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December 13, 2022

Honorable Brian Bergen  
5 East Main St., Suite 22B  
Denville, New Jersey 07834

Dear Assemblyman Bergen:

This letter is in response to your request for information regarding the phrase “incidental entry” as it pertains to Assembly Bill No. 4769 and Senate Bill No. 3214, which, in relevant part, codify certain venues at which the right to carry a handgun would be restricted. Specifically, you asked whether the phrase “incidental entry” is defined under the provisions of A4769/S3214 or in other statutes.

As you are aware, the phrase “incidental entry” is used in subsection a. of section 7 of A4769/S3214 when describing permissible entry into certain locations while carrying a handgun. The section states:

Except as otherwise provided in this section and in the case of a brief, *incidental entry* onto property, which shall be deemed a de minimis infraction within the contemplation of N.J.S.2C:2-11, it shall be a crime of the third degree for any person, other than a person lawfully carrying a firearm within the authorized scope of an exemption set forth in N.J.S.2C:39-6, to knowingly carry a firearm as defined in subsection f. of N.J.S.2C:39-1 and a crime of the second degree to knowingly possess a destructive device as defined in subsection c. of N.J.S.2C:39-1 in any of the following places....(emphasis supplied)

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Please be advised that the phrase "incidental entry" is not specifically defined under the provisions of A4769/S3214. Additionally, the phrase does not appear in New Jersey statutory law or the administrative code. A survey of court cases within this jurisdiction indicates that the phrase does not appear in New Jersey case law. Therefore, it would be left to a court to interpret the meaning of the phrase.

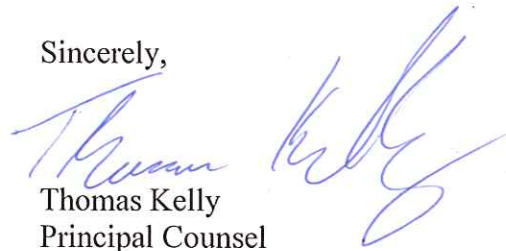
However, it may interest you to know that the phrase "incidental entry" appears with regard to entry onto property in several court cases in other jurisdictions. In Halluer v. Emigh, 81 Ohio App. 3d 312, 316 (1992), an Ohio appeals court held that "mere *incidental entry* on the property, entry not of a character to alert the land owner that his land was appropriated, did not vest the State with fee simple ownership." (emphasis supplied) In Blue Harvest, Inc. v. DOT, 288 Mich. App. 267, 270, 316 (2010), a Michigan appeals court cited to the trial court decision, which held that plaintiffs were not permanently deprived of their property and that "the *incidental entry* of road salt onto Plaintiffs' properties" had only rendered the growing of blueberries uneconomical. (emphasis supplied)

When addressing the issue of adverse possession of property in Dierks Lumber & Coal Co. v. Carroll, 223 Ark. 424, 428 (1954), the Supreme Court of Arkansas stated that when reliance "is placed upon sporadic conduct, *incidental entry* and tactics difficult to distinguish from trespass frequently committed" it is difficult for a court to determine whether the activity is continuing operation under which property may be adversely possessed or is a series of unwarranted acts. (emphasis supplied)

I hope this information has been useful to you. If you have any further questions regarding this matter, please feel free to contact me at 609-847-3870 or [Tkelly@njleg.org](mailto:Tkelly@njleg.org).

This is not a legal opinion of Legislative Counsel and therefore is not a legal opinion of the Office of Legislative Services.

Sincerely,



Thomas Kelly  
Principal Counsel

TK/mw