 of 2023, that list now includes a member of a municipal fire department bomb squad who is authorized to carry a concealed handgun under the newly created A.C.A. § 12-15-204. Acts 2023, No. 166, § 3. This law, which is not yet effective, does not alter the analysis or conclusion of this opinion.

² See A.C.A. §§ 5-73-122(a)(3), (b) (listing exceptions to the crime of carrying or possessing a firearm or other deadly weapon in a publicly owned building or facility or on the State Capitol grounds), 5-73-306 (Supp. 2021) (listing locations where concealed handguns are prohibited and exceptions to those prohibitions), 5-73-322 (Supp. 2021) (authorizing a licensee with a concealed carry endorsement to carry in certain locations and listing exceptions to this authorization).

³ See A.C.A. §§ 5-73-122(a)(3)(D), 5-73-322(h).

⁴ See 36 C.F.R. § 327.13(a).

⁵ See 18 U.S.C. § 930.

⁶ See 36 C.F.R. § 327.26(3).

The federal regulation limiting the possession and use of firearms on USACE property, 36 C.F.R. § 327.13, has been challenged in other jurisdictions with differing outcomes. In *Morris v. U.S. Army Corps of Engineers*, a federal trial court in Idaho declared 36 C.F.R. § 327.13 unconstitutional.⁷ While acknowledging USACE’s right to regulate handguns on its property, the court found that USACE could not ban handguns altogether.⁸ The court rejected USACE’s argument that its parks are a “sensitive place,” reasoning that key U.S. Supreme Court precedent limited the “sensitive place” analysis to facilities like “schools and government buildings,” rather than “outdoor parks.”⁹ Consequently, the court enjoined the enforcement of 36 C.F.R. § 327.13 on USACE property in Idaho.¹⁰

By contrast, a federal trial court in Georgia held in *GeorgiaCarry.org, Inc. v. U.S. Army Corps of Engineers* that 36 C.F.R. § 327.13 did not violate the Second Amendment.¹¹ The court reasoned that the military nature of the USACE dam and property at issue made it a “sensitive place” under key U.S. Supreme Court precedent.¹² Also central to the court’s decision was the fact that the regulation was “not an act of governance” but was “a managerial action affecting only government owned lands.”¹³ The court reasoned that “there is a crucial difference, with respect to constitutional analysis, between the government exercising ‘the power to regulate or license, as a lawmaker,’ and the government acting ‘as proprietor, to manage [its] internal operation.’”¹⁴

While there is clearly some litigation in other jurisdictions on the constitutionality of 36 C.F.R. § 327.13, neither *Morris* nor *GeorgiaCarry.org* is binding in Arkansas.¹⁵ Given the absence of any binding precedent in Arkansas, 36 C.F.R. § 327.13 is still the law in Arkansas regarding the use and possession of firearms on USACE property.¹⁶

⁷ 60 F. Supp. 3d 1120 (D. Idaho 2014).

⁸ *Id.* at 1125.

⁹ *Morris*, 60 F. Supp. 3d at 1123–24 (referencing *District of Columbia v. Heller*, 554 U.S. 570 (2008)).

¹⁰ *Id.* at 1125–26.

¹¹ 212 F. Supp. 3d 1348 (N.D. Ga. 2016).

¹² *See id.* at 1361–62 (“Simply put, the Court cannot fathom that the framers of the Constitution would have recognized a civilian’s right to carry firearms on property owned and operated by the United States Military, especially when such property contained infrastructure products central to our national security and well being.”).

¹³ *Id.* at 1367.

¹⁴ *Id.* (quoting *Engquist, v. Oregon Dept., of Agric.*, 553 U.S. 591 (2008)).

¹⁵ Both *Morris* and *GeorgiaCarry.org* were decided before *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S.Ct. 2111 (2022), which clarified the constitutional standard endorsed in *Heller* and rejected the “two-step” framework for analyzing Second Amendment challenges that included an application of “means-ends scrutiny.” However, *Bruen* did not overturn either of these decisions, as 36 C.F.R. § 327.13 differs significantly from the unconstitutional New York law requiring “proper-cause” for a concealed carry license.

¹⁶ In 2020, the USACE published in the Federal Register a request for comments on a proposed revision to 36 C.F.R. § 327.13, which would remove the requirement that a person obtain written permission before possessing a weapon

3. Conclusion. In conclusion, state law does not prohibit the carrying of a firearm in an Arkansas state park, but it might be unlawful for a person to carry a firearm into a building or facility located in a state park. And, under federal law, a person wishing to carry a firearm or other prohibited weapon onto property managed by the USACE may do so only if the person (1) is a federal, state, or local law enforcement officer; (2) is using the weapon for hunting or fishing as permitted by USACE regulations; (3) is using the weapon at an authorized shooting range; or (4) has written permission from the District Commander.

Senior Assistant Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line above it.

TIM GRIFFIN
Attorney General