

July 28, 2005

Honorable Randy Wood
Member, House of Representatives
Post Office Box 4432
Anniston, Alabama 36204

Pistol Permits – Law Enforcement –
Qualifications – Retirement – Calhoun
County

A retired law enforcement officer who obtains a permanent concealed firearms license pursuant to section 36-21-9 of the Code of Alabama is not required to be tested annually for firearms re-qualification. This license, however, only permits the officer to carry a concealed firearm in Alabama and in those states that extend reciprocity to Alabama's concealed firearms licenses.

To carry a concealed firearm in every state in the United States in accordance with the Law Enforcement Officers Safety Act of 2004, a retired Alabama law enforcement officer must be tested annually for firearms re-qualification.

Dear Representative Wood:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is a retired law enforcement officer required to be tested annually for firearms re-qualification to satisfy state and federal requirements for carrying a concealed weapon?

FACTS AND ANALYSIS

Section 13A-11-73 of the Code of Alabama provides that “[n]o 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.” ALA. CODE § 13A-11-73 (1994). Section 36-21-9 of the Code of Alabama provides the method through which a retired law enforcement officer obtains this license:

(a) Any honorably retired law enforcement officer whose retirement was not based on any pending disciplinary or legal action shall be eligible to obtain without charge a card authorizing the retired officer to legally carry a handgun about or on his person. ***Such card shall be issued permanently by the sheriff of the county in which the retired law enforcement officer resides upon application by any eligible retired law enforcement officer.***

(b) In the event the retiree having such a card of authorization is suspected of or is charged with any crime or his character becomes so degenerated that he becomes known as one who is of bad character, then said retiree's authorization for the carrying of a handgun shall be revoked by the sheriff of the county in which the retired officer resides. The sheriff shall notify the retiree in writing and by registered mail that his authorization is revoked. The sheriff shall state the reasons for the revocation and order the retiree to turn his authorization card in to that sheriff within 30 days. Should the retiree refuse to return the card within the said 30-day limit and continue to carry the handgun, he will be guilty of carrying a weapon without a license or carrying a concealed weapon, whichever might be the case.

ALA. CODE § 36-21-9 (2001) (emphasis added). This is a permanently issued license that allows a retired law enforcement officer to carry a concealed firearm in Alabama and in every “state whose laws recognize and give effect in that state to a license issued under the laws of the State of Alabama.” ALA. CODE § 13A-

11-85 (Supp. 2004). It should be noted that the Code of Alabama does not require firearms re-qualification as a prerequisite for obtaining a permanent concealed weapons license pursuant to section 36-21-9.

In 2004, Congress passed the Law Enforcement Officers Safety Act of 2004 ("Safety Act"), Pub. L. 108-277, 118 Stat. 865, which, as the title states, exempts "qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns." *See* 18 U.S.C.A. §§ 926B & 926C (West 2004). The Safety Act provides, in part, as follows:

(a) 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).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law enforcement officer" means 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.

18 U.S.C.A. § 926C (West 2004) (emphasis added). The Safety Act also requires a retired law enforcement officer wanting to qualify under this Act to carry photo identification from the law enforcement agency from which the individual retired from service and proof that the retired law enforcement officer has met the State's standards for active law enforcement officers to carry firearms. *Id.*

The Safety Act overrides state laws prohibiting law enforcement officers from possessing concealed weapons and permits retired and active police officers to carry a concealed weapon anywhere within the United States. *Id.* For a retired law enforcement officer to comply with this provision, that officer must meet the "State's standards for training and qualification for active law enforcement officers to carry firearms." 18 U.S.C.A. § 926C (West 2004). In Alabama, active law enforcement officers must pass an approved firearms course annually. ALA. ADMIN. CODE r. 650-X-12-.03 (2005). Accordingly, if a retired Alabama law enforcement officer wants to comply with the Safety Act, that retired officer must pass an approved firearms course annually. *See* 18 U.S.C.A. § 926C (West 2004); *See also* ALA. ADMIN. CODE r. 650-X-12-.04

(2005) (providing procedure for retired law enforcement officers to apply to be tested for annual firearms re-qualification).

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dept. of Mental Health and Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002); *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993); opinion to Honorable Ryan deGraffenried Jr., Member, Alabama State Legislature, dated February 19, 1993, A.G. No. 93-00110. The court looks for the legislative intent in the language of the act; that language may be explained; and it cannot be detracted from or added to. *Ala. Indus. Bank v. State ex rel. Avinger*, 286 Ala. 59, 62, 237 So. 2d 108, 110 (1970); *May v. Head*, 210 Ala. 112, 113, 96 So. 869, 870 (1923). In constructing statutes, legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser v. Anheuser-Busch*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Shelton v. Wright*, 439 So. 2d 55, 57 (Ala. 1983).

The Safety Act was not designed to create more stringent requirements in states that already permit retired law enforcement officers to carry concealed weapons. Instead, the Safety Act was designed to allow current and retired police officers to carry a concealed weapon in any of the 50 States. H.R. Rep. No. 108-560, at 3 (2004). This act allows “tens of thousands of additionally equipped, trained, and certified law enforcement officers to continue to protect our communities regardless of jurisdiction or duty status at no cost to taxpayers.” *Id.* In the same manner that the Safety Act does not affect section 13A-11-75 of the Code of Alabama that authorizes sheriffs to issue annual licenses to ordinary citizens, the act also does not affect section 36-21-9 of the Code of Alabama that authorizes sheriffs to issue permanent licenses to honorably retired law enforcement officers. The Safety Act, instead, provides an alternative process for a retired law enforcement officer to qualify to carry a concealed weapon with fewer geographic limitations.

Accordingly, a retired law enforcement officer who obtains a permanent concealed firearms license pursuant to section 36-21-9 of the Code of Alabama is not required to be tested annually for firearms re-qualification. This license, however, only permits the officer to carry a concealed firearm in Alabama and in those states that extend reciprocity to Alabama’s concealed firearms licenses. To carry a concealed firearm in every state in the United States in accordance with the Safety Act, a retired Alabama law enforcement officer must be tested annually for firearms re-qualification.

CONCLUSION

A retired law enforcement officer who obtains a permanent concealed firearms license pursuant to section 36-21-9 of the Code of Alabama is not required to be tested annually for firearms re-qualification. This license, however, only permits the officer to carry a concealed firearm in Alabama and in those states that extend reciprocity to Alabama's concealed firearms licenses. To carry a concealed firearm in every state in the United States in accordance with the Safety Act, a retired Alabama law enforcement officer must be tested annually for firearms re-qualification.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Rushing Payne of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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