

ABC's and AR-15's: Arming Arkansas's Teachers*

I. INTRODUCTION

On December 14, 2012, Adam Lanza murdered twenty children and six adults at Sandy Hook Elementary School in Newtown, Connecticut.¹ The massacre sparked a national debate about gun control and the safety of American schoolchildren.² A week after the shooting, Wayne LaPierre, Chief Executive Officer of the National Rifle Association, announced that the organization supported placing armed security guards in every school in the country. He famously stated that “[t]he only thing that stops a bad guy with a gun is a good guy with a gun,” and then asked, “[w]ould you rather have your 911 call bring a good guy with a gun from a mile away or a minute away?”³

Arkansas law prohibits an individual, with a few exceptions, from carrying a firearm on “the developed property of a public or private school, K–12.”⁴ The statute does not exempt school employees from this general prohibition.⁵ In 2013, the Arkansas General Assembly passed several pieces of legislation authorizing universities, colleges, and church-operated schools to allow certain individuals to possess firearms

* The author expresses his deep gratitude to Amanda Hurst, Visiting Assistant Professor of Law, University of Arkansas School of Law, for her guidance and counsel in the drafting of this comment. The author also extends his thanks to Mark Daven, Brinkley Cook-Campbell, John Damron, and Micah Goodwin for their tireless commitment to the editorial process.

1. James Barron, *Gunman Massacres 20 Children at School in Connecticut; 28 Dead, Including Killer*, N.Y. TIMES, Dec. 15, 2012, at A1.

2. See generally *The Gun Debate*, CNN.COM, <http://www.cnn.com/SPECIALS/us/gun-debate> (last visited Sept. 30, 2014) (compiling reactions to proposed gun-control legislation proposed in response to the shooting at Sandy Hook Elementary School).

3. Wayne LaPierre, *NRA Press Conference*, NRA (Dec. 21, 2012), <http://home.nra.org/home/document/nra-press-conference>.

4. See ARK. CODE ANN. § 5-73-119(b)(1)(A) (Supp. 2013).

5. See ARK. CODE ANN. § 5-73-119(e) (listing specific exemptions to the general prohibition of carrying firearms on school campuses).

on school property, including employees.⁶ However, the Arkansas House Education Committee rejected legislation that would have allowed public school employees to carry firearms on campus.⁷

The major exception to Arkansas's general prohibition against the possession of firearms on school property is for law enforcement officers and "registered commissioned security guard[s]."⁸ Arkansas schools conventionally hire school resource officers⁹ to provide armed security.¹⁰ However, some school district administrators claim their districts lack the resources to employ additional staff and arming existing school personnel is necessary to adequately protect students.¹¹ Over time, thirteen school districts obtained licenses from the Arkansas Board of Private Investigators and Private Security Agencies ("Arkansas Security Board") designating school employees as security guards and allowing them to carry firearms on campus.¹² These school districts claimed the Private

6. See Act 226, § 5, 2013 Ark. Acts 905, 907 (codified at ARK. CODE ANN. § 5-73-322 (Supp. 2013)) (colleges and universities); Act 1390, § 1, 2013 Ark. Acts 5926, 5926 (codified at ARK. CODE ANN. § 5-73-119(e)(11) (Supp. 2013)) (church-operated schools).

7. See H.B. 1231, 89th Gen. Assemb., Reg. Sess. (Ark. 2013) (died in committee); see also BUREAU OF LEGIS. RESEARCH, SUMMARY OF GENERAL LEGISLATION: 89TH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, 79-81 (2013), available at <http://www.arkleg.state.ar.us/assembly/2013/2013R/General%20Summary/2013%20Summary%20of%20General%20Legislation.pdf> (failing to list House Bill 1231 among the firearms legislation passed during the Regular Session of the 89th General Assembly).

8. ARK. CODE ANN. § 5-73-119(e)(2), (4) (Supp. 2013). Arkansas law allows "law enforcement officer[s]" and "registered commissioned security guard[s]" to carry firearms on school property as long as they are "acting in the course and scope of [their] official duties." ARK. CODE ANN. § 5-73-119(e); see also Evie Blad, *State Lawmakers Seek School-Safety Quick Fix*, ARK. DEMOCRAT-GAZETTE, Aug. 29, 2013, at 1A ("State and federal laws prohibit the carrying of firearms on school grounds by anyone except law-enforcement officers or credentialed private-security officers. In compliance with those laws, districts can employ school resource police officers or contract with a private security agency to place armed security guards in schools.").

9. "School resource officer[s]" are law enforcement officers, employed by police departments, who are assigned to work with schools and community-based organizations. See NATHAN JAMES & GAIL MCCALLION, CONG. RESEARCH SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 1-3 (2013).

10. Blad, *supra* note 8.

11. *Id.*

12. John Lyon, *Some School Employees Carrying Guns; Future of Practice Unknown*, ARK. NEWS (Sep. 15, 2013, 2:05 AM), <http://arkansasnews.com/sections/news/some-school-employees-carrying-guns-future-practice-unknown.html>.

Investigators and Private Security Agencies Act (“PIPSA”) authorized the licenses.¹³

On August 1, 2013, Arkansas Attorney General Dustin McDaniel issued an advisory opinion stating that public school districts cannot obtain these licenses under PIPSA.¹⁴ The Arkansas Security Board responded by temporarily suspending all licenses for employees at public schools on August 14.¹⁵ One month later, the Arkansas Security Board reinstated the licenses, allowing previously authorized school employees to act as private security guards for two years.¹⁶ The Arkansas Security Board, composed of seven appointees, rejected the legal opinion of its own legal counsel, the Arkansas Attorney General, and did what the Arkansas House Education Committee refused to do just a few months earlier—arm public school employees.

Public school employees in Arkansas continued to explore other creative ways to legally possess firearms on school property under existing law. Since the Arkansas Security Board’s decision, a number of public school employees signed up for training to become “reserve deputies,” which could allow them to carry firearms on campus as actual law enforcement officials.¹⁷ The requirements for becoming a reserve deputy, which include a mandatory 110 hours of training,¹⁸ are considerably more strenuous than the requirements necessary to become a commissioned private security officer.¹⁹

13. See Evie Blad, *Board Suspends Arming of School Staffs*, ARK. DEMOCRAT-GAZETTE, Aug. 15, 2013, at 1A (“Districts around the state have used [PIPSA] for years to arm staff members.”); see also ARK. CODE ANN. § 17-40-101 to -354 (Repl. 2010) (relevant statutory provisions).

14. Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013) (“[T]he Code in my opinion does not authorize either licensing a school district as a guard company or classifying it as a private business authorized to employ its own teachers as armed guards.”).

15. Blad, *supra* note 13.

16. Evie Blad, *Board Reverses, OKs School-Staff Gunmen*, ARK. DEMOCRAT-GAZETTE, Sept. 12, 2013, at 1A.

17. See Brenda Bernet, *Teachers in 4 Districts Sign Up for Sheriff Reserve-Deputy Training*, ARK. DEMOCRAT-GAZETTE, Oct. 28, 2013, at 1B. Ten public school employees from four school districts in Boone County, Arkansas participated in training as reserve deputies, but the school districts have not made a final decision on whether to allow them to possess guns on school property. See *id.*

18. Brenda Bernet, *10 at Schools Train as Reserve Deputies*, ARK. DEMOCRAT-GAZETTE, May 19, 2014, at 7B.

19. See *infra* Part III.A.

This comment analyzes the past, present, and future of Arkansas's policy on arming school employees. Part II examines legislative activity on firearms policy during the 2013 session of the Arkansas General Assembly. Part III explains why PIPSA does not authorize public school districts to arm their employees. Part IV examines the challenges posed by allowing school employees to possess firearms on school property as reserve deputies. Part V compares Arkansas law to the law of states that permit public school employees to carry firearms on school property, demonstrating the unique approach Arkansas has taken on this issue.

The wisdom of arming elementary school teachers is undoubtedly a contentious political issue better suited for debate on the floor of the Arkansas General Assembly than in the pages of the *Arkansas Law Review*. With this in mind, this comment does not address the question of whether school employees should be authorized to carry a firearm on campus. Instead, noting the importance of this issue and the ambiguous state of Arkansas law, it calls on the Arkansas General Assembly to explicitly address whether school employees are authorized to act as armed security guards. Part VI outlines the issues the legislature should consider if school employees are one day able to carry firearms on school property and provides recommendations based on current Arkansas law, similar laws in other jurisdictions, and public-policy considerations.

II. RECENT ARKANSAS FIREARMS LEGISLATION

A. Legislation Enacted in 2013

In 2013, the Arkansas General Assembly demonstrated a keen interest in firearms policy, passing 18 pieces of gun legislation during its biennial regular meeting.²⁰ Of these new laws, three are particularly relevant to the subject of this comment.

1. *Guns on College Campuses*

The legislature passed a bill authorizing staff members of public, private, and community colleges in Arkansas to carry

20. See generally BUREAU OF LEGIS. RESEARCH, *supra* note 7 (listing legislation passed during the Regular Session of the 89th General Assembly).

firearms on school property, unless a college adopts a policy “expressly disallowing” the possession of firearms on their property.²¹ A public college or university wishing to ban the possession of firearms must renew its policy every year.²² If it fails to do so, staff members are automatically allowed to legally carry a firearm on campus.²³ Staff members possessing firearms on college campuses are required to have a concealed-carry permit.²⁴ Two weeks before the law went into effect, nearly all of Arkansas’s colleges and universities had voted to continue the prohibition of firearms on campuses.²⁵

2. *Guns on Church Property*

The Church Protection Act of 2013 authorized “church[es] or other place[s] of worship” to determine who may carry a concealed handgun on their premises.²⁶ Prior to its passage, Arkansas law prohibited possession of firearms on church property.²⁷ Notably, the legislature rejected a bill offered as a companion to the Church Protection Act that would have entitled churches and other places of worship to “charitable immunity with respect to injury or death caused by a handgun on the premises” and also stipulated that these institutions were not vicariously liable for injuries caused by the negligence of individuals on their property involving a handgun.²⁸

21. See Act 226, § 5, 2013 Ark. Acts 905, 909 (codified at ARK. CODE ANN. § 5-73-322 (Supp. 2013)).

22. ARK. CODE ANN. § 5-73-322(b)(2)(C) (Supp. 2013); see also Sarah D. Wire, *Campus-Gun Law Among Arrivals Today*, ARK. DEMOCRAT-GAZETTE, Aug. 16, 2013, at 1B (“Boards must renew those policies annually if they want them to remain in effect.”).

23. See ARK. CODE ANN. § 5-73-322(b)(2)(C) (Supp. 2013) (“A policy disallowing the carrying of a concealed handgun by staff members . . . must be readopted each year by the governing board of the public university, public college, or public community college to remain in effect.”).

24. ARK. CODE ANN. § 5-73-322(b). A concealed-carry permit is necessary for qualified persons wishing to legally carry a handgun on or about their person or in their vehicle. See ARK. CODE ANN. § 5-73-301 to -302 (Repl. 2005).

25. See Wire, *supra* note 22 (“Nearly all of the state’s higher-education institutions, public and private, have voted to opt out of the new law . . .”).

26. Act 67, § 1, 2013 Ark. Acts 273, 274 (codified at ARK. CODE ANN. § 5-73-306(16) (Supp. 2013)).

27. John Lyon, *Arkansas Churches Face Decision: Guns or No Guns?*, ARK. NEWS (May 5, 2013, 2:00 AM), <http://arkansasnews.com/sections/news/arkansas/arkansas-churches-face-decision-guns-or-no-guns.html>.

28. See H.B. 1284, 89th Gen. Assemb., Reg. Sess. (Ark. 2013); see also BUREAU OF LEGIS. RESEARCH, *supra* note 7 (failing to list House Bill 1284 among the legislation passed during the Regular Session of the 89th General Assembly).

3. Guns on Church-Operated School Campuses

After the Church Protection Act became law, the Arkansas General Assembly passed a bill allowing individuals to possess firearms in primary schools operated by churches.²⁹ In order to legally possess a firearm on school property, an individual: (1) must have a concealed carry permit and (2) must be authorized by the church or other place of worship to possess a firearm on its property.³⁰ Shortly after the law became effective, Arkansas Christian Academy in Bryant attracted national media attention when it posted signs in front of its school building, announcing its employees were “armed and trained” and “attempt[s] to harm children [would] be met with deadly force.”³¹ The school claimed that all “task force members” had completed approximately forty hours of training, far in excess of the law’s training requirements.³²

B. Legislation Rejected in 2013

While the legislature enacted policies allowing guns in universities, churches, and schools operated by churches, the Arkansas House Education Committee rejected House Bill 1231, which would have authorized employees of Arkansas public schools to carry firearms on school property.³³ The legislation would have allowed schools to contract with existing employees “to provide security during school hours in addition to [their] other job duties” for additional pay.³⁴ In order to carry a firearm on school property, the bill required school employees to complete a forty-hour training course at an accredited law enforcement training academy and an annual eight-hour recertification course.³⁵ The bill also required employees: (1) to have an Arkansas concealed carry permit; (2) to pass a physical

29. Act 1390, § 1, 2013 Ark. Acts 5926, 5926 (codified at ARK. CODE ANN. § 5-73-119(e)(11) (Supp. 2013)).

30. ARK. CODE ANN. § 5-73-119(e)(11) (Supp. 2013).

31. Chelsea Boozer, *Signs at Bryant School Warn of ‘Deadly Force,’* ARK. DEMOCRAT-GAZETTE, Aug. 23, 2013, at 3B.

32. *Id.*

33. See H.B. 1231, 89th Gen. Assemb., Reg. Sess. (Ark. 2013); see also Michael Stratford, *Arkansas House Panel Rejects School Employee Gun Bill*, MEMPHIS DAILY NEWS (Mar. 1, 2013), <http://www.memphisdailynews.com/news/2013/mar/1/arkansas-house-panel-rejects-school-employee-gun-bill/>.

34. H.B. 1231, § 3, 89th Gen. Assemb., Reg. Sess. (Ark. 2013).

35. H.B. 1231, § 3, 89th Gen. Assemb., Reg. Sess.

examination; (3) to “undergo the standard psychological evaluation for law enforcement personnel;” and (4) to subject to a background check.³⁶

The President of the Arkansas Education Association, Donna Moray, testified in opposition to House Bill 1231, arguing that school violence would be better prevented by “keep[ing] all guns off school property,” while also focusing on bullying and investing in mental health services.³⁷ Dr. Tom Kimbrell, the Arkansas Commissioner of Education, also testified in opposition to the bill.³⁸ Dr. Kimbrell shared the Arkansas Education Association’s concerns and voiced his preference for school resource officers as the only individuals authorized to carry firearms on school property.³⁹

The Arkansas School Boards Association supported the bill, reasoning that the legislation’s training requirements represented an improvement over current law.⁴⁰ Kristen Gould, testifying on their behalf, argued that school districts would license employees as private security officers should the legislature not pass House Bill 1231.⁴¹ Committee members did not question Ms. Gould about this option during the hearing.

A motion to move the bill out of committee failed.⁴² The committee’s rejection of the bill is particularly notable considering that the Arkansas General Assembly enacted legislation allowing the possession of firearms in colleges, universities, churches, and church-run schools during the same session. By rejecting House Bill 1231, it is clear that the legislature—or at least the House Education Committee—believed that public school employees should not possess firearms on school property.

36. H.B. 1231, § 3, 89th Gen. Assemb., Reg. Sess.

37. *Audio Recording of the Hearing on H.B. 1231 Before the House Education Committee*, ARK. HOUSE OF REPRESENTATIVES, 1:11:30–1:14:18 (Feb. 28, 2013), http://arkansas-house.granicus.com/ViewPublisher.php?view_id=7 [hereinafter *Committee Meeting*].

38. *Id.* at 1:15:38.

39. *Id.*

40. *See id.* at 1:14:15 (“We believe this is a good response to a problem. Without this bill, school districts will respond . . . by using existing laws to have school district employees to go through a[n] . . . online course to become licensed security guards.”).

41. *Id.*

42. *Committee Meeting*, *supra* note 37, at 01:32:07. The committee approved a motion to move the bill to interim study and directed that a report be prepared so the bill could be on the agenda for a future meeting of the legislature. *Id.* at 01:33:06.

III. ARMING TEACHERS UNDER PIPSA

A. Commission as a Private Security Officer

Arkansas law generally prohibits individuals from carrying firearms on school property.⁴³ School employees, with limited exceptions, are not exempt from this general prohibition.⁴⁴ However, law enforcement officers and properly licensed security guards are authorized to possess firearms on public school property as long as they are acting “in the course and scope” of their employment.⁴⁵

In order for a security guard to carry a firearm within the “course of performing his or her duties,” the Arkansas Security Board must commission the guard.⁴⁶ Commissions may only be issued to qualified “private security officers,” defined as “any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, or armored car guard.”⁴⁷ Therefore, to be eligible to become a commissioned security guard, an individual must be employed by a security contractor or the security department of a private business.

The Arkansas Security Board’s Rules and Regulations establish the training requirements applicants must satisfy in order to be granted a commission.⁴⁸ Applicants must complete a minimum of ten hours of training on a variety of subjects, including two hours of training on the legal authority of private security officers, two hours on the Arkansas Security Board’s rules and regulations, and two hours on field duties and report writing.⁴⁹ Further, applicants are required to complete a four-hour firearms course that includes instruction on the legal limitations on the use of firearms as well as training on weapons

43. See ARK. CODE ANN. § 5-73-119(b)(1)(A) (Supp. 2013) (“No person in this state shall possess a firearm . . . [u]pon the developed property of a public or private school, K-12 . . .”).

44. See ARK. CODE ANN. § 5-73-119(e)(1)–(11) (listing specific exemptions to the general prohibition of carrying firearms on school campuses).

45. ARK. CODE ANN. § 5-73-119(e)(2), (4).

46. See ARK. CODE ANN. § 17-40-335(2) (Repl. 2010).

47. ARK. CODE ANN. § 17-40-102(21) (Repl. 2010).

48. See RULES OF THE ARK. BD. OF PRIVATE INVESTIGATORS, PRIVATE SEC. AGENCIES, AND ALARM SYS. COS. R. (May 3, 2013) [hereinafter BOARD RULES], available at http://static.ark.org/eeuploads/asp/pi_alarm_services_rules_062014.pdf.

49. See *id.* at R. 3.13.

safety, marksmanship, and range safety.⁵⁰ Applicants must also pass examinations on each of these subjects⁵¹ and successfully qualify on a firing range.⁵²

B. The Attorney General's Opinion

On August 1, 2013, Arkansas Attorney General Dustin McDaniel issued a non-binding opinion stating that he did not believe public school employees could be licensed as security officers under PIPSA.⁵³ According to the opinion, PIPSA “authorizes the licensing of private businesses to provide armed security to clients. . . . [and] does not authorize the licensing of a political subdivision such as a school district, which is neither in itself private nor authorized to establish a separate private identity.”⁵⁴

The opinion first addressed whether a school district qualified as a “security services contractor,” where school employees serve as “private security officers” commissioned by the Arkansas Security Board to carry weapons.⁵⁵ PIPSA defines “security services contractor” as “any guard company or armored car company.”⁵⁶ The legislation states that a “guard company” is “any person engaging in the business of providing or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person.”⁵⁷ The Attorney General observed, “[i]f a school district were indeed functioning as a ‘guard company,’ then, it would be organized to provide services to any and all ‘customers’ purely for the purpose of generating income – a private business motivation that is self-evidently anathema to a school district’s purely public functions.”⁵⁸ On that basis, the opinion concluded that PIPSA did not “authoriz[e] the licensing of school districts as guard companies that might by virtue of that designation employ

50. *Id.*

51. *Id.* at R. 3.11.

52. *Id.* at R. 3.13.

53. Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013).

54. *Id.* (internal quotation marks omitted).

55. *Id.*

56. ARK. CODE ANN. § 17-40-102(26) (Repl. 2010).

57. ARK. CODE ANN. § 17-40-102(12).

58. Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013).

their own teachers and other employees as armed commissioned security officers.”⁵⁹

The Attorney General next addressed whether a school district qualified as a “private business . . . authorized to establish its own security department” under PIPSA.⁶⁰ The opinion noted the statute defined a “security department of a private business” as “the security department of any person if the security department has as its general purpose the protection and security of its own property and grounds and if it does not offer or provide security services to any other person.”⁶¹ The opinion also noted the applicable statute defined “person” as “an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.”⁶² Citing the doctrine of *noscitur a sociis*, which “provides that a word can be defined by the words accompanying it,”⁶³ and the statute’s repeated focus on private businesses, the opinion concluded that “the term ‘person’ in this definition [should be] restricted in meaning to a point that cannot accommodate a classically public entity such as a school district.”⁶⁴ The Attorney General believed that public school employees could not be issued commissions under PIPSA because public school districts are neither security services contractors nor private businesses authorized to establish their own security departments.⁶⁵

C. The Arkansas Security Board Hearing

After the Attorney General issued the opinion, the Arkansas Security Board temporarily suspended the commissions of all public school district employees.⁶⁶ On September 11, 2013, the Arkansas Security Board held a hearing where it considered whether to permanently revoke these

59. *Id.*

60. *See id.*

61. *Id.* (emphasis omitted) (quoting ARK. CODE ANN. § 17-40-102(24) (Repl. 2010)).

62. Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013) (quoting ARK. CODE ANN. § 17-40-102(19) (Repl. 2010)).

63. *State v. Oldner*, 361 Ark. 316, 327, 206 S.W.3d 818, 822 (2005).

64. Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013).

65. *See id.*

66. Blad, *supra* note 13.

commissions.⁶⁷ At the hearing, the school districts advanced two main arguments in support of keeping their security commissions.

1. *School Employees Qualify Under PIPSA*

The school districts first argued that employees of public school districts were eligible to receive commissions under the statute.⁶⁸ While conceding that school districts are not “security services contractors” for the purpose of the statute,⁶⁹ they argued that their armed employees fell within the statute’s definition of a “security department of a private business,” defined as “the security department of any person if the security department has as its general purpose the protection and security of its own property and grounds and if it does not offer or provide security services to any other person.”⁷⁰ The school districts noted that the statute broadly defined “person” as “an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.”⁷¹ They asserted that a school district met this definition as a “nonprofit organization,” “institution,” or at least a “similar entity.”⁷² In support of this argument, the school districts cited definitions of each of these terms from *Black’s Law Dictionary*.⁷³

The Attorney General responded to this argument by noting that PIPSA’s definition of “person” can only be read within its definition of a “security department of a private business.”⁷⁴ He argued that the Arkansas Security Board must first determine if a public school district is a private business before determining if it fits within the definition of a “person” under the statute.⁷⁵ According to this argument, whether a school district qualified

67. See Blad, *supra* note 16.

68. See Audio tape: Hearing of the Arkansas Board of Private Investigators and Private Security Agencies at 00:36:03 (Sept. 11, 2013) [hereinafter Board Hearing] (on file with author).

69. See *id.* at 00:38:07.

70. *Id.* at 00:37:49; see also ARK. CODE ANN. § 17-40-102(24) (Repl. 2010) (defining “security department of a private business”).

71. Board Hearing, *supra* note 68, at 00:38:25; see also ARK. CODE ANN. § 17-40-102(19) (Repl. 2010) (defining “person”).

72. See Board Hearing, *supra* note 68, at 00:38:50.

73. See *id.* at 00:39:29.

74. See *id.* at 01:25:56; see also ARK. CODE ANN. § 17-40-102(24) (Repl. 2010) (defining “security department of a private business”).

75. Board Hearing, *supra* note 68, at 1:26:16.

as a “person” had no bearing on determining whether it was a private business.⁷⁶

2. Governmental Estoppel

The school districts also argued that their employees should be able to keep their commissions under the principle of governmental estoppel.⁷⁷ Under the equitable principle of estoppel, “a party who by his act or failure to act when he should, either designedly or with willful disregard of the interest of others, induces or misleads another to change his position to his detriment is estopped to assert his right afterwards.”⁷⁸ Governmental estoppel is simply the extension of this principle for use against the government.⁷⁹ Four elements must be satisfied to support a finding of estoppel:

(1) [T]he party to be estopped must know the facts; (2) the party to be estopped must intend that the conduct be acted on or must act so that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting the estoppel must rely on the other’s conduct and be injured by that reliance.⁸⁰

In support of their governmental estoppel argument, the school districts claimed that the Arkansas Security Board knew that the applications were for school district employees when they originally approved the commissions.⁸¹ Accordingly, the Arkansas Security Board should have also reasonably expected that, once the commissions were approved, the districts would spend time and resources to create a security program.⁸² The school districts had no reason to believe that the Arkansas Security Board would reinterpret the statute and revoke the

76. *Id.* at 01:26:37.

77. *Id.* at 00:41:28.

78. *Howard Bldg. Ctr. v. Thornton*, 282 Ark. 1, 3, 665 S.W.2d 870, 871 (1984).

79. *See generally* David K. Thompson, Note, *Equitable Estoppel of the Government*, 79 COLUM. L. REV. 551 (1979) (detailing the history of governmental estoppel).

80. *Ark. Dept. of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 23-24, 922 S.W.2d 712, 713 (1996).

81. Board Hearing, *supra* note 68, at 00:55:07.

82. *Id.* at 00:55:34.

licenses,⁸³ and school districts relied in good faith on the Board's choice to issue the licenses.⁸⁴

The Attorney General argued that the school districts misapplied the principle of governmental estoppel.⁸⁵ Using the distribution of unemployment benefits as an example, the Attorney General explained that, under the principles of governmental estoppel, the government would not be entitled to collect past benefits it mistakenly distributed to innocent citizens.⁸⁶ However, governmental estoppel does not require the government to continue paying benefits to ineligible citizens solely because they had been paid in the past.⁸⁷ While the Attorney General conceded that these school districts reasonably relied on the Arkansas Security Board's past approval of the commissions, he argued that governmental estoppel did not require the Board to reinstate the commissions.⁸⁸

D. The Arkansas Security Board's Findings

The Arkansas Security Board officially ruled that "Public School Districts [were] not private businesses" and that "employees of Public School Districts [could not] be registered or commissioned as private security officers under the Board's governing statutes."⁸⁹ Based on these findings, the Board concluded that the commissioned school employees were "in violation of the provisions of [Arkansas law] which permit only the employees of security contractors and private businesses to serve as private security officers."⁹⁰

Despite this conclusion, the Arkansas Security Board allowed the school employees commissioned as private security officers at the time of the hearing to "retain their registrations and commissions for two years from the date of the hearing held on September 11, 2013."⁹¹ The governmental estoppel argument evidently influenced this decision, as the Board's

83. *Id.* at 00:56:06.

84. *Id.* at 00:56:34.

85. *Id.* at 01:27:50.

86. Board Hearing, *supra* note 68, at 01:28:07.

87. *Id.* at 01:28:32.

88. *Id.* at 01:29:00.

89. Ashdown Pub. Sch. Dist., No. 13-100, at 2 (Ark. Bd. of Private Investigators and Private Sec. Agencies Oct. 7, 2013).

90. *Id.* at 3.

91. *Id.* at 4.

order: (1) noted the fact that some school districts “spent public funds for equipment and training based on the previously granted . . . commissions;” (2) prohibited any school district from commissioning additional employees as private security officers; and (3) stated that all employee commissions would automatically expire on September 11, 2015.⁹² The Board extended the commissions for two years so the Arkansas General Assembly could address the issue of arming school employees at the next scheduled regular legislative session in 2015.⁹³

E. Analysis of the Arkansas Security Board’s Decision

1. Public School Districts and Immunity from Tort Liability

As a result of the Arkansas Security Board’s decision, approximately sixty public school employees are authorized to carry firearms on school property until September 11, 2015.⁹⁴ Since the Arkansas Security Board reinstated the commissions, some have questioned whether the school districts and their armed employees, who are technically private security officers until 2015, are immune from liability for accidents related to firearms.⁹⁵

Arkansas recognizes both statutory⁹⁶ and constitutional⁹⁷ sovereign immunity. While school districts and their employees qualify for statutory sovereign immunity, they do not qualify for

92. *Id.* at 3-4.

93. *See* Board Hearing, *supra* note 68, at 02:24:00 (“They may keep the remaining [commissions] that are employed by the districts for the remaining two years.”); *see also* Blad, *supra* note 16 (“That decision will allow those employees to retain their commissions as private security guards for two years, giving lawmakers a chance to change state law . . .”).

94. *See* Blad, *supra* note 16 (“The Arkansas [Security Board] had previously voted to temporarily suspend the commissions of about 60 employees of school districts throughout the state.”).

95. *See* Ark. Att’y Gen. Op. No. 2013-091 (August 1, 2013) (noting that it is unclear whether a school district employee would be subject to a criminal charge for carrying a firearm on school property); Lyon, *supra* note 12 (“‘If something happens in the school, who’s going to be liable?’ asked board member Jack Acre of Little Rock, who voted against allowing districts to arm employees. ‘Because you know when a student gets shot or hurt in a school, somebody’s going to be suing somebody.’”).

96. *See* ARK. CODE ANN. § 21-9-301 (Supp. 2013) (making school districts immune to tort liability except to the extent that they are covered by liability insurance).

97. ARK. CONST. art. 5, § 20 (“The State of Arkansas shall never be made defendant in any of her courts.”).

sovereign immunity under the Arkansas Constitution.⁹⁸ Unlike constitutional sovereign immunity, which expressly prohibits filing suit against the State of Arkansas in her courts,⁹⁹ Arkansas law declares that all school districts and their governing bodies “shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.”¹⁰⁰ The statute also establishes that school districts are immune from liability for the alleged tortious acts of their agents and employees.¹⁰¹

Today, courts give broad deference to school districts under statutory immunity.¹⁰² Historically, school districts and other political subdivisions in Arkansas were liable for damages unless the activity causing the damage was “in the general interest of the public.”¹⁰³ However, under the statute, school districts enjoy immunity from all damages, except to the extent that they may be covered by liability insurance, regardless of whether the activity was in the public interest or not.¹⁰⁴ School district employees are also “immune from suit for torts occasioned by any negligent act they may commit in the performance of their official duties,”¹⁰⁵ except to the extent that they are covered by insurance.¹⁰⁶

98. *Dermott Special Sch. Dist. v. Johnson*, 343 Ark. 90, 96-97, 32 S.W.3d 477, 481 (2000) (“We conclude that school districts, as political subdivisions, are not entitled to the State’s constitutional sovereign-immunity protection. . . . We note that the resolution of this issue does not affect the statutory immunity from tort liability . . .”).

99. *Brown v. Ark. State Heating, Ventilation, Air Conditioning and Refrigeration, Licensing Bd.*, 336 Ark. 34, 37-38, 984 S.W.2d 402, 403 (1999) (“Article 5, section 20, of the Constitution of the State of Arkansas reads, ‘The State of Arkansas shall never be made a defendant in any of her courts.’ In regard to this immunity, we have held that the constitutional prohibition was not merely declaratory that the state could not be sued without her consent, but that all suits against the state were expressly forbidden.”).

100. ARK. CODE ANN. § 21-9-301(a) (Supp. 2013).

101. ARK. CODE ANN. § 21-9-301(b).

102. See HOWARD W. BRILL, *ARKANSAS LAW OF DAMAGES* § 22:4 (5th ed. 2004) (“[T]he broad definition of governmental functions effectively foreclose[s] any actions against a city in tort.”).

103. *Id.*

104. See *id.*

105. See *Matthews v. Martin*, 280 Ark. 345, 345-46, 658 S.W.2d 374, 375 (1983); see also *Cousins v. Dennis*, 298 Ark. 310, 312, 767 S.W.2d 296, 297 (1989).

106. See *Carlew v. Wright*, 356 Ark. 208, 216, 148 S.W.3d 237, 242 (2004) (“This issue is based on language found in [the Arkansas Code Annotated], which provides that appellant, as a county judge, is entitled to immunity from liability and from suit for damages except to the extent that he is covered by liability insurance.”).

School districts are not statutorily required to obtain any liability insurance other than motor vehicle insurance.¹⁰⁷ A survey of Arkansas case law demonstrates that school districts often obtain insurance policies carefully drafted to avoid financial responsibility for negligence.¹⁰⁸ Therefore, the statute essentially operates as a complete bar to recovery for injuries caused by a school employee's negligence.

Under current Arkansas law, it appears that school districts and armed employees would be completely immune from tort liability related to the use of firearms, unless they are covered by liability insurance. While the classification of these employees as "private security officers" is a complicating factor—in that the courts have yet to consider whether such a characterization is proper—Arkansas courts have a long history of respecting tort immunity for school districts and their employees.¹⁰⁹ Any problems with tort immunity could be, and should be, resolved by the legislature.¹¹⁰

2. Public School Districts Are not "Private Businesses" Under PIPSA

The Arkansas Security Board rejected the school districts' argument that they fit within PIPSA's definition of "private businesses."¹¹¹ The school districts chose not to appeal this finding because the Board temporarily reinstated their employees' commissions on the basis of governmental

107. See ARK. CODE ANN. § 21-9-303(a) (Repl. 2004) (requiring political subdivisions, including school districts, to carry liability insurance for their motor vehicles).

108. See, e.g., *Waire v. Joseph*, 308 Ark. 528, 534, 825 S.W.2d 594, 598 (1992) ("Given Arkansas's strong adherence to governmental immunity, we think that if the legislature had intended to require [the Arkansas Department of Education] to insure against the negligent acts of school district employees, claims from which school districts traditionally have been immune, they would have expressly stated this intent. In the absence of such express intent, we do not think this court should change longstanding public policy of the State of Arkansas.").

109. See BRILL, *supra* note 102, § 22.4 ("Other than motor vehicle coverage, the local government is not required to maintain liability insurance. . . . In the absence of insurance, a claim against the government is barred.").

110. See *Hardin v. City of Devalls Bluff*, 256 Ark. 480, 483, 508 S.W.2d 559, 562 (1974) (stating that the Arkansas General Assembly has "full authority" to address the issue of the sovereign immunity of school districts).

111. *Ashdown Pub. Sch. Dist.*, No. 13-100, at 2 (Ark. Bd. of Private Investigators and Private Sec. Agencies Oct. 7, 2013).

estoppel.¹¹² At the time of publication, it does not appear that this issue will be litigated.

According to the Arkansas Supreme Court, “[t]he basic rule of statutory construction is to give effect to the intent of the General Assembly.”¹¹³ To determine a statute’s meaning, “the first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language.”¹¹⁴ The court will not resort to the rules of statutory construction if “the language of a statute is plain and unambiguous,”¹¹⁵ and a statute is only ambiguous if “it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning.”¹¹⁶ Finally, the “court will not give statutes a literal interpretation if it leads to absurd consequences that are contrary to legislative intent.”¹¹⁷ Applying these tenants of statutory construction to PIPSA, it is clear that the Arkansas General Assembly did not intend to include public school districts as “private businesses.” The ordinary and usually accepted meaning of “private business” simply does not include a “public” entity like a school district.

Also, “private business” and “school district” are incompatible as defined in conventional legal language. *Black’s Law Dictionary* defines “private” as “[r]elating or belonging to an individual, as opposed to the public or the government”¹¹⁸ and “business” as “[a] commercial enterprise carried on for profit.”¹¹⁹ In contrast, the dictionary defines “school district” as “[a] political subdivision of a state, created by the legislature and invested with local powers of self-government, to build, maintain, fund, and support the public schools within its territory and to otherwise assist the state in administering its educational responsibilities.”¹²⁰ The ordinary and usually

112. *Id.* at 3-4.

113. *Nolan v. Little*, 359 Ark. 161, 165, 196 S.W.3d 1, 3 (2004).

114. *Id.*

115. *Cave City Nursing Home, Inc. v. Ark. Dep’t. of Human Servs.*, 351 Ark. 13, 21, 89 S.W.3d 884, 889 (2002).

116. *ACW, Inc. v. Weiss*, 329 Ark. 302, 312, 947 S.W.2d 770, 775 (1997).

117. *Nolan*, 359 Ark. at 165, 196 S.W.3d at 3.

118. *BLACK’S LAW DICTIONARY* 1315 (9th ed., 2009).

119. *Id.* at 226.

120. *Id.* at 1463.

accepted meaning of these terms shows that a public school district simply cannot be characterized as a private business.

Further, the legislature and state courts treat school districts as public, rather than private, entities. The Arkansas General Assembly enacted a statute that immunizes school districts and their employees from almost all tort liability,¹²¹ which clearly conflicts with the state's policy for private businesses and their employees. The legislature also granted school districts the authority to seize private property through eminent domain,¹²² an inherent power of the sovereign that may only be exercised for a public purpose.¹²³ The Arkansas Supreme Court has also found it "obvious" that school districts are political subdivisions—not private businesses.¹²⁴ Therefore, the argument that school districts qualify as a private businesses under the statute contradicts not only the common definition of these terms, but Arkansas's traditional legislative and judicial interpretation of them as well.

In their arguments before the Arkansas Security Board, the school districts ignored this issue and instead focused on the statute's definition of "person," which is "an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity."¹²⁵ They argued that "school district" fits within the ordinary and usually accepted meaning of some of these terms, specifically "nonprofit organization," "institution," or a "similar entity."¹²⁶ The definition of "person" is relevant because the statute defines "security department of a private business" as "the security department of any person."¹²⁷

An Arkansas court would likely rule that public school districts are not persons under the statute. Even if a court found that school districts were within the ordinary and usually accepted meaning of the statute's definition of "person," the "court will not give statutes a literal interpretation if it leads to

121. See ARK. CODE ANN. § 21-9-301 (Supp. 2013).

122. See ARK. CODE ANN. § 6-13-103(a) (Repl. 2013).

123. BRILL, *supra* note 102, § 18:1.

124. See *Muse v. Prescott Sch. Dist.*, 233 Ark. 789, 791, 349 S.W.2d 329, 330 (1961).

125. Board Hearing, *supra* note 68, at 00:38:25; see also ARK. CODE ANN. § 17-40-102(19) (Repl. 2010) (defining "person").

126. Board Hearing, *supra* note 68, at 00:38:50.

127. ARK. CODE ANN. § 17-40-102(24) (Repl. 2010).

absurd consequences that are contrary to legislative intent.”¹²⁸ This issue of statutory construction is analogous to one presented in *Nolan v. Little*, where the Arkansas Supreme Court held that seed samplings were not “public records” under the Arkansas Freedom of Information Act.¹²⁹ The relevant statute in *Nolan* defined “public records” as “writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium.”¹³⁰ The statute defined “medium” as “the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes.”¹³¹ The plaintiff argued that the seed samplings fit within the ordinary and accepted meaning of “any medium” and therefore within the broad statutory definition of “public record.”¹³²

The court rejected this argument, finding that the definitions of “public record” and “medium” could not be stretched to include seed samples.¹³³ Despite recognizing that the statute’s list of possible “mediums” was not exhaustive, the court noted that this did not include seeds and other organic objects.¹³⁴ The court then listed the types of items that constitute public records and mediums and found that the plain and ordinary meaning of the statute simply did not include an actual seed.¹³⁵

128. *Nolan v. Little*, 359 Ark. 161, 165, 196 S.W.3d 1, 3 (2004).

129. *Id.*

130. *Id.* at 164, 196 S.W.3d at 3 (quoting ARK. CODE ANN. § 25-19-103(5)(A) (Supp. 2003)).

131. *Id.* at 165, 196 S.W.3d at 3 (quoting ARK. CODE ANN. § 25-19-103(3) (Supp. 2003)).

132. *Id.* (“[Plaintiff] contends that a ‘public record’ includes data as contained within ‘any medium,’ to include seed samples and the genetic information contained therein. [Plaintiff] also argues that the canons of statutory interpretation require ‘any medium’ to be given plain meaning and effect, and that a broad definition of ‘public record’ be applied.”).

133. *See Nolan*, 359 Ark. at 166, 196 S.W.3d at 4.

134. *Id.* at 165, 196 S.W.3d at 3 (“Although the list of items that can be mediums is not exhaustive, it does not contain a seed or any other organic object.”).

135. *Id.* at 166, 196 S.W.3d at 3-4 (“Giving the words of the statute their plain and ordinary meaning as required by the rules of statutory construction, a seed sample does not constitute a ‘public record,’ nor does it fall within the definition of a medium.”).

Similar to the definitions considered in *Nolan*, PIPSA uses a non-exhaustive list to define “person.”¹³⁶ Public school districts are not explicitly included in this list.¹³⁷ While public school districts are similar to some types of listed entities, their intrinsic public nature distinguishes them from entities that the statute clearly includes. Additionally, even if a court were to find that a school district is literally within the statute’s definition of “person,” it could not ignore the fact that the statute is limited to “private businesses,” which public school districts plainly are not. Arkansas courts have explicitly stated that they “will not give statutes a literal interpretation if it leads to absurd consequences that are contrary to legislative intent.”¹³⁸ Finding that a public school district is a private business because it fits within PIPSA’s broad definition of a “person” is precisely the kind of absurd consequence that a court would likely avoid.

3. Governmental Estoppel¹³⁹

The Arkansas Security Board reinstated the commissions primarily due to an individual board member’s personal concerns over school safety and on the principle of governmental estoppel. The school districts correctly argued that Arkansas recognizes governmental estoppel, as the Arkansas Supreme Court “abandon[ed] the principle . . . that the state can never be estopped by the actions of its agents” over thirty years ago.¹⁴⁰ The Arkansas Supreme Court has identified four elements necessary to establish governmental estoppel,¹⁴¹ but the court also has held that “a sovereign is not bound by the unauthorized acts of its employees.”¹⁴² Therefore, governmental estoppel simply does not apply where a government agent’s

136. See ARK. CODE ANN. § 17-40-102(19) (Repl. 2010) (defining “person” as “an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity”).

137. See ARK. CODE ANN. § 17-40-102(19).

138. *Nolan*, 359 Ark. at 165, 196 S.W.3d at 3.

139. Dedicating much space in this comment to provide a detailed analysis of the governmental estoppel argument is unnecessary. The Arkansas Security Board is unlikely to revisit this issue, and the Board’s decision has no precedential value for Arkansas courts. Nevertheless, the argument played an important role in the ruling, and warrants cursory discussion.

140. *Foote’s Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 822, 607 S.W.2d 323, 325 (1980) (emphasis omitted).

141. See *supra* note 80 and accompanying text.

142. *City of Russellville v. Hodges*, 330 Ark. 716, 719, 957 S.W.2d 690, 692 (1997).

conduct was unauthorized, even if the four elements of governmental estoppel are met.¹⁴³

The Arkansas Security Board was not authorized to grant security officer commissions to public school employees. The Arkansas Security Board found that these individuals are ineligible to serve as private security guards¹⁴⁴ because PIPSA expressly prohibits the Arkansas Security Board from issuing commissions to those who do not meet *all* of its qualifications.¹⁴⁵ Therefore, the Arkansas Security Board's original grant of the commissions was an unauthorized act, and the State of Arkansas cannot be bound by its decision, even if the four elements of estoppel are met. As the Attorney General argued, once the Arkansas Security Board determined that school district employees were ineligible under the statute, the issue was settled, and the security commissions should have been permanently revoked.¹⁴⁶

IV. SCHOOL EMPLOYEES AS AUXILIARY LAW ENFORCEMENT OFFICERS¹⁴⁷

A. Yes, They Can

School district employees that have not been commissioned as private security officers may have an alternative option under

143. *Id.* (“We need not decide whether the four elements [of governmental estoppel] are met because we conclude that the chancellor erred in finding that [the government agent] was authorized to waive the City's zoning requirements.”); *see also* *Miller v. City of Lake City*, 302 Ark. 267, 270, 789 S.W.2d 440, 442 (1990) (“The appellant does not meet all of the requirements [of governmental estoppel]. First, the [government agents] were not authorized to waive the zoning requirements.”).

144. *Ashdown Pub. Sch. Dist.*, No. 13-100, at 3 (Ark. Bd. of Private Investigators and Private Sec. Agencies Oct. 7, 2013) (“[T]he registrations and/or commissions of the [school district employees] are in violation of the provisions of the Act which permit only the employees of security services contractors and private businesses to serve as private security officers.”).

145. ARK. CODE ANN. § 17-40-337(b) (Repl. 2010) (“The [Arkansas Security Board] shall not issue a security officer commission to an applicant employed by a licensee or the security department of a private business unless the applicant submits evidence satisfactory to the board that he or she meets all qualifications established by this chapter and by the rules of the board.”).

146. *See* Board Hearing, *supra* note 68, at 01:30:20.

147. Media reports on this subject generally use the term “reserve deputy.” *See* Blad, *supra* note 16 (“Some of those districts that were expecting to lose the security guard commissions had already started plans to train some of their employees as reserve deputies for their county sheriffs so they could remain armed.”). A “reserve deputy” is one type of auxiliary law enforcement officer. *See* ARK. CODE ANN. § 12-9-301(1) (Repl. 2009).

existing Arkansas law to legally possess firearms on school property. These individuals may be appointed by a political subdivision or law enforcement agency as “auxiliary law enforcement officers” if they meet certain training requirements and other minimum requirements.¹⁴⁸ Auxiliary law enforcement officers have the same authority as police officers as long as they are “performing an assigned duty and [are] under the direct supervision of a full-time certified law enforcement officer.”¹⁴⁹ However, the law clearly limits their power. Auxiliary officers must be performing an assigned duty while working under the direct supervision of a full-time law enforcement officer to have authority beyond that of a private citizen.¹⁵⁰

Under Arkansas law, it is permissible for an individual to carry a handgun on school property if “[t]he person is a law enforcement officer . . . acting in the course and scope of his or her official duties.”¹⁵¹ The language is not limited to full-time law enforcement officers, and therefore it appears that auxiliary law enforcement officers could legally carry a firearm on school property as long as they are “performing an assigned duty . . . under the direct supervision of a full-time certified law enforcement officer.”¹⁵²

The question then becomes what constitutes “direct supervision” under the statute. Since the school districts argued that they must arm their employees because they cannot afford resource officers, the statute is of little practical use to them if a full-time law enforcement officer must be physically present for the auxiliary officers to have any police authority.¹⁵³ Fortunately for supporters of this plan, the statute’s definition of “direct supervision” plainly states that a full-time officer is not required to be physically present in order to directly supervise an auxiliary officer.¹⁵⁴

148. ARK. CODE ANN. § 12-9-301(1) (Repl. 2009).

149. ARK. CODE ANN. § 12-9-303(a) (Repl. 2009).

150. ARK. CODE ANN. § 12-9-303(b).

151. ARK. CODE ANN. § 5-73-119(e)(2) (Supp. 2013).

152. ARK. CODE ANN. § 12-9-303(a) (Repl. 2009).

153. Blad, *supra* note 8 (“[D]istricts can employ school resource police officers or contract with a private security agency to place armed guards in schools. But some school leaders at the meeting said that employing police officers is too costly for their limited budgets . . .”).

154. ARK. CODE ANN. § 12-9-301(3) (Repl. 2009) (“Direct supervision . . . does not mean that the full-time certified law enforcement officer must be in the physical presence

The statute defines direct supervision as “having a designated on-duty, full-time certified law enforcement officer responsible for the direction, conduct, and performance of the auxiliary law enforcement officer when that auxiliary law enforcement officer is working an assigned duty.”¹⁵⁵ This requirement is liberally construed. Arkansas courts have found that radio contact between auxiliary and full-time officers is sufficient to constitute direct supervision.¹⁵⁶ One court even went as far as to find that an auxiliary officer was directly supervised by an “on-duty” law enforcement officer even though his supervisor had left the office before an arrest was made, and the auxiliary officer contacted him at home on his personal telephone.¹⁵⁷ In *Martin v. State*, the Arkansas Supreme Court found that the statute did not require auxiliary officers to be “on duty” before they “could be authorized and activated to perform law enforcement functions.”¹⁵⁸ Therefore, it appears that school employees serving as auxiliary law enforcement officers can legally possess firearms on school property and have the legal authority of law enforcement officers to protect students even in the physical absence of a full-time law enforcement officer.

B. Yes, They Should?

However, there are several reasons why school district employees may be unable or unwilling to become auxiliary law enforcement officers. One of the requirements for becoming an auxiliary law enforcement officer is appointment “by a political subdivision or a law enforcement agency.”¹⁵⁹ School districts, though considered in many cases under Arkansas law to be “political subdivisions,” likely do not have the authority under the statute to make these appointments themselves.¹⁶⁰ While

of the auxiliary law enforcement officer when the auxiliary law enforcement officer is working an assigned duty.”).

155. ARK. CODE ANN. § 12-9-301(3).

156. *See, e.g.*, *Turnbull v. State*, 22 Ark. App. 18, 20, 731 S.W.2d 794, 796 (1987) (ruling an auxiliary officer was directly supervised where he was in radio contact with his designated supervisor prior to making an arrest).

157. *Martindill v. State*, 40 Ark. App. 16, 19, 839 S.W.2d 545, 547 (1992).

158. 327 Ark. 38, 40, 936 S.W.2d 75, 76 (1997).

159. ARK. CODE ANN. § 12-9-301(1) (Repl. 2009).

160. *See* Ark. Att’y Gen. Op. No. 2006-010 (Apr. 6, 2006) (“In my opinion, under Arkansas law, a public school district cannot in effect establish its own law enforcement agency by employing individuals qualified to serve as ‘law enforcement officers’ . . .”).

sheriffs from multiple Arkansas counties have expressed a willingness to make such appointments,¹⁶¹ they are not required to do so. Therefore, the appointment requirement could prevent school employees from becoming auxiliary officers, even if all of the other requirements are met.

The training requirements present another hurdle for school employees, as they are considerably more stringent than those for private security officers.¹⁶² Auxiliary law enforcement officer candidates are statutorily required to complete a minimum of 100 hours of training approved by the Arkansas Commission on Law Enforcement Standards and Training, which includes a firearms course equivalent to the requirement for full-time officers.¹⁶³ The current training course is actually 110 hours and includes subjects unrelated to school safety, such as “Traffic Law,” “Rules of Evidence,” and “D.W.I. Detection and Enforcement.”¹⁶⁴ Individual sheriffs may also require additional training prior to appointing school employees as auxiliary law enforcement officers.¹⁶⁵ Therefore the training requirements clearly impose a heavy burden for employees who already work at the school.

Finally, deputizing school employees as auxiliary law enforcement officers is a novel concept in the State of Arkansas, and uncertainty about how courts would interpret the statute could have a chilling effect on interested employees. Auxiliary law enforcement officers are private citizens unless they are performing an assigned duty and working under the direct supervision of a full-time certified law enforcement officer.¹⁶⁶ If a court finds that the school employee is not an auxiliary officer while possessing a firearm on school property, the employee has

161. See Brenda Bernet, *Schools Debate Plan to Let Staff Carry Guns*, ARK. DEMOCRAT-GAZETTE, Sep. 24, 2013, at 1B.

162. Compare BOARD RULES, *supra* note 48, at R. 3.13 (requiring a minimum of ten hours of training to become a private security officer), with ARK. CODE ANN. § 12-9-304(f) (Repl. 2009) (requiring a minimum of 100 hours of training to become an auxiliary law enforcement officer).

163. ARK. CODE ANN. § 12-9-304(f) (Repl. 2009).

164. *Training Material & Testing Information*, ARK. COMM’N ON LAW ENFORCEMENT STANDARDS & TRAINING, <http://www.clest.org/aleta/Pages/testingTrainingMaterials.aspx> (last visited Sept. 30, 2014).

165. See Bernet, *supra* note 161 (“For a reserve deputy to work on a school campus, [Boone County Sheriff Mike] Moore would require an additional 24 hours in ‘active shooter’ training and 16 hours in weapon retention.”).

166. ARK. CODE ANN. § 12-9-303(b) (Repl. 2009).

committed a felony.¹⁶⁷ While school employees may argue that their “assigned duty” is protecting the school while children are present—and Arkansas courts have liberally interpreted “direct supervision”—the absence of any case law on this issue likely would deter school employees from choosing to become auxiliary law enforcement officers.

V. COMPARISON WITH THE LAW OF OTHER STATES

While a vast majority of states prohibit the possession of firearms on school property,¹⁶⁸ the policy is not universal. For example, in Utah, anyone with a valid concealed-carry permit may legally possess a firearm on the property of a primary school.¹⁶⁹ Even individuals without concealed-carry permits may possess a gun on school property if they have permission from “the responsible school administrator” to possess the firearm or if the firearm is in the individual’s car.¹⁷⁰ In the year following the shooting at Sandy Hook Elementary School, five states “enacted laws that expanded the ability for public educators to arm themselves at school.”¹⁷¹

A. Alabama

Despite passing sweeping legislation loosening state gun-control laws in 2013,¹⁷² Alabama continues to generally prohibit the possession of firearms on school property.¹⁷³ However, the

167. See ARK. CODE ANN. § 5-73-119(b)(2) (Supp. 2013).

168. See *Guns in Schools Policy Summary*, LAW CTR. TO PREVENT GUN VIOLENCE (Nov. 1, 2013), <http://smartgunlaws.org/guns-in-schools-policy-summary/> (providing an overview of the current status of the law across various jurisdictions).

169. David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 528 (2009) (“[U]nder Utah law, since 1995, any person with a concealed carry permit has been able to carry a handgun in Utah K–12 public schools.”).

170. UTAH CODE ANN. § 76-10-505.5(4)(b), (d)(ii) (West 2014).

171. Kim Severson, *Guns at School? If There’s a Will, There Are Ways*, N.Y. TIMES, Sep. 28, 2013, at A9.

172. See Kim Chandler, *Lawmakers Give Final Approval to Gun Bill*, AL.COM (May 22, 2013, 1:59 PM), http://blog.al.com/wire/2013/05/lawmakers_give_final_approval_1.html.

173. See Memorandum from Thomas R. Bice, State Superintendent, Ala. Dep’t of Educ., to City and Cnty. Superintendents, on the Applicability of New Gun Laws on Prohibitions of Carrying Firearms on School Campuses (Aug. 7, 2013), available at <http://localtvwhnt.files.wordpress.com/2013/08/applicability-of-alabamas-gun-law-act-2013-283.pdf>; Kim Chandler, *Superintendent Tommy Bice: Guns Still Prohibited at Schools*, AL.COM (last updated Aug. 12, 2013, 4:52 PM), http://blog.al.com/wire/2013/08/superintendent_tommy_bice_says.html.

state legislature, over Governor Robert Bentley's veto, passed county-specific legislation that allowed any primary school in Franklin County, Alabama to form volunteer security forces that may legally carry firearms on school grounds.¹⁷⁴

The relevant statute provides that if the principal of any school in Franklin County determines "that the safety of the students at the school is not adequately protected or that additional security is necessary to ensure the safety of the students or employees," then he or she may request volunteers to serve on an emergency security force for the school.¹⁷⁵ The security force may "consist of current employees of the school, retired employees of the school, and residents of the school district."¹⁷⁶ The principal must submit a list of volunteers to the county sheriff, who then determines if there is a sufficient number of suitable volunteers to staff the volunteer emergency security force.¹⁷⁷

Once a volunteer emergency security force is formed, the sheriff and school personnel must prepare a crisis plan for the school.¹⁷⁸ The plan must "specify how and where weapons may be stored and carried by emergency security force members and circumstances under which certain weapons may be used."¹⁷⁹ The statute stipulates that "[a]ll weapons and equipment used shall be approved by the sheriff."¹⁸⁰

Governor Bentley, a Republican, vetoed the legislation for two reasons: (1) it lacked adequate firearms and combat training requirements and (2) potential liability was passed from Franklin County to the state.¹⁸¹ As enacted, the statute fails to list any specific training requirements necessary for becoming a member

174. Mary Sell, *Franklin School Security Bill Survives 2 Vetoes*, TIMES DAILY (May 21, 2013, 12:00 AM), http://www.timesdaily.com/archives/article_4356c18e-8962-5ec6-836d-8034dc0f75b2.html?TNNoMobile.

175. ALA. CODE § 45-30-103(a) (2014).

176. ALA. CODE § 45-30-103(a).

177. ALA. CODE § 45-30-103(b).

178. ALA. CODE § 45-30-103(c).

179. ALA. CODE § 45-30-103(c).

180. ALA. CODE § 45-30-103(c) (2014).

181. See Kellie Singleton, *Morrow Airs Frustrations in Letter to Governor*, FRANKLIN CNTY. TIMES (Apr. 27, 2013, 1:48 PM), <http://www.franklincountytimes.com/2013/04/27/morrow-air-frustrations-in-letter-to-governor/>; see also Mary Sell, *Bentley Explains, Defends Franklin County Bill Veto*, TIMES DAILY (Apr. 5, 2013, 12:00 AM), http://www.timesdaily.com/archives/article_dd0b37af-8e4f-5f3c-8c5c-24428295268c.html.

of a volunteer emergency security force and only states that members “shall receive any training deemed necessary by the sheriff.”¹⁸² Members of a volunteer emergency security force are classified as “reserve deputy sheriff[s],”¹⁸³ which supporters of the legislation argued requires them to meet certain training requirements, but no specific requirements are mandated by the statute itself.¹⁸⁴

B. Kansas

In 2013, the Kansas Legislature authorized public schools to allow employees with concealed-carry permits to possess handguns on school property as part of a significant expansion of state concealed-carry laws.¹⁸⁵ In order to obtain a concealed-carry permit in Kansas, applicants must complete an eight-hour handgun safety and training course¹⁸⁶ and must submit to a background check.¹⁸⁷ In response to the new law, the insurance carrier to ninety percent of Kansas school districts announced it would deny or not renew the coverage of any school that permitted employees to carry firearms on campus.¹⁸⁸

C. South Dakota

On March 8, 2013, South Dakota became the first state to “enact a law explicitly authorizing school employees to carry guns on the job.”¹⁸⁹ However, school districts in the state have demonstrated little interest in the program.¹⁹⁰ The new law authorizes school boards to implement “school sentinel programs,” which allow “school employees, hired security

182. ALA. CODE § 45-30-103(d) (2014).

183. ALA. CODE § 45-30-103(d).

184. See ALA. CODE § 45-30-103 (containing no training requirements).

185. *Brownback Signs Measure Allowing Schools to Arm Employees with Concealed Guns*, KAN. CITY STAR (last updated May 20, 2014, 10:42 AM), <http://www.kansascity.com/2013/04/17/4187107/brownback-signs-measure-allowing.html>; see also KAN. STAT. ANN. § 75-7c10(d) (West 2014) (relevant statutory provision).

186. KAN. STAT. ANN. § 75-7c04(b)(1) (West 2014).

187. KAN. STAT. ANN. § 75-7c03(h)(2) (West 2014).

188. See Steven Yaccino, *Schools Seeking to Arm Employees Hit Hurdle on Insurance*, N.Y. TIMES, July 8, 2013, at A9.

189. John Eligon, *A State Backs Guns in Class for Teachers*, N.Y. TIMES, Mar. 8, 2013, at A1.

190. Ben Dunsmoor, *No Sentinels for Security*, KELOLAND.COM (Sept. 23, 2013, 10:13 PM), <http://www.keloland.com/newsdetail.cfm/no-sentinels-for-security/?id=153607>.

personnel, or volunteers” to carry firearms on school property.¹⁹¹ A school board is required to “obtain the approval of the law enforcement official who has jurisdiction over the school premises” before implementing the program or making any material changes to the personnel or protocol.¹⁹²

All “school sentinels” must complete a training course before they are authorized to carry a firearm on school property.¹⁹³ The program requires eighty hours of training on a variety of subjects.¹⁹⁴ School sentinels are also required to have a valid permit to carry a concealed weapon.¹⁹⁵ Finally, the governing law stipulates that it does not “waive the sovereign immunity of the public entities of the State of South Dakota or of their employees.”¹⁹⁶

D. Tennessee

Tennessee’s School Security Act of 2013 authorizes individuals, including school employees, to carry a firearm on school property, subject to three restrictions.¹⁹⁷ The most unique and stringent requirement under Tennessee’s law is that only current or former law enforcement officers are authorized to carry firearms on school property.¹⁹⁸ Examples of school employees who could be authorized to carry a firearm under the statute include “teachers in a school’s criminal justice program, a police officer-turned-teacher[,] or a volunteer with police experience.”¹⁹⁹ To possess a firearm on school property, employees must meet two additional requirements: (1) they must have a permit to possess and carry a firearm and (2) they must receive written authorization from both the director of schools and the school principal to possess a firearm on school property.²⁰⁰ Tennessee school districts have been hesitant to use

191. See S.D. CODIFIED LAWS § 13-64-1 (2014).

192. S.D. CODIFIED LAWS § 13-64-2 (2014).

193. S.D. CODIFIED LAWS § 13-64-3 (2014).

194. S.D. ADMIN. R. 2:01:16:02 (2013).

195. See S.D. CODIFIED LAWS § 13-64-5 (2014).

196. S.D. CODIFIED LAWS § 13-64-16 (2014).

197. See TENN. CODE ANN. § 49-6-815(b) (West 2014).

198. TENN. CODE ANN. § 49-6-815(b)(3).

199. Lisa Fingerroot & Chas Sisk, *Tenn. Schools Slow to Embrace Armed Teachers*, USA TODAY (June 2, 2013, 9:37 PM), <http://www.usatoday.com/story/news/nation/2013/06/02/tennessee-schools-armed-teachers/2383053/>.

200. TENN. CODE ANN. § 49-6-815(b)(1)–(2) (West 2014).

their new authority.²⁰¹ As in Kansas, some school districts may be concerned about the effect arming school employees could have on their insurance coverage.

E. Texas

On September 1, 2013, the Protection of Texas Children Act officially became law.²⁰² If a school district participates in the program, the school board may select one or more school employees to become a “school marshal.”²⁰³ A “school marshal” is a volunteer law enforcement officer.²⁰⁴ Their law enforcement authority, however, is limited. School marshals are only “authorized to act in response to an active shooter or other immediate threat to human life on school grounds.”²⁰⁵ The legislation exempts the identities of school marshals from Texas’s Freedom of Information Act.²⁰⁶

School employees must complete an eighty-hour training program and undergo a psychological evaluation to be licensed as school marshals.²⁰⁷ The license is renewable, contingent upon the school marshal completing additional training requirements.²⁰⁸

Participating school districts must adopt written regulations for the school marshal.²⁰⁹ These regulations must stipulate that

201. Fingerroot & Sisk, *supra* note 199 (“The Middle Tennessee school systems with their own resource officers aren’t showing any interest in a new Tennessee law allowing teachers with police training to carry guns . . .”).

202. Kris Betts, *Program to Arm Texas School Marshals Nearly Complete*, KHOU.COM (Sept. 5, 2013, 7:41 AM), <http://www.khou.com/news/texas-news/Program-to-arm-Texas-school-marshals-nearly-complete-222523361.html>.

203. See TEX. EDUC. CODE ANN. § 37.0811 (West 2014).

204. See *Legislature: Protection of Texas Children Act Passes Senate*, YOUR HOUSTON NEWS (May 22, 2013, 11:30 AM), http://www.yourhoustonnews.com/tomball/news/legislature-protection-of-texas-children-act-passes-senate/article_ebd5f2ac-c2fc-11e2-8374-001a4bcf887a.html.

205. *Id.*; see also TEX. EDUC. CODE ANN. § 37.0811(e) (West 2014) (relevant statutory provision).

206. TEX. EDUC. CODE ANN. § 37.0811(g) (West 2014).

207. See TEX. EDUC. CODE ANN. § 37.0811(b) (stating training required); TEX OCC. CODE ANN. § 1701.260 (West 2014) (stating requirements of training program).

208. See TEX OCC. CODE ANN. § 1701.260(h) (West 2014); see also *Legislature: Protection of Texas Children Act Passes Senate*, *supra* note 204 (“License renewal will be required every two years, which such license renewal would include mental health reevaluation, active shooter and emergency situation recertification, and firearms proficiency training as developed by [the Texas Commission on Law Enforcement Officer Standards and Education].”).

209. TEX. EDUC. CODE ANN. § 37.0811(c)(1) (West 2014).

the marshal may carry a handgun on the property of the authorizing school.²¹⁰ However, if the school marshal's primary duties involve "regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty."²¹¹ The regulations also must include a requirement "that a handgun carried by or within access of a school marshal may be loaded only with frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others."²¹²

F. Georgia

Georgia enacted sweeping changes to its gun-control laws by passing the Safe Carry Protection Act of 2014.²¹³ Under the new law, local school boards can adopt a policy allowing school employees to possess or carry weapons on school property, at school events, and on school buses.²¹⁴ The policy must meet certain requirements under the statute. It must identify the types and quantity of weapons and ammunition that may be carried by school personnel.²¹⁵ Also, the policy must provide a "mandatory method of securing weapons."²¹⁶ The law requires that weapons must be carried on the person of the school employee or "in a secured lock safe or similar lock box that cannot be easily accessed by students."²¹⁷ The policy must prohibit any school employee "who has had an employment or other history indicating any type of mental or emotional instability as determined by the local board of education" from being authorized to possess a firearm on school property.²¹⁸ Finally, the policy must describe the training that employees are

210. TEX. EDUC. CODE ANN. § 37.0811(d).

211. TEX. EDUC. CODE ANN. § 37.0811(d).

212. TEX. EDUC. CODE ANN. § 37.0811(d).

213. Devon M. Sayers & Elliott C. McLaughlin, *Georgia Law Allows Guns in Some Schools, Bars, Churches*, CNN.COM (Apr. 23, 2014, 4:12 PM), <http://www.cnn.com/2014/04/23/us/georgia-governor-signs-gun-bill/index.html> ("[T]he Safe Carry Protection Act of 2014—which opponents have nicknamed the 'guns everywhere bill'—specifies where Georgia residents can carry weapons.").

214. GA. CODE ANN. § 16-11-127.1(c)(6) (West 2014).

215. GA. CODE ANN. § 16-11-130.1(b)(2) (West 2014).

216. GA. CODE ANN. § 16-11-130.1(b)(4).

217. GA. CODE ANN. § 16-11-130.1(b)(4).

218. GA. CODE ANN. § 16-11-130.1(b)(3).

required to complete before they are authorized to carry weapons on school property.²¹⁹ At a minimum, employees must be trained on “judgment pistol shooting, marksmanship, and a review of current laws relating to the use of force for the defense of self and others.”²²⁰

In addition to these requirements, the new law provides that all employees allowed to carry a weapon must have a license to carry a firearm and must submit to an annual criminal history background check conducted by the school board.²²¹ The school board, not the state, is responsible for all costs of arming employees under the law.²²² All documents and meetings pertaining to arming school employees are “considered employment and public safety security records and shall be exempt from disclosure” from Georgia’s Open Records Law.²²³

VI. RECOMMENDATIONS

The Arkansas Security Board incorrectly issued security commissions to public school employees, but the impact of its decision is limited. The Board claims that it will not issue any new security officer commissions to public school employees, and all existing security officer commissions for school employees will permanently expire on September 11, 2015.²²⁴ School employees, for the most part, will be unable to possess firearms on school property from that point forward.

The Arkansas General Assembly must address this issue in its upcoming session by either: (1) expressly prohibiting school employees from acting as *de facto* armed law enforcement officers or (2) allowing employees to possess firearms on school property under clearly articulated conditions. The issue is too important to ignore and should not be resolved by interpretations of statutes that were not intended to arm school employees. While school employees could possess firearms under existing

219. GA. CODE ANN. § 16-11-130.1(b)(1).

220. GA. CODE ANN. § 16-11-130.1(b)(1) (West 2014). However, if the employee previously received similar weapons training as a certified law enforcement officer or as a member of the military, the law allows school boards to substitute this training for what is otherwise required under the statute. *See* GA. CODE ANN. § 16-11-130.1(b)(1).

221. GA. CODE ANN. § 16-11-130.1(c).

222. GA. CODE ANN. § 16-11-130.1(e).

223. GA. CODE ANN. § 16-11-130.1(f).

224. *See* Ashdown Pub. Sch. Dist., No. 13-100, at 4 (Ark. Bd. of Private Investigators and Private Sec. Agencies Oct. 7, 2013).

law by completing training and being appointed as auxiliary law enforcement officers, the statute was not intended to arm teachers. Such an important public policy decision should not be left to using a legal loophole. If the Arkansas General Assembly wants to allow school employees to possess firearms on school property, they must first address several issues.

A. Training Requirements

Arkansas currently requires ten hours of training for private security officers²²⁵ and 110 hours for auxiliary law enforcement officers.²²⁶ By comparison, South Dakota's school sentinel program requires a minimum of eighty hours of initial training and an eight-hour annual recertification course.²²⁷ Texas also requires an eighty-hour training program and a psychological evaluation before a school employee may possess a firearm on school property.²²⁸

South Dakota's legislation also identifies seven subject areas that must be included in every applicant's training: (1) firearms proficiency; (2) weapons retention; (3) weapons storage; (4) education on the appropriate use of force; (5) the protocol for identifying other school sentinels; (6) education on the legal aspects of the program; and (7) first aid.²²⁹ If the Arkansas General Assembly authorizes school employees to possess firearms on school property, it should follow the South Dakota approach of tailoring a training program to fit the specific needs of school employees with security responsibilities.

B. Tort Immunity

In Arkansas, school districts and their employees are "immune from liability and from suit for damages except to the extent that they may be covered by liability insurance."²³⁰ The state's insurance requirements are also government-friendly, as school districts are only required to carry liability insurance for

225. See BOARD RULES, *supra* note 48, at R. 3.13.

226. *Training Material & Testing Information*, *supra* note 164.

227. See S.D. ADMIN. R. 2:01:16:02 (2013).

228. See TEX. EDUC. CODE ANN. § 37.0811(b) (West 2014); TEX OCC. CODE ANN. § 1701.260 (West 2014).

229. See S.D. ADMIN. R. 2:01:16:02 (2013).

230. ARK. CODE ANN. § 21-9-301(a) (Supp. 2013).

motor vehicles.²³¹ Multiple Arkansas Supreme Court decisions have upheld the constitutionality of this broad grant of immunity.²³² If school employees are authorized to possess firearms on school property as part of their official duties, the school district and employees will probably be completely shielded from liability for damages caused by negligence. Because school districts and their employees are only required to carry liability insurance for motor vehicles, authorizing the possession of firearms is unlikely to result in the increased insurance costs seen in Kansas.

However, the Arkansas General Assembly should consider mandating insurance coverage for armed school employees. While this would increase costs for the school districts, it would be in the interest of schoolchildren, and their families, who could be seriously injured or killed by a firearms-related accident. Barring recovery from a firearms accident does not further the state interest of protecting schoolchildren, thereby undermining the very purpose of arming school employees.

C. Authority

If school employees are authorized to possess a firearm on school property, the Arkansas General Assembly should require that participating school districts complete a written firearms and emergency response policy subject to approval by the local law enforcement department. Similar requirements now exist in Alabama, Georgia, South Dakota, and Texas.²³³

A firearms and emergency response policy should identify which employees are authorized to possess a firearm on school grounds. If firearms will be stored on school property, the policy should identify the location and manner in which the firearm will be safely secured. In Texas, teachers and other employees whose primary duties involve “regular, direct contact

231. ARK. CODE ANN. § 21-9-303 (Repl. 2004).

232. *See, e.g.*, *White v. City of Newport*, 326 Ark. 667, 672, 933 S.W.2d 800, 803 (1996) (“We find the legislature’s enactment of the municipal tort immunity statute to be a reasonable means of achieving a permissible public-policy objective. Therefore, we hold that the statute does not violate . . . the Arkansas Constitution.”); *Hardin v. City of Devalls Bluff*, 256 Ark. 480, 485, 508 S.W.2d 559, 563 (1974) (holding that the Arkansas Constitution does not prohibit the legislature from enacting sovereign immunity statutes).

233. *See* ALA. CODE § 45-30-103(c) (2014), GA. CODE ANN. § 16-11-130.1(b) (West 2014), S.D. CODIFIED LAWS § 13-64-2 (2014), TEX. EDUC. CODE ANN. § 37.0811 (West 2014).

with students” cannot possess a firearm on their person. Rather, they may only possess a firearm on school property if it is “in a locked and secured safe within the [employee’s] immediate reach when conducting the [employee’s] primary duty.”²³⁴ If Arkansas chooses to adopt a similar approach, the firearms and emergency response policy should include the location of the safe and standards ensuring the absolute security of its contents.

The firearms and emergency response policy should also state when the use of force is appropriate. Law enforcement agencies generally have policies identifying when force is justified, commonly known as a “use-of-force continuum.”²³⁵ Requiring a use-of-force continuum provides clarity to employees and gives the local law enforcement officer approving the plan an opportunity to educate employees about the use of force.

In the event an employee needs to use force to protect the school from a threat, the policy should provide clear guidelines for how the employee should be treated in the aftermath of an incident. For example, Arkansas Department of Corrections officers are required to file a report as soon as possible after discharging a weapon or using deadly or non-deadly physical force.²³⁶ If an officer is involved in a shooting, he or she is assigned administrative duties, or is suspended with pay, until the ADC completes an investigation.²³⁷ Also, if the shooting results in injury or death, the officer is required to participate in an interview with a psychologist or psychiatrist before returning to normal job duties.²³⁸ A similar policy will ensure: (1) school employees are uniformly treated and (2) clear standards are set before employees may return to school.

Finally, recognizing the sensitivity of the information in the firearms and emergency response policies, the Arkansas General Assembly should consider exempting some or all of the policy from the Arkansas Freedom of Information Act. In 2013, Arkansas passed legislation exempting the identities of concealed carry permit holders from the Arkansas Freedom of

234. TEX. EDUC. CODE ANN. § 37.0811(d) (West 2014).

235. See *The Use-of-Force Continuum*, NAT’L INST. OF JUSTICE (Aug. 4, 2009) <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/continuum.htm>.

236. 159-00-002 ARK. CODE R. § 4.9(V)(D)(1) (LexisNexis 2012).

237. 159-00-002 ARK. CODE R. § 4.9(V)(D)(3).

238. 159-00-002 ARK. CODE R. § 4.9(V)(D)(4).

Information Act.²³⁹ This legislation—and the reaction to it—was not without controversy.²⁴⁰ However, considering the fact that firearms and emergency response policies typically include the location of weapons on school property and information about how employees respond to threats, these policies should not be available for public consumption.

VII. CONCLUSION

Over a year has passed since the shooting at Sandy Hook Elementary School, and school shootings are tragically becoming all the more common in the United States. The federal government, mired in partisan gridlock, failed to address school shootings in the aftermath of Sandy Hook and appears to be no closer to addressing these issues in the future.²⁴¹ Therefore, the school districts' desire to address this issue themselves is both understandable and laudable. However, arming school employees is a matter of important public policy and should be addressed by the state legislature. It is the author's hope that this issue will be resolved in 2015, absent further tragedy, but after great consideration and debate. Arkansas's schoolchildren deserve nothing less.

THOMAS CHRISTOPH KELLER

239. See Act 145, 2013 Ark. Acts 580, 580-81 (codified at ARK. CODE ANN. § 25-19-105(b)(19) (Supp. 2013)).

240. See David Ramsey, *Arkansas Business Publishes Concealed Carry List*, ARK. BLOG (Feb. 25, 2013, 5:09 PM), <http://www.arktimes.com/ArkansasBlog>.

241. See Ed O'Keefe, *Gun Background Check Compromise, Assault Weapon Ban Fail in Senate*, POST POLITICS (Apr. 17, 2013, 6:00 PM), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/04/17/senate-to-vote-on-amendments-to-gun-bill-with-background-check-plan-in-doubt/>.