

# The Law and Open Carry in Alabama

*"That every citizen has a right to bear arms in defense of himself and the state"*  
**Alabama State Constitution, Article 1 Section 26**

The purpose of this document is to show that the unconcealed carrying of a pistol is legal in the state of Alabama.

Title 13A, Chapter 11, Section 52 (otherwise known as 13A-11-52) of the Code of Alabama is often cited as the prohibition of unconcealed carry. There is no such wording in §52.

## **13A-11-52** **Carrying a pistol on premises not his own; who may carry pistol.**

***Except as otherwise provided in this article,*** no person shall carry a pistol about his person on premises not his own or under his control...

While at first reading, this may seem to prohibit unconcealed carry of a pistol, the Alabama courts have ruled that unconcealed carry without a pistol permit is, in fact, legal. The key is in the exception clause, and in the later statute:

## **13A-11-73** **License to carry pistol in vehicle or concealed on person – Required.**

No person shall carry a pistol in any vehicle or concealed on or about his person, except on his land, in his own abode or fixed place of business, without a license therefor as hereinafter provided.

As evidence that §52 applies only to **concealed carry** of a pistol, the following cases are offered.

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Early in our States history, the Supreme Court of Alabama made it quite clear that unconcealed carry was, and must remain, uninhibited:

## **The State v. Reid,** **Supreme Court of Alabama, 1 Ala. 612; 1840 Ala.**

But the court say that it is a matter which will not admit of legislative regulation, and in order to test the correctness of its opinion, supposes one Legislature to prohibit the bearing arms secretly, and a subsequent Legislature to enact a law against bearing them openly; and then asks the question, whether the first, or last enactment would be unconstitutional. ***Under the provision of our constitution, we incline to the opinion that the Legislature cannot inhibit the citizen from bearing arms openly,*** because it authorizes him to bear them for the purposes of defending himself and the State, and it is only when carried openly, that they can be efficiently used for defense.

There are more recent court cases that further uphold the legalities of unconcealed carry:

## **KJ v. State, 690 So.2d 541** **(Ala.Cr.App., 1997)**

... there is a conflict between the two statutes. Section 13A-11-52, like § 13A-11-50, does not permit the carrying of a pistol outside of a person's own premises under any circumstances. ***However, that section does begin with the phrase 'except as otherwise provided in this article.'***

The court continues:

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***§ 13A-11-73 does not prohibit carrying an unlicensed pistol if the pistol is unconcealed and the person is on foot ...***

13A-11-52 applies ***only the extent*** that it is consistent with § 13A-11-73 because it is the later statute and a complete revision of the subject matter.'

There are other cases concerning this issue:

## **Morris v. State, 342 So.2d 417** **(1977)**

However, the State failed to prove that the arrest was lawful. In fact it was not lawfully authorized because the defendant, ***was not carrying a concealed pistol.*** The State's evidence (Tr. p. 7) shows that the ***pistol was in a scabbard or holster, worn on the side and was not covered.*** We call attention to Title 14, s 175, Recompiled Code 1958

[... author's note - the court cites the code section here, which has been re-codified as 13A-11-73, and is identical in wording ...]

It is to be observed that this law prohibits carrying a pistol (concealed or not) in any vehicle or 'concealed on or about his person, except... without license therefor . . .'. ***It does not prohibit an unconcealed pistol.***

The last case we will consider here is straightforward:

**Looney v. State,  
41 Al. App. 582 (1962)**

Code 1940, T. 14, § 175, [author's note – again, is now codified in 13A-11-73] as amended, makes it an offense for a person who has no license therefor (except on his land, abode or place of business):

- 1) to carry a pistol in any vehicle; or
- 2) to carry a pistol concealed on or about his person.

***Thus, a permit is not required when a person afoot carries an unconcealed pistol.***

These cases comport with an Attorney General's opinion by then Assistant Attorney General Gallion on this statute before the 1956 amendment, which transplanted the word 'concealed' from being immediately before 'in any vehicle' to its present place in the section. There it is said:

**Quarterly Reports of Attorney General, Vol. 79, p. 31, 35.**

'... a person may carry an unconcealed and unlicensed pistol anywhere, either on his own property, ... on the public highways, public property or the land of another person **without violating either section 163, supra, or Section 175, as amended...**'

Again, Section 175 is now codified as 13A-11-73, and section 163 is now codified as 13A-11-52.

There are also other Attorney Generals Opinions on this matter:

**AGO 2007-054**

... Noncommissioned animal control officers may carry a sidearm, *if such officers follow the **same procedures as any other citizen...*** [animal control officers] may carry an **unlicensed and unconcealed pistol in all places** except where there are specific restrictions regarding the carrying of a firearm...

The specific restrictions regarding the carrying of firearms must be codified into law, posted or personally conveyed by a property owner or manager. The only specifically prohibited places can be found in the Code of Alabama:

**13A-11-59**

**Possession of firearms by persons participating in, attending, etc., demonstrations at public places**

... (b) It shall be unlawful for any person... to have... any firearm while participating in or attending any demonstration being held at a public place...

The definitions of a public place and demonstration are clearly defined in that section as well.

One last Attorney General's Opinion on this matter is quite clear on unconcealed carry:

**AGO 1984-205**

... 2. May a person carry an unlicensed and unconcealed pistol anywhere, either on his own property, on the public highways, public property or on the land of another person without violating 13A-11-52 or 13A-11-73? (providing he is not riding in a vehicle.)

... yes, generally, however, "anywhere" is a broad term. There may be individual or specific restrictions... landowners or residents may exclude licensees or invitees who do not comply with their rules prohibiting firearms ...

One last point of Alabama Gun Law worth mentioning is that the State Legislature is the only authority that may regulate handguns.

**11-80-11**

**Regulation of gun shows, etc.;**

**(a) No county or municipal corporation, instrumentality, or political subdivision thereof, by ordinance, resolution, or other enactment, shall regulate in any manner** gun shows, the possession, ownership, transport, **carrying**, transfer, sale, purchase, **licensing**, registration or use of firearms, ammunition, components of firearms, firearms dealers, or dealers in firearm components.

**11-45-1.1**

**Subject matter of handguns reserved to State Legislature;**

No incorporated municipality shall have the power to enact any ordinance, rule, or regulation which shall tax, restrict, prevent, or in any way affect the possession or ownership of handguns by the citizens of this state. **The entire subject matter of handguns is reserved to the State Legislature.**

In closing, bear in mind that these facts are the opinions of the State Legislature, Alabama Courts and Attorneys General, making them easily verifiable.