



HENRY McMASTER  
ATTORNEY GENERAL

February 18, 2010

The Honorable David L. Thomas  
Senator, District No. 8  
P. O. Box 142  
Columbia, South Carolina 29609

Dear Senator Thomas:

In a letter to this office you questioned whether Mr. Dameion Thames qualifies pursuant to S.C. Code Ann. § 23-31-600 to receive an identification card as a "qualified retired law enforcement officer" in order to carry a concealed weapon. Such provision states that

(A) For purposes of this section:

- (1) "Identification card" is a photographic identification card complying with 18 U.S.C. Section 926C(d).
- (2) "Qualified retired law enforcement officer" means any retired law enforcement officer as defined in 18 U.S.C. Section 926C(c) who at the time of his retirement was certified as a law enforcement officer in this State and who was trained and qualified to carry firearms in the performance of his duties.

(B) An agency or department within this State must comply with Section 3 of the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. Section 926C, by issuing an identification card to any person who retired from that agency or department and who is a qualified retired law enforcement officer. If the agency or department currently issues credentials to active law enforcement officers, then the agency or department may comply with the requirements of this section by issuing the same credentials to retired law enforcement officers. If the same credentials are issued, then the agency or department must stamp the credentials with the word "RETIRED".

(C)(1) Subject to the limitations of subsection (E), a qualified retired law enforcement officer may carry a concealed weapon in this State if he possesses an identification card issued pursuant to subsection (C) along with a certification that he has, not less recently than one year before the date the individual is carrying the

firearm, met the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm. (emphasis added).

In his explanation, Mr. Thames states his rendition of the facts alleging that while out on disability as a result of an injury, he was not allowed to participate in training exercises or activities which included recertification. He states that since his separation "...was caused by an on-the-job injury that resulted in my permanent disability...", he is entitled to receive retirement credentials as well as a weapons certification. In reviewing this matter, I contacted the Department of Corrections and was informed that Mr. Thames did not retire but instead resigned his position as a correctional officer and at the time he voluntarily resigned, he was not a certified correctional officer because his certification had lapsed. Obviously, there is a dispute of facts as to Mr. Thames' situation.

This office has repeatedly stated that an opinion of this office cannot determine facts noting that the determination of facts is beyond the scope of an opinion of this office. See: Ops. Atty. Gen. dated November 12, 2008; March 19, 2008; October 8, 2007. Therefore, while the statute speaks for itself, this office cannot in an opinion determine the necessary facts to resolve Mr. Thames' situation, particularly regarding his certification status. Only a court can make such determination. See: Op. Atty. Gen. dated May 8, 2009. As a result, the matter of whether an individual meets the necessary standard in order to carry a concealed weapon as a retired law enforcement officer depends upon the investigation of the factual situation presented, a matter beyond the scope of an opinion of this office. Moreover, as noted in an opinion of this office dated October 26, 2006,

[t]his office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of...(a)...statute in question. See, e.g., Ops. Atty. Gen. dated March 9, 2000 and November 25, 1998. As noted in a prior opinion of this office dated October 20, 1997, "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration...and should not be overruled absent cogent reasons." Moreover, where an administrative interpretation is long-standing and has not been expressly changed by the General Assembly, the agency interpretation is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (Ct.App. 1983). As recognized in another prior opinion of this office dated March 12, 1997, if an administrative interpretation is reasonable, courts will defer to such construction even if that construction is not the only reasonable one or the one a court would have adopted in the first instance.

Recognizing such, this office would defer to the interpretation by the Department of Corrections as to the issue in question. See also: Ops. Atty. Gen. dated September 17, 2007 and July 28, 2006.

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I regret that we cannot be of more assistance at this time.

Very truly yours,

Henry McMaster  
Attorney General

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By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a long horizontal flourish extending to the right.

Robert D. Cook  
Deputy Attorney General