

# Chalkboard



An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold

2012 Issue 4

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## Open Carry Law and School District Sites

by Cheryl A. Dixon

On November 1, 2012, Oklahoma became the fifteenth state to allow firearms to be carried openly by license holders. Oklahoma's "gun laws" consist of three separate legislative enactments. These include: Manufacture, Sales and Wearing of Weapons, Okla. Stat. tit. 21, §§1271-1288 (enacted in 1957); the Oklahoma Firearms Act of 1971, Okla. Stat. tit. 21, §§ 1289.1-1289.29; and the Oklahoma Self Defense Act (enacted in 1995), Okla. Stat. tit. 21, §§ 1290.1-1290.26. Each of these statutory enactments cross references the others. The Oklahoma Self Defense Act is what is now commonly referred to as the "open carry law" and was previously known as the "conceal carry law."

Oklahoma's conceal carry law has been in effect since 1995 and the only change is that the license holder can now carry his or her weapon visible to the public – or open carry. Licensees are still re-

quired to attend training and are supposed to be given a copy of the Oklahoma statutes. It is the licensee's responsibility under the law to know the law and fully comply with it.

The recent changes to Oklahoma's open carry law cannot be understood by simply reading SB 1733, the most recent legislation, because that act does not include the provisions of the three laws that were left unchanged in the last legislative session. For example, SB1733 does not include section 1290.10 from the Oklahoma Self Defense Act, which is

### Mandatory Preclusions

(things which automatically exclude someone from being able to obtain a license). Thus, someone reading SB 1733 in isolation would not

learn of these mandatory preclusions.

Following are some frequent Questions and Answers on open carry and school district property.

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Q – Can school district personnel with a valid handgun license keep their weapon in their vehicle while at work?

A – NO, It is unlawful for anyone issued a handgun license to carry a handgun into any elementary or secondary school. This includes the parking lot of a school, except as provided in paragraph “c” immediately below (dropping off a student and vehicle does not remain unattended).

Gun carrying individuals are permitted to keep their weapons in their vehicle in all other parking lots (a private cause of action has even been created). The legislature has carved out school district parking lots as the only parking lots weapons cannot be locked in the car and left unattended.

Q – Can anyone have a weapon, including a handgun, on school district property, including the parking lot?

A – No, except for the following. Possession of any weapon on school property, or in any school bus or vehicle used by school for transportation of students or teachers, is prohibited except for:

- peace officers or other persons authorized by law to possess a weapon in the performance of their duties;
- A gun or knife used for the purposes of participating in the Oklahoma Department of Wildlife Conservation certified hunter training education course or any other hunting, fishing, safety or firearms training courses, or a recognized firearms sports event, team shooting program or competition, or living history reenactment, provided the course or event is approved by the principal or chief administrator of the school where the course or event is offered, and provided the weapon is properly displayed or stored as required by law pending participation in the course, event, program or competition;

- A gun or knife designed for hunting or fishing purposes kept in a privately owned vehicle and properly displayed or stored as required by law, or a handgun carried in a vehicle pursuant to a valid handgun license authorized by the Oklahoma Self-Defense Act, provided such vehicle containing said gun or knife is driven onto school property only to transport a student to and from school and such vehicle does not remain unattended on school property.
- Valid Oklahoma Self-Defense Act license holders may carry or store a handgun in their vehicle in accordance with the law while parked on property set aside for the use of parking of any vehicle on a college, university, or technology center campus.

"School property" is defined as any publicly or privately owned property held for purposes of elementary, secondary or vocational-technical education, and shall not include property owned by public school districts or private educational entities where such property is leased or rented to an individual or corporation and used for purposes other than educational.

Q—What do we do if someone has a handgun or any weapon on school property?  
A—Call your campus security, if applicable, otherwise call 911 to report it and let law enforcement handle the situation.

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A – Call your campus security, if applicable, otherwise call 911 to report it and let law enforcement handle the situation.

If school property is used for elementary, secondary or vocational-technical education then it is a felony to possess a weapon on school district property:

“Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00), and imprisonment in the custody of the Department of Corrections for not more than two (2) years. Any person convicted of

violating the provisions of this section after having been issued a handgun license pursuant to the provisions of the Oklahoma Self-Defense Act shall have the license permanently revoked and shall be liable for an administrative fine of One Hundred Dollars (\$100.00) upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section."

## All Members of the Board of Education Have The Authority to Consult with the School District's Legal Counsel

In an opinion issued on December 12, 2012, the Oklahoma Attorney General concluded that all of the trustees of a town with a board of trustees form of government have equal authority to consult with the town's attorney regarding legal matters. 2012 OK AG 20. Although the question presented to the Attorney General related only to the board of trustees of a town, the same analysis would apply with regard to a school district's board of education, and the same result would almost certainly follow.

The Attorney General pointed out that the legislature has provided that authority to govern a town with a board of trustees form of government "shall be vested in the board of trustees." Likewise, the legislature has specifically provided that "the governing board of each school district in Oklahoma is hereby designated and shall hereafter be known as the board of education of such school district." OKLA. STAT. tit. 70, § 5-106. The Attorney General noted that the statutes specifying the powers of town's board of trustees "are silent as to any relationship or communications between a statutory town board of trustees and its attorneys." The statutes that set forth the powers of a school district's board of education are also silent on this issue. The Attorney General concluded that all of the members of a town's board of trustees are "co-equals in the powers, rights, privileges and duties of a trustee" and, for that reason, each trustee has the "co-equal right to consult on legal matters

Possession of a weapon on any other school property is a misdemeanor, as provided in Okla. Stat. tit 21, § 1272:

"Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor punishable as provided in Section 1276 of this title."

involving the town's business with the town's attorney on an equal basis." Because members of a school district's board of education are also co-equals in powers, rights, privileges, and duties, it follows that all of the members of a school district's board of education have a co-equal right to consult with the school district's attorney regarding school district business.

The Attorney General was also asked whether a town board of trustees has the authority to limit which board members may consult with the town's attorney on town business. The Attorney General stated that among the powers granted to a town board of trustees is the power to establish matters of policy. The Attorney General noted that pursuant to this policy, a town board of trustees may vote to adopt "a uniform, non-discriminatory policy to limit the town's expenditures on services" including, but not limited to, legal services. The Attorney General concluded that "other than through such a policy, the board of trustees may not limit individual member's access to the town attorney."

Boards of education make policy for school districts. There is no reason to doubt that a board of education, like a town board of trustees, may adopt a uniform, non-discriminatory policy intended to limit the school district's expenditures for legal services. Before adopting such a policy, however, it would be wise to discuss all of the possible ramifications of such action with your local school attorney.

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## New Legislative Update Section Added!

- Final bills and RFR Red Banner Updates will be available at [www.rfrlaw.com](http://www.rfrlaw.com) as the session progresses.

### 2013 Official Oklahoma Holidays

In an executive order by Governor Mary Fallin, issued on June 28, 2012, the following dates are to be observed as holidays by the State of Oklahoma. Oklahoma law requires you to post an agenda a minimum of 24 hours in advance, excluding Saturdays, Sundays, and state declared holidays. Therefore, the state declared holidays for 2013 are as follows:

Tuesday, January 1, 2013 (New Year's Day)  
Monday, January 21, 2013 (Martin Luther King, Jr. Day)  
Monday, February 18, 2013 (President's Day)  
Monday, May 27, 2013 (Memorial Day)  
Thursday, July 4, 2013 (Independence Day)  
Monday, September 2, 2013 (Labor Day)  
Monday, November 11, 2013 (Veterans Day)  
Thursday and Friday, November 28 and 29, 2013 (Thanksgiving Holiday)  
Tuesday and Wednesday, December 24 and 25, 2013 (Christmas Holiday)

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*Chalkboard* is a Rosenstein, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published four times a year and is sent without charge to all education clients of Rosenstein, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

*Chalkboard* is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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