

Armed School Personnel: A Judicial Update from the Twelfth District Court of Appeals

By G. Frederick Compton, Jr.

The arming of school personnel as a safety and security measure for public schools has been given some guidance in the form of a decision by the Twelfth District Court of Appeals in a Butler County case involving the Madison Local School District (“District”). The decision in *Gabbard v. Madison Local School District Board of Education* (3/30/2020) involved an appeal of a common pleas court judgment in favor of the District’s authorization of certain school employees (teachers and support personnel) to carry firearms during the academic school day in its schools. The District experienced a school shooting in 2016 and, as a result of that incident, the Board of Education authorized the possession of firearms by “approved volunteers” among its school personnel. The “approved volunteers” were to be employees of the District, properly licensed to carry a concealed firearm in Ohio, who completed 24 hours of active shooter/killer training and completed and passed a criminal background check, a drug screen and a mental health evaluation. The District’s authorization relied upon language in a criminal statute [R.C. 2923.122(D)(1)(a)] that exempts school employees authorized by a school board to carry a firearm from the offense of possession of a deadly weapon in a school safety zone.

After the passage of the authorization resolution, several parents of District students filed a lawsuit to enjoin the operation of the authorization claiming that the training requirements established by the Board were in violation of the statutory minimum training requirements for school employees who carry a firearm while on duty as required by R.C. 109.78(D). R.C. 109.78(D) prohibits a “public or private educational institution ... [to] employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless the person has completed twenty years of active duty as a peace officer.” (Emphasis added) The referenced certification requires a minimum of 728 hours of training plus passing a criminal background check, physical fitness test and a drug screen.

The trial court determined that the statute referenced by the District allowed it to authorize employees to carry a firearm subject to its prescribed requirements and that the statute referenced by the parents did not negate that authority. The Court of Appeals, however, in a split (2-1) decision determined that an armed school employee is included as an “other position in which such person goes armed while on duty” referred to in R.C. 109.78(D) and therefore the increased training requirements pertain to their ability to carry a firearm while on duty in the school. The Court of Appeals further determined that the statutory exemption relied upon by the District did not override the training requirements of R.C. 109.78(D). There was a dissent opinion in this case that provides some logical reasoning to support the original authorization by the Board of Education, which may predict a further appeal of the issue.

If the Ohio Supreme Court accepts the jurisdictional appeal, the Court could decide a statewide standard for school districts to follow when contemplating the arming of school personnel.

Doug Spiker
Practice Group Manager
Employment Services
216.696.7125 | dspiker@ralaw.com

Lewis Adkins
Practice Group Manager
Public Law, Regulatory and Finance
216.616.4842 | ladkins@ralaw.com

Helen S. Carroll330.849.6710 | hcarroll@ralaw.com**G. Frederick Compton, Jr.**330.849.6610 | fcompton@ralaw.com**Diana M. Feitl**216.615.4838 | dfeitl@ralaw.com**Leighann K. Fink**330.849.6633 | lfink@ralaw.com**Monica Frantz**216.820.4241 | mfrantz@ralaw.com**Daniel G. Hilson**614.723.2060 | dhilson@ralaw.com**Justin P. Markey**330.849.6632 | jmarkey@ralaw.com**Stephanie Olivera Mittica**330.849.6671 | smittica@ralaw.com**Galen L. Schuerlein**216.820.4238 | gschuerlein@ralaw.com