

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA  
JUDGE T. JACKSON BEDFORD, JR., PRESIDING



GEORGIACARRY.ORG, INC. )  
 )  
Plaintiff )  
 )  
 )  
v. )  
 )  
CODE REVISION COMMISSION, )  
NATHAN DEAL, Individually and in his )  
Official Capacity as Governor of Georgia, )  
*et al.* )  
 )  
Defendants. )

CIVIL ACTION  
FILE NO. 2015CV256659

**FINAL ORDER GRANTING LEGISLATIVE BRANCH DEFENDANTS' MOTION FOR  
DISMISSAL**

This matter comes on Defendants Code Revision Commission, David Ralston, Lowell Casey Cagle, and John Does 1 through 13's (collectively, "Legislative Branch Defendants") Motion for Dismissal. The Plaintiff substantively failed to respond to this Motion and, instead, filed an amended complaint. After review of the motion, the amended complaint and the record, the Court hereby GRANTS the Defendant's motion.

The Plaintiff contends that in the 2014 Regular Session, the General Assembly passed two bills, House Bill 60 and House Bill 826, that conflict with each other concerning the carrying of weapons within a school safety zone. This particular challenge concerns the alleged conflicting revisions of O.C.G.A. § 16-11-127.1 by these Acts. In the contested section of the statute, HB 60 prohibits the carrying of weapons within a school safety zone, except for licensed individuals who are carrying or picking up a student, and it explicitly defines school, school

safety zone and weapon. HB 826 permits licensed individuals to carry a firearm within a school safety zone, and defines school, school safety zone, and firearm differently from HB 60.

Both bills were passed during the 2014 Regular Session of the General Assembly but were signed into law by Governor Nathan Deal on separate days. HB 826 was passed on February 25, 2014 by the House of Representatives, passed by the Senate on March 20, 2014, and signed by the Governor on April 22, 2014. HB 60 was passed by the Senate on March 18, 2014, passed by the House on March 20, 2014 and signed by the Governor on April 23, 2014. These laws became effective on July 1, 2014.

On March 13, 2015 the Governor approved HB 90 which reenacts and makes corrections to O.C.G.A. § 16-11-127.1. The relevant part stating that “the text of Code sections...as amended by the text and numbering of the Code sections as contained in the 2014 supplements to the Official Code of Georgia Annotated...are hereby reenacted.”

Plaintiff filed suit against the Legislative Branch Defendants and Governor Deal. The Plaintiff seeks a writ of mandamus and injunctive relief to compel the Code Revision Commission to incorporate provisions of HB 826 into the O.C.G.A. The Amended Complaint must be dismissed for being moot, presenting no justiciable controversy, and failing to present a set of facts that would provide mandamus relief.

First, this lawsuit has been rendered moot by the enactment of HB 90, 2015, which reenacted “the text of Code sections ... as amended by the text and numbering of Code sections as contained in the 2014 supplements to the Official Code of Georgia.” The Code Revision Commission is required by statute to introduce this bill to reenact and correct the statutory text in the O.C.G.A.<sup>1</sup> The current version of O.C.G.A. § 16-11-127.1 was reenacted and given the force

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<sup>1</sup> Provided by OCGA 28-9-5 (c), “such reenactment of the Official Code of Georgia shall have the effect of adopting and giving force and effect of law to all the statutory text.”

of law by the General Assembly through HB 90, which was signed by Governor Deal on March 13, 2015. When the General Assembly passed HB 90, it even changed O.C.G.A. § 16-11-127.1, when it added a single comma to the statute as it was written. HB 90, § 16 (3). It is clear that the General Assembly intended to adopt the Code Revision Commission's version of O.C.G.A. § 16-11-127.1. HB 90 also has the effect of curing any alleged defects in the contents of a particular section. *See Central of Ga. Ry. v. State*, 104 Ga. 831 (1898). Thus any question as to the language that should be put into or taken out of the code is now moot and only the General Assembly can amend this statute.

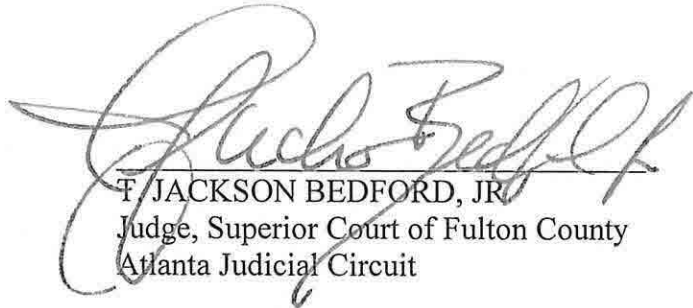
Second, there is no justiciable controversy in this matter because the pleadings and the law are clear that HB 60 controls. As stated above, the General Assembly has clearly reenacted the Code Revision Commission's work, which has the effect of curing any alleged defects in the drafting of the statute. In addition, when different acts are passed in the same legislative season, it is law that the act which was last in time will repeal conflicting provisions from the former act. O.C.G.A. § 28-9-5 (b); *Rutter v. Rutter*, 294 Ga. 1, 3 (2013); *Keener v. MacDougall*, 232 Ga. 273 (1974). The two acts here are of a contradictory nature. HB 826 allows any licensed individual with a permit to carry in a school safety zone, but HB 60 limits the carrying of weapons by licensed individuals who are in these school safety zones with the specific purpose of carrying or picking up a student. HB 60 criminalizes the behavior of licensed individuals who are in school safety zones but not carrying or picking up students, which HB 826 decriminalizes. These acts cannot clearly co-exist and cannot be construed to make them both valid and binding. Thus, the temporally later act, which is the bill that is signed last in time by the Governor, repeals the former act, regardless of when the two acts were passed by the legislature. *See Rutter*,

294 Ga. at 3 (2013). *See also* O.C.G.A. § 28-9-5 (b). When there is no actual controversy or uncertainty as to the Plaintiff's rights, then no declaration is needed.

Third, mandamus relief is not appropriate. The Code Revision Commission cannot be compelled through mandamus to perform a discretionary act or undo a past act. *Bland Farms, LLC v. Georgia Dep't of Agr.*, 281 Ga. 192, 193, (2006) (quoting *Schrenko v. DeKalb County School Dist.*, 276 Ga. 786, 794(3) (2003)); *Wilson v. Sanders*, 222 Ga. 681, 685 (1966). The Code Revision Commission is commanded to use its professional judgment in determining what amendments of law passed in the same session can be construed together or conflict. O.C.G.A. § 28-9-5. To substitute the Court's judgment for the Commission's would be an improper usurpation of the legislative branch's power. Thus, mandamus relief is not available here.

For the reasons stated above, the Legislative Branch Defendant's Motion for Dismissal is GRANTED and the Amended Complaint is dismissed.

IT IS SO ORDERED this, the 30<sup>th</sup> day of September, 2015.

  
T. JACKSON BEDFORD, JR.  
Judge, Superior Court of Fulton County  
Atlanta Judicial Circuit

IN THE SUPERIOR COURT OF FULTON COUNTY

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Plaintiff

v.

CODE REVISION COMMISSION,  
NATHAN DEAL, Individually and in his  
Official Capacity as Governor of Georgia,  
*et al.*

Defendant.

CIVIL ACTION  
FILE NO. 2015CV256659

**FINAL ORDER GRANTING DEFENDANT DEAL'S MOTION TO DISMISS**

This matter comes on Defendant Governor Nathan Deal's Motion to Dismiss. The Plaintiff failed to respond substantively to this Motion and, instead, filed an amended complaint. After review of the motion, the amended complaint and the record, the Court hereby GRANTS the Defendant's motion.

The Plaintiff contends that in the 2014 Regular Session, the General Assembly passed two bills, House Bill 60 and House Bill 826, that conflict with each other concerning the carrying of weapons within a school safety zone. This particular challenge concerns the alleged conflicting revisions of O.C.G.A. § 16-11-127.1 by these Acts. In the contested section of the statute, HB 60 prohibits the carrying of weapons within a school safety zone, except for licensed individuals who are carrying or picking up a student, and it explicitly defines school, school safety zone and weapon. HB 826 permits licensed individuals to carry a firearm within a school safety zone, and defines school, school safety zone, and firearm differently from HB 60.



Both bills were passed during the 2014 Regular Session of the General Assembly but were signed into law by Governor Nathan Deal on separate days. HB 826 was passed on February 25, 2014 by the House of Representatives, passed by the Senate on March 20, 2014, and signed by the Governor on April 22, 2014. HB 60 was passed by the Senate on March 18, 2014, passed by the House on March 20, 2014 and signed by the Governor on April 23, 2014. These laws became effective on July 1, 2014.

On March 13, 2015 the Governor approved HB 90 which reenacts and makes corrections to O.C.G.A. § 16-11-127.1. The relevant part stating that “the text of Code sections...as amended by the text and numbering of the Code sections as contained in the 2014 supplements to the Official Code of Georgia Annotated...are hereby reenacted.”

Plaintiff filed suit against the Legislative Branch Defendants<sup>1</sup> and Governor Deal. The Plaintiff seeks a declaratory judgment against Governor Deal for a declaration that it is not a crime for a licensed individual to carry a firearm within a school safety zone. The Amended Complaint must be dismissed for being moot and presenting no justiciable controversy necessary for a declaratory judgment.

First, this lawsuit has been rendered moot by the enactment of HB 90, 2015, which reenacted “the text of Code sections ... as amended by the text and numbering of Code sections as contained in the 2014 supplements to the Official Code of Georgia.” The Code Revision Commission is required by statute to introduce this bill to reenact and correct the statutory text in the O.C.G.A.<sup>2</sup> The current version of O.C.G.A. § 16-11-127.1 was reenacted and given the force of law by the General Assembly through HB 90, which was signed by Governor Deal on March 13, 2015. When the General Assembly passed HB 90, it even changed O.C.G.A. § 16-11-127.1,

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<sup>1</sup> The Legislative Branch Defendants filed a separate motion to dismiss, which has been granted.


<sup>2</sup> Provided by OCGA 28-9-5 (c), “such reenactment of the Official Code of Georgia shall have the effect of adopting and giving force and effect of law to all the statutory text.”

when it added a single comma to the statute as it was written. HB 90, § 16 (3). It is clear that the General Assembly intended to adopt the Code Revision Commission's version of O.C.G.A. § 16-11-127.1. HB 90 also has the effect of curing any alleged defects in the contents of a particular section. *See Central of Ga. Ry. v. State*, 104 Ga. 831 (1898). Thus any question as to the language that should be put into or taken out of the code is now moot and only the General Assembly can amend this statute.

Second, there is no justiciable controversy in this matter because the pleadings and the law are clear that HB 60 controls. As stated above, the General Assembly has clearly reenacted the Code Revision Commission's work, which has the effect of curing any alleged defects in the drafting of the statute. In addition, when different acts are passed in the same legislative season, it is law that the act which was last in time will repeal conflicting provisions from the former act. O.C.G.A. § 28-9-5 (b); *Rutter v. Rutter*, 294 Ga. 1, 3 (2013); *Keener v. MacDougall*, 232 Ga. 273 (1974). The two acts here are of a contradictory nature. HB 826 allows any licensed individual with a permit to carry in a school safety zone, but HB 60 limits the carrying of weapons by licensed individuals who are in these school safety zones with the specific purpose of carrying or picking up a student. HB 60 criminalizes the behavior of licensed individuals who are in school safety zones but not carrying or picking up students, which HB 826 decriminalizes. These acts cannot clearly co-exist and cannot be construed to make them both valid and binding. Thus, the temporally later act, which is the bill that is signed last in time by the Governor, repeals the former act, regardless of when the two acts were passed by the legislature. *See Rutter*, 294 Ga. at 3 (2013). *See also* O.C.G.A. § 28-9-5 (b). When there is no actual controversy or uncertainty as to the Plaintiff's rights, then no declaration is needed.

For the reasons stated above, Defendant Deal's Motion to Dismiss is GRANTED and the Amended Complaint is dismissed.

IT IS SO ORDERED this, the 30<sup>th</sup> day of September, 2015.

  
T. JACKSON BEDFORD, JR.  
Judge, Superior Court of Fulton County  
Atlanta Judicial Circuit



IN THE SUPERIOR COURT OF FULTON COUNTY

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Plaintiff

v.

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NATHAN DEAL, Individually and in his  
Official Capacity as Governor of Georgia,  
*et al.*

Defendant.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing **FINAL ORDER GRANTING LEGISLATIVE BRANCH DEFENDANT'S MOTINO FOR DISMISSAL AND FINAL ORDER GRANTING DEFENDANT DEAL'S MOTION TO DISMISS** via E-mail to:

John R. Monroe, Esq. at [jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)  
Wayne Allen, Esq. at [wayne.allen@legis.ga.gov](mailto:wayne.allen@legis.ga.gov)  
Rebecca Dobras, Esq. at [rdobras@law.ga.gov](mailto:rdobras@law.ga.gov)

**Plaintiff to serve any other necessary parties and file a certificate of service.**

This 30 day of September, 2015.

  
Alex Bernick, Staff Attorney  
T. JACKSON BEDFORD, JR.  
Judge, Fulton County Superior Court