

WEAPONS: CONCEALED: Unlawful for guards of U. S. property  
EXPOSED: - to carry concealed firearms in Missouri;  
may carry firearms in plain view peaceably  
and soberly, without license. License  
required for purchase.

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January 23, 1942

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Hon. Carleton E. Kelley  
Sr. Attorney  
War Department  
U. S. Engineers Office  
Clock Tower Building  
Rock Island, Illinois



Dear Sir:

This is in reply to your request for an official opinion by your recent letter which is in the following terms:

"In accordance with directive from higher authority, this office has taken increased precautions for the protection of government property, particularly the locks and dams in the Mississippi River. It is deemed necessary that the civilian guards and supervisors placed on these government-owned structures be armed.

"A brief inspection of the 1939 Revised Statutes of the State of Missouri reveals that Section 4423, Chapter 31, Crimes and Punishments, provides that:

'Sec. 4423. Carrying concealed weapons. - If any person shall carry concealed upon or about his person a dangerous or deadly weapon of any kind or description, or shall go into any church or place where people have assembled for religious worship, or into any

school room or place where people are assembled for educational, political, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill, or meetings called under militia law of this state, having upon or about his person, concealed or exposed, any kind of firearms, bowie knife, spring-back knife, razor, metal knucks, billy, sword cane, dirk, dagger, slungshot or other similar deadly weapons, or shall, in the presence of one or more persons, exhibit any such weapons in a rude, angry or threatening manner, or shall have any such weapon in his possession when intoxicated, or, directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding two years, or by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than fifty days nor more than one year, or by both such fine and imprisonment: Provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state.'

"It is noted that there is apparently no provision made by statute for the issuance of a license or permit for the carrying of a concealed weapon. If the civilian guards employed by this office do not fall within the exceptions provided by the above statute, can a permit or license to carry a concealed weapon be issued by responsible state or county officials? If so, what procedure should be followed?"

Section 4423 R. S. Missouri, 1939, quoted in your letter prohibits the carrying of a concealed firearm by any person other than sheriffs and police officers, and other persons whose bona fide duty is to execute process, make arrests, or aid in conserving the public peace. We understand that the "civilian guards" referred to in your letter are not sheriffs or police officers. The reference in the statute to "bona fide" duty in our opinion means official duty. We believe a private citizen under the above mentioned statute has no right to carry a concealed weapon in anticipation of a contingency in which it might be lawful for him to preserve the peace or restrain the perpetrator of a felony committed in his presence. In our opinion it would be unlawful for the civilian guards to carry concealed firearms. Violation of Section 4423 R. S. Missouri, 1939, is now a felony. Said Section 4423, supra, does not conflict with the Constitution of the United States or of the State of Missouri.

In State v. Keet, 269 Mo. 206, 1. c. 209, 214, 190 S. W. 573, the Supreme Court of Missouri said:

"Our statute against carrying concealed weapons is not in conflict with the second article of the amendments to the Constitution of the United States, as that amendment has no reference to State legislation, but is a limitation upon the powers of the national Government only. (State v. Shelby, 90 Mo. 302; Presser v. Illinois, 116 U. S. 252.)

"Neither is that statute in conflict with the Bill of Rights in our State Constitution (Art. II., Sec. 17) which provides, 'That the right of no citizen to keep and bear arms in defense of his home, person and property, or in the aid of the civil power, when thereto legally summoned, shall be called in question, but nothing herein contained is intended to justify the practice of wearing concealed weapons.' (Parenthesis and explanation therein ours.) \* \* \* \*

"The provision exempting those who carried a weapon in self-defense from the penalty of the law originated in the Revised Statutes of 1879, section 1275. That provision was expressly repealed by the Act of April 28, 1909 (Laws 1909, p. 452), and has never been reenacted."

When, under an earlier statute, the offense of carrying a concealed firearm was a misdemeanor, the Kansas City Court of Appeals, in State v. Hale, 70 Mo. App., 143, l.c. 145, 146, said:

"\* \* \* The rule in such cases is that there must have been a concealment, and this must be proved by the state. 2 Wharton's Criminal Law, sec. 1557; Ridentur v. State, 65 Ind. 411; Smith v. State, 69 Ind. 140. \*\* \* \* \* \*"

\* \* \* \* \*  
"The evidence presents a case of a total failure to make out an essential and controlling element in the offense charged in the indictment; that is to say, the concealment of the pistol."

Said Section 4423, supra, further prohibits the carrying or exhibition of an exposed firearm in a rude, angry or threatening manner, or by an intoxicated person. That por-

tion of the statute is constitutional. In State v. White, 253 S. W. 724, l. c.727, 299 Mo. 599, it was ruled:

"\* \* \* The only reasonable and sensible construction to give the statute is that the exhibitions of deadly weapons in a rude, angry, or threatening manner, when the act of aggression or assault is being committed by such citizen, is all that is prohibited.

"The portion of section 3275, R. S. 1919, thus attacked is not only wise and salutary, and in the interest of public peace and the protection of human life, but is also in harmony with section 17, art. 2, of the Constitution, when its purpose is understood. The attack upon the statute and information is without merit."

Section 4423, supra, also prohibits the carrying of an exposed firearm in churches, schools, election precincts on election day, court rooms in session, and in political and other assemblies except military meetings.

Another statute, Section 4369 R. S. Missouri, 1939, makes it unlawful to "display any deadly weapon. . .within one hundred yards of any polling place \* \* \*."

Cities are by statute given authority to regulate firearms generally. Cities of the first class are authorized by Section 6293 (XLIX) R. S. Missouri, 1939, "To regulate, prevent and prohibit the use of fireworks and firearms." Cities of the second class may "regulate. . . discharge of firearms" Sec. 6609, (LIX) R. S. Mo. 1939. Cities of the third class may "prohibit and punish for the carrying of concealed deadly weapons," (Sec. 6958) and "regulate discharge of firearms," (Sec. 6950). The same powers are given to cities of the fourth class by Sections 7177 and 7169 R. S. Missouri, 1939. We suggest that you consult the City Attorney of affected cities regarding their ordinances.

From all the foregoing it is clear that the carrying of a firearm in plain view in a peaceable and sober manner at places other than those enumerated in Section 4423, supra, is not prohibited by the law of the State of Missouri, and no license is required or provided for by the law of this State.

A license is required for the purchase by persons other than manufacturers, and wholesale and retail dealers, of firearms of a size which may be concealed upon the person. Section 4826 R. S. Missouri, 1939, provides:

"No person, other than a manufacturer or wholesaler thereof to or from a wholesale or retail dealer therein, for the purposes of commerce, shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive, in this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, unless the buyer, borrower or person receiving such weapon shall first obtain and deliver to, and the same be demanded and received by, the seller, loaner, or person delivering such weapon, within thirty days after the issuance thereof, a permit authorizing such person to acquire such weapon. Such permit shall be issued by the circuit clerk of the county in which the applicant for a permit resides in this state, if the sheriff be satisfied that the person applying for the same is of good moral character and of lawful age, and that the granting of the same will not endanger the public safety. The permit shall recite the date of the issuance thereof and that the same is invalid after thirty days after the said date, the name and address of the person to whom granted and of the person from whom such weapon is to be acquired, the nature of the transaction, and a full description of such weapon, and shall be countersigned by

the person to whom granted in the presence of the circuit clerk. The circuit clerk shall receive therefor a fee of fifty cents. If the permit be used, the person receiving the same shall return it to the circuit clerk within thirty days after its expiration, with a notation thereon showing the date and manner of the disposition of such weapon. The circuit clerk shall keep a record of all applications for such permits and his action thereon, and shall preserve all returned permits. No person shall in any manner transfer, alter or change any such permit or make a false notation thereon or obtain the same upon any false representation to the circuit clerk granting the same, or use or attempt to use a permit granted to another."

Section 4827 R. S. Missouri, 1939, provides as follows:

"No person within this state shall lease, buy or in anywise procure the possession from any person, firm or corporation within or without the state, of any pistol, revolver or other firearm of a size which may be concealed upon the person, that is not stamped as required by section 4825; and no person shall buy or otherwise acquire the possession of any such article unless he shall have first procured a written permit so to do from the circuit clerk of the county in which such person resides, in the manner as provided in section 4826."

And, Section 4825 requires that a retailer selling such a firearm must keep a record of the permit of the purchaser.

Hon. Carleton E. Kelley

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January 23, 1942

CONCLUSION

In our opinion, it would be unlawful for civilian guards of United States property, such as locks and dams in the Mississippi River, to carry concealed firearms in the State of Missouri, unless such guards are lawfully constituted police officers. Said guards may lawfully carry firearms in plain view in a peaceable and sober manner, in places other than churches, schools, election precincts on election day, court rooms in session, and political and other assemblies except military meetings, and no license therefor is required or provided by the law of this State. City ordinances should be consulted.

Respectfully submitted

ERNEST HUBBELL  
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APPROVED:

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