



Florida Department of Law Enforcement

Guy M. Tunnell, Commissioner

*Jeb Bush, Governor
Charlie Crist, Attorney General
Tom Gallagher, Chief Financial Officer
Charles H. Bronson, Commissioner of Agriculture*

August 19, 2005

MEMORANDUM

TO: Criminal Justice Agency Administrators
Criminal Justice Training Schools

FROM: Program Director Michael D. Crews
Criminal Justice Professionalism Program

SUBJECT: House Resolution Bill 218; Law Enforcement Officer's Safety Act of 2004 AND
Criminal Justice Standards and Training Commission's Firearms Qualification Standard

As I am sure many of you are aware in July 2004 the President signed into law House Resolution 218, the Law Enforcement Officers Safety Act of 2004. With certain limitations and conditions, the act exempts active and retired "qualified law enforcement officers" from state and local ordinances prohibiting the carrying of concealed weapons. In other words, an individual who is a qualified law enforcement officer and is carrying the identification required may carry a concealed firearm.

The Criminal Justice Standards and Training Commission (CJSTC), in an effort to address the qualification requirements included in HR 218 (retirees must meet the same standard as active law enforcement officers) recently adopted a firearms qualification standard for active law enforcement officers at its August 2005 meeting. The standard will become effective July 1, 2006. Enclosed for your review is a summary of the required firearms qualification standard adopted by the CJSTC, which includes the course-of-fire and other related issues.

I have also included a copy of the Attorney General's Opinion AGO-2005-45, issued August 2, 2005, by Attorney General Charlie Crist. This opinion outlines the specific steps that retired officers in Florida must meet prior to carrying a concealed firearm. As the required standard adopted by the CJSTC does not become effective until July 1, 2006, the Attorney General's Opinion takes precedence in regard to retired law enforcement officers carrying concealed firearms.

MDC/es/djh

Attachments: Attorney General's Advisory Legal Opinion
Commission's Firearms Qualification Standard

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Florida Attorney General Advisory Legal Opinion

Number: AGO 2005-45

Date: August 2, 2005

Subject: Federal Law Enforcement Officers Safety Act of 2004

The Honorable Bill Posey
Senator, District 24
1802 South Fiske Boulevard, Suite 108
Rockledge, Florida 32955-3007

RE: WEAPONS--LAW ENFORCEMENT OFFICERS--authority of retired law enforcement officers to carry concealed weapons under federal act in absence of statewide qualifications and training standards. s. 790.06, Fla. Stat.; 18 U.S.C. 926C

Dear Senator Posey:

You have expressed your concerns regarding the application of the federal Law Enforcement Officers Safety Act of 2004. Specifically, you ask:

Whether the State of Florida has statewide qualifications and training standards for active law enforcement officers to carry firearms and, if not, whether a retired law enforcement officer may carry a concealed weapon pursuant to the federal act?

In July 2004 President Bush signed into law House Resolution 218, the Law Enforcement Officers Safety Act of 2004. Title 18 United States Code 926C provides for the carrying of concealed firearms by qualified retired law enforcement officers, stating in subsection (a) that:

"Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b)."[1]

Subsection (c) of 18 United States Code 926C defines "qualified retired law enforcement officer" as an individual who:

- "(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
- (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- (3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- (4) has a nonforfeitable right to benefits under the retirement plan of the agency;
- (5) *during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;*
- (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (7) is not prohibited by Federal law from receiving a firearm." (e.s.)

The identification required by the subsection is defined in 18 United States Code 926C(d) as:

- "(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification of active law enforcement officers to carry a firearm of the same type as the concealed firearm; or
- (2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm."

Florida does not have statewide standards for firearms training and qualification for active law enforcement officers.[2] In this state the responsibility for firearms proficiency lies with the local employing agency. The question therefore has been raised as to whether the federal act requires the state to adopt a uniform statewide standard in order for retired law enforcement officers to exercise their rights under 18 United States Code 926C to carry a concealed firearm.

This office has reviewed the legislative history surrounding the adoption of House Resolution 218 and found nothing that indicates the federal government intended to require states to adopt statewide standards. Testimony before the congressional committees recognized the wide disparity among states regarding their training standards and acknowledged that many states do not have a statewide standard. The intent of the legislation appears to have been to ensure that retired law enforcement officers meet the same firearms training and qualifications as active officers if such standards exist, rather than to require a state to adopt such standards.

I would note that in Florida any citizen who meets the qualifications of section 790.06(2), Florida Statutes, may be granted a license to carry a concealed weapon or firearm. The licensee must demonstrate competence with a firearm by completing one of several firearms safety or training courses.[3] Concealed weapons or firearms licenses are valid for a period of five years and may be renewed by filing a renewal form, with a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in section 790.06, Florida Statutes.[4] Thus, under Chapter 790, Florida Statutes, a citizen who wishes to carry a concealed firearm is not required to meet the requirements of one uniform state standard in order to maintain his or her license.

Florida law exempts active law enforcement officers from the requirements of the state's concealed weapons licensing statute,[5] retired law enforcement officers, however, are required to obtain a concealed weapons license although section 790.06, Florida Statutes, exempts a retired officer, from the required fees and background investigation for a period of one year subsequent to the date of retirement of the officer.[6] The federal law, by permitting retired law enforcement officers to carry concealed weapons provided that they meet the criteria specified in the federal act, would, in my opinion, preempt the state statute requiring retired law enforcement officers to obtain a concealed weapons permit.

In light of these considerations, I am of the opinion that retired law enforcement officers may carry concealed weapons pursuant to 18 United States Code 926C even though the state does not currently have statewide firearms training and qualifications standards for active law enforcement officers.[7]

Sincerely,

Charlie Crist
Attorney General

CC/tall

[1] See 18 U.S.C. 926C(b) which provides that the section does not supersede or limit any state law that permits private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or prohibits or restricts the possession of concealed firearms on state or local government property. *And see* 18 U.S.C. 926C(e) which states that the term "firearm" does not include any machine gun, any firearm silencer, or a destructive device.

[2] See s. 943.10(1), Fla. Stat., defining "Law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state." *And see* s. 943.13, Fla. Stat., which sets forth general qualifications for employment or appointment of an individual as a law enforcement officer including, among other things, completion of a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection.

[3] See s. 790.06(2)(h), Fla. Stat., stating that the licensee must demonstrate competence with a firearm by any one of the following:

- "1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;
2. Completion of any National Rifle Association firearms safety or training course;
3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;
4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or
7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;"

"A photocopy of a certificate of completion of any of the courses or classes; or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph; any person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm[.]"

[4] Section 790.06(1) and (11), Fla. Stat.

[5] See s. 790.06(5)(b), Fla. Stat., which provides in part that

"an individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," "correctional officer," or "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If any individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) wishes to receive a concealed weapons or firearms license, such person is exempt from the background investigation and all background investigation fees, but shall pay the current license fees regularly required to be paid by nonexempt applicants."

And see ss. 790.051 (law enforcement officers exempt from licensing and penal provisions of [Chapter 790] when acting at any time within the scope or course of their official duties or when acting at any time in the line of or performance of duty) and 790.052, Fla. Stat., stating that all persons holding active certifications from the Criminal Justice Standards and Training Commission as law enforcement officers have the right to carry, on or about their persons, concealed firearms, during off-duty

hours, at the discretion of their superior officers; however, "nothing in this subsection shall be construed to limit the right of a law enforcement officer . . . to carry a concealed firearm off duty as a private citizen under the exemption provided in s. 790.06 that allows a law enforcement officer . . . to carry a concealed firearm without a concealed weapon or firearm license."

[6] Section 790.06(5)(b), Fla. Stat.

[7] This office has been advised that the Criminal Justice Standards and Training Commission has decided to adopt statewide firearms training and qualification standards for active law enforcement officers. *See* s. 943.12(5), Fla. Stat., authorizing the commission to establish "uniform minimum training standards for the training of officers in the various criminal justice disciplines."

***Criminal Justice Standards and Training Commission
Adopted the following Firearms Qualification Standard For
Active Law Enforcement Officers***

The Criminal Justice Standards and Training Commission at its August 2005 meeting in Coral Springs, following a review and discussion of the recommendations submitted by the Commission's Select Committee on Firearms Qualification Standards, adopted a statewide firearms qualification standard for active law enforcement officers.

The Commission's Firearms Qualification Standard shall be completed every other year beginning July 1, 2006, with the first reporting period ending June 30, 2008; the reporting period will be every two years thereafter. Any officer who fails to meet the required firearms qualification standard shall be removed from sworn duty until he or she has met the required standard. Any officer who fails to meet the standard by June 30, 2008, shall have his/her certification made inactive.

The Course-of-Fire and the related requirements are outlined below:

COURSE OF FIRE

Stage 1

Two hand high point from the holster
Single target, 15 yard line
6 rounds in 30 seconds

Stage 2

Two hand high point from the holster
Single target, 7-yard line
Mandatory reload
12 rounds in 45 seconds

Stage 3

Two hand high point from the holster
Single target, 7 -yard line
3 rounds in 5 seconds
Repeat for a total of 6 rounds

Minimum Score

Total of 40 rounds
Minimum Score of 80%
32 of 40 rounds in the scoring area

Stage 4

Two hand high point from the holster
Single target, 7-yard line
2 rounds in 4 seconds from the holster
2 rounds in 4 seconds from ready gun position
2 rounds in 4 seconds from ready gun position

Stage 5

Two hand high point from ready gun
Single target, 3 yard line
2 rounds in 1 second
Repeat two times for a total of 6 rounds

Stage 6

Hip position from the holster
Single target, 3-yard line
2 rounds in 4 seconds
Repeat 1 time for a total of 4 rounds

ADDITIONAL REQUIREMENTS

- The B-21E target or its equivalent is required
- The qualification course of fire shall be conducted in daylight conditions
- An officer must qualify with the type of weapon that is to be carried
- The qualification course of fire must be administered by a CJSTC certified firearms instructor
- The qualification course of fire maybe conducted at either a CJSTC certified training school range, an agency range or a private range
- Remedial training and qualification may be conducted by the employing agency