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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 30, 1996

The Honorable Glenn G. Reese
Senator, District No. 11
117 Sun Valley Drive
Inman, South Carolina 29349

Dear Senator Reese:

You have asked my opinion concerning "The Law Abiding Citizen's Self Defense Act of 1996". You pose the following question:

[d]oes one permit qualify an individual to carry all types or styles of handguns that they own or do they have to pass a SLED qualification for each style or each gun. In other words, can they qualify to use all of their guns by qualifying with only one of their guns.

LAW \ ANALYSIS

By Act No. 464 of 1996, the General Assembly has enacted the "Law Abiding Citizens Self-Defense Act of 1996." By its terms, the Act sets the standards for issuance of a concealable weapons permit. Section 23-31-215 of the Act requires SLED to issue the permit, provided the requirements such as age, residency, proof of training, and a favorable fingerprint review and background check, etc. are met. Section 23-31-210 (5) defines a "concealable weapon" as

... a firearm having a length of less than twelve inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing except when needed for self-defense, defense of others, and the protection of real or personal property.

Section 23-31-215 (A) (5) establishes that one of the criteria for the issuance of a concealable weapons permit by SLED is "proof of training". "Proof of training" is defined by Section 23-31-210 (4) of the Act as

... an original document or certified copy of the document supplied by an applicant that certifies that he is either:

(a) a person who, within three years before filing an application, has successfully completed a basic or advanced handgun education course offered by a state, county, or municipal law enforcement agency or a nationally recognized organization that promotes gun safety. This education must be a minimum of eight hours and must include, but is not limited to:

(i) information on the statutory and case law of this State relating to handguns and to the use of deadly force;

(ii) information on handgun use and safety;

(iii) information on the proper storage practice for handguns with an emphasis on storage practices that reduces the possibility of accidental injury to a child; and

(iv) the actual firing of the handgun in the presence of the instructor;

(b) an instructor certified by the National Rifle Association or another SLED-approved competent national organization that promotes the safe use of handguns;

(c) a person who can demonstrate to the Director of SLED or his designee that he has a proficiency in both the use of handguns and state laws pertaining to handguns;

(d) an active duty police handgun instructor;

(e) a person who has a SLED-certified or approved competitive handgun shooting classification; or

(f) a member of the active or reserve military, or a member of the National Guard who has had handgun training in the previous three years.

SLED shall promulgate regulations containing general guidelines for courses and qualifications for instructors which would satisfy the requirements of this item. For purposes of subitems (a) and (b), 'proof of training' is not satisfied unless the organization and its instructors meet or exceed the guidelines and qualifications contained in the regulations promulgated by SLED pursuant to this item.

(emphasis added). Section 23-31-215 (J) provides that a permit issued by SLED "is valid statewide unless revoked" In addition, "[a] permit holder must have his permit identification card in his possession whenever he carries a concealable weapon."

In resolving your question, a number of rules of statutory construction are applicable. The intent of the Legislature must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

In addition, the construction given to a statute by the agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons. Laurens Co. School Districts 55 and 56 v. Cox, 417 S.E.2d 560 (1992); Jasper Co. Tax Assessor v. Westvaco, 409 S.E.2d 333 (1991).

I am advised that SLED has interpreted the Act as requiring that a concealed weapons permit would entitle the permit holder to carry only the type of handgun with which the person had qualified. SLED Guideline 73-64 (2) requires the instructor to "report the brand name, model and caliber of each weapon used by an applicant in qualification." In other words, due to the differences in handgun design, SLED requires training with respect to each type and caliber of handgun an individual desires to carry.

You are concerned that the Act does not justify SLED's interpretation in this regard. Your fear is that no provision in the new statute makes any distinction between

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the types of handguns which a concealable weapons permit authorizes an individual to carry.

It is correct that the definition of "concealable weapon" makes no distinction between various types of handguns. Nor does any other provision of the Act expressly state that a permit relates only to a specific type of handgun - only that a "concealable weapon" may be carried pursuant to an issued permit.

However, Section 23-31-210 states that "SLED shall promulgate regulations containing general guidelines for courses and qualifications for instructors which would satisfy the requirement of this item." Such Section also provides that "[f]or purposes of subitems (a) and (b), 'proof of training' is not satisfied unless the organization and its instructors meet or exceed the guidelines and qualifications contained in the regulations promulgated by SLED pursuant to this item."

I am advised that SLED has based its interpretation upon Section 23-31-210 (4) (iv) which defines "proof of training" as including "the actual firing of the handgun in the presence of the instructor ...". (emphasis added).

In Op. Atty. Gen. 90-40 (May 1, 1990), this Office stated its position as to the necessity of deferring to the statutory interpretation by the agency charged with its administration. We stated:

[i]n light of this legislative and administrative history and with due regard for these well established rules of statutory construction, I do not believe that the courts would find the Regulation to be void as inconsistent with the statute. This is not to say that the Commission's Regulation captures the only reasonable interpretation of the subject language or that the courts would have adopted the same interpretation as did the Commission if they were not confronted with the 1968 interpretation and the statute's history. Moreover, I do not suggest that the present Commission's belief that the statute should be applied more broadly than suggested by the Regulation is not a reasonable interpretation of Section 61-3-440, ... but again, such speculation is irrelevant since the courts would be constrained to defer to the construction embellished in the Regulation.

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I understand that the authors of "The Law Abiding Citizen's Self Defense Act of 1996" may not have intended that a concealable weapons permit would be an authorization to carry only the handgun for which the individual was trained. SLED, on the other hand, argues that there is a considerable difference in the level of proficiency necessary to use a 22 cal. pistol or a .45 or even a .357.

My analysis is that, based upon the specific language in Section 23-31-210 (4) (iv), referencing "the actual firing of the handgun in the presence of the instructor", SLED thus would have no choice but to interpret the Act in the express and literal manner that it has been written. For SLED to ignore the use of the term "the handgun" would be an interpretation by the agency beyond the plain language of the Act. That being the case, both this Office and the courts would be required to defer to that agency's interpretation of the statute.

It would appear to me, based upon the information provided that the drafters of the Act may not have intended that a concealable weapons permit should apply only to the make, model and caliber of handgun with which an individual qualifies in firing. If that is indeed the case, the General Assembly should seek to clarify the law in January consistent with the original intent.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph