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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

August 20, 2003

The Honorable William E. Sandifer
Member, House of Representatives
112 Cardinal Drive
Seneca, South Carolina 29672

Dear Representative Sandifer:

You note that a number of citizens have contacted you regarding the need for concealed weapons permit reciprocity/recognition with North Carolina. As you indicate, the State of North Carolina recently enacted a statute which permits reciprocity/recognition with other states.

It is your understanding that South Carolina law allows for reciprocity/recognition with states which have concealed weapons permit issuing standards "equal or stricter" than that of South Carolina.

You have asked that we review the applicable statutes to determine if the "equal or stricter" standard is met. If such standard is met, you are hopeful that "officials here can quickly move to secure a reciprocity/recognition agreement with North Carolina."

Law / Analysis

By way of background, the "Law Abiding Citizens Self-Defense Act of 1996," codified at S.C. Code Ann. Section 23-31-205 et seq., requires that if an individual meets certain specified criteria, a "concealable weapons" permit must be issued. South Carolina's statute is thus representative of the so-called "right to carry" acts which have been enacted in a number of states.

Section 23-31-215 of the Act mandates SLED to issue the concealable weapons permit provided compliance with certain requirements such as age, residency, proof of training and favorable fingerprint review and background check, among others, are documented. Section 23-31-215(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

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> wear of clothing except when needed for self-defense, defense of others, and the protection of real and personal property.

For purposes of your request, the pertinent provision of the Concealable Weapons law is Section 23-31-215(N), which sets forth the requirements for permit reciprocity with other states having similar concealable weapons laws to that of South Carolina. This provision specifies that

> [v]alid out-of-state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State. SLED shall make a determination as to those states which have permit issuance standards equal to or greater than the standards contained in this article and shall maintain and publish a list of those states with which South Carolina has reciprocity.

(emphasis added). In other words, for the permit of a concealable weapons permit holder in another state to be honored by South Carolina, SLED must determine whether that State's permit issuance standards are "equal to or greater" than those of South Carolina.

The specific issue which you have presented for our review concerns concealable weapons permit reciprocity between North Carolina and South Carolina. We understand that South Carolina's more than 40,000 concealed weapons permit holders have previously been denied reciprocity or CWP recognition by North Carolina. Heretofore, the State of North Carolina could not honor the permits held by South Carolinians because no North Carolina provision of law existed which would allow concealable weapons permit reciprocity with other states. That situation has now changed because the State of North Carolina has enacted legislation, which recently went into effect, and which corrects this problem. N.C. Code Ann. §§ 14-415.24(a) provides for concealable weapons permit reciprocity with other states as follows:

> [a] valid concealed handgun permit or license issued by another state is valid in North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.

In short, North Carolina must be assured that South Carolina will honor North Carolina concealed weapons permits before it will do so reciprocally.

Accordingly the issue raised by your letter is whether South Carolina would grant "the same right" regarding the right to carry a concealable weapon to North Carolina residents by honoring their North Carolina gun permit. This, of course, would depend upon whether South Carolina determines that North Carolina's concealed weapons law imposes standards "equal to or greater" than those of this State. Such a determination, of course, lies exclusively with SLED, subject to judicial review. However, we offer for your information a court's likely determination of this issue.

Courts have held that "no provision of either the state or federal constitution require[s] a reciprocal arrangement between any other state for the licensing of any business or profession." Reciprocity – consisting of an agreement between two states whereby the licensees of one state can be accepted by another state provided the first state will grant the ruling of the state itself – is deemed by the courts as "strictly a matter of legislative policy ...." O'Dell v. Ohio State Medical Bd., 259 N.E.2d 167, 174-175 (1970). As the Court recognized in O'Dell, reciprocity is

> ... strictly a matter of State policy and that policy is fixed by the Legislature. The state does not have to admit a lawyer or doctor, a chiropractor, a real estate agent, a funeral director from any other state unless it so desires, and so provides by law and may set up such standards as they feel proper in respect to this reciprocal agreement.

Id. The determination of reciprocity is usually a matter of discretion with the agency charged by the Legislature with the enforcement of the applicable licensing requirements. Lake v. Mercer, 216 S.C. 391, 58 S.E.2d 336 (1950). Hollis v. State Bd. of Medical Examiners, 82 S.C. 230, 64 S.E. 232 (1909). However, if the applicant seeking reciprocity "establishes the prerequisite conditions, the license must be granted." Lake v. Mercer, 214 S.C. 189, 51 S.E.2d 742, 744 (1949). Thus, when the standards determined by the General Assembly for licensure are unequivocally met by the out-of-state applicant, the issue ceases to be one of discretion, but a mandatory duty, and a court will grant relief and order the license issued. State ex rel. Mauldin v. Matthews, 81 S.C. 414, 62 S.E. 695 (1908). See, generally, Owens v. State Bd. of Architect. Exam., 1988 WL 30176 (Tenn. 1988).

In this instance, the General Assembly has determined that the standards for reciprocally granting a concealable weapons permit to a permit holder from another state is that the out-of-state resident's jurisdiction must have standards "equal to or greater" than those of South Carolina. To determine the legal meaning of this phrase we must apply the ordinary rules of statutory construction. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In construing a statute, the words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

The term "equal to" or "equal" generally means "alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights." Black's Law Dictionary, Fourth Ed. The word "alike" is usually held to mean "similar." "Alike" – which has the same meaning as "equal" – is usually held not to be synonymous with "identical" which means "exactly the same." Id. Thus,

we read the term "equal to" as used in § 23-31-215(N) to be intended by the General Assembly to mean "alike" or "similar," rather than "identical."[1]

This interpretation is supported by authorities in other jurisdictions, including those rendered in the specific context of reciprocity laws. For example, the Texas Attorney General in Op. Tex. Atty. Gen., Op. No. JM-668 (April 6, 1987), commented with respect to the reciprocity requirements of the Texas Chiropractic Act that

> [t]he phrase "equal to" in section 9 must be interpreted to mean the substantial equivalent of rather than identical to; otherwise, no chiropractor could be licensed by reciprocity .... The legislature must have intended that if the licensing requirements of the other state or territory are the reasonable equivalent to the requirements imposed in Texas, including the completion of college courses in the basic sciences, the board must grant a license to an applicant licensed in the other state. ... The board could determine, in its discretion and upon investigation, that the other state's testing requirements in the basic sciences constitute the substantial equivalent of Texas' requirements.

The Attorney General of Texas also cautioned as to the potential for litigation if the Board of Chiropractic Examiners read the reciprocity statute too narrowly by requiring an out-of-state applicant to meet the identical standards for licensure as a chiropractor required by Texas. While a state is not constitutionally required to enact a reciprocity provision, the Texas Attorney General noted that there could be legal consequences if the State refused to grant reciprocity to an out-of-state applicant who stands in similar circumstances to in-state licensees:

> [d]enial of licensure by reciprocity to an applicant who meets all the requirements imposed upon Texas applicants solely on the basis that the non-Texas applicant is licensed in a state which does not itself impose the same requirements would raise serious questions under the Fourteenth Amendment to the United States Constitution. A state cannot exclude a person from an occupation in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39 (1957) ....

And, in Wash. AGO 1957-58 No. 147 (January 14, 1958), the Attorney General of Washington stated that "[c]omparing statutes to determine whether or not the standards, eligibility requirements and examinations are equal requires a determination of fact since statutes of different states cannot be expected to be identical."

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[1] Of course, if it is determined that North Carolina standards are "greater" than those of South Carolina, there would be no need to attempt to determine the meaning of "equal to" in such instance.

In numerous other contexts also, courts have concluded that the term "equal" does not mean "identical." See, Horner v. Mary. Inst., 613 F.2d 706 (8th Cir. 1980) [for purposes of Equal Pay Act, "equal" means "substantially" equal rather than "identical"]; Schultz v. Kimberly-Clark Corp., 315 F.Supp. 1323 (W.D. 1970) (Equal Pay Act]; Ellison v. U.S., 25 Cl. Ct. 481 (1992) ["equal jobs" does not mean "identical"]; Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1990) ["equal protection" with respect to tax classifications does not require identity of treatment].

We reiterate that in applying the legal standard for reciprocity mandated by South Carolina's "equal to or greater" requirement contained in § 23-31-215(N), the ultimate decision as to whether North Carolina's concealed weapons law meets such requirement would be a determination for SLED to make. However, as seen below, in our opinion, SLED could, within its discretion, determine that North Carolina's law is "equal to" or substantially similar to that of South Carolina.

There are a number of close parallels between the North Carolina law, § 14-415.10 et seq., and the South Carolina "concealable weapons" statute, § 23-31-205 et seq. Both statutes require state residency, a minimum age of 21 years, submission of fingerprints with the application and the notification of or approval by a local law enforcement official. In addition, a local criminal records check as well as a state and federal criminal records check are required. The vital information which is mandated by each state is virtually identical. Moreover, proof of training, including state law and case law pertaining to a number of specific areas, is sought pursuant to both North Carolina and South Carolina law. Applicants are disqualified by both states for habitual drunkenness, drug addiction, judicially declared or adjudicated mental incapacity as well as those situations in which a person is prohibited by state or federal law from firearms possession. As noted above, both states now include a clause enabling reciprocity.

Of course, as would be expected, the two statutes are not absolutely identical in every aspect. For example, North Carolina law does not contain a provision requiring a minimum of eight hours training. However, that state's law does require substantial training covering the same materials. Moreover, South Carolina law authorizes "proof of training" for any "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."

Neither does North Carolina law expressly require proof of vision. However, the North Carolina statute specifies that state may not issue a permit to any legally impaired person. With respect to proof of residence, North Carolina apparently verifies this information through the application process. We understand that the applicant must obtain approval and fingerprinting in person at the local sheriff's office. South Carolina satisfies such requirement by submission of a copy of a valid driver's license.

We understand that South Carolina requires applicants to submit a full facial photo for verification or identification. It is our understanding that during the issuance process, SLED compares the applicant's submitted photograph with the electronically stored photo maintained by

the DMV. The DMV photo is then placed on the Concealed Weapons Permit. On the other hand, it is our information that North Carolina does not require that a photograph be submitted. However, personal verification of identify is accomplished by the Sheriff's office, as referenced above.

Both states require the submission of a completed application. This does not mean, however, that the applications must be identical in form or require precisely the same information in a given instance. The test which a court would apply is whether the out-of-state law, in this instance, North Carolina, imposes substantially similar requirements to that of South Carolina with respect to its concealable weapons permits. We believe that a court would conclude that it does.

Conclusion

South Carolina's concealable weapons statute, § 23-31-215(N), requires that in order to grant a reciprocal permit to an out-of-state concealed weapons permit holder, the State must be satisfied that the permit holder's state imposes standards for licensure "equal to or greater" than those of South Carolina. This does not mean, however, that the out-of-state permit law must be identical to or impose identical standards to South Carolina. In our opinion, a court would conclude that such standards must be substantially similar, or reasonably equivalent to one another.

The ultimate determination of whether the "equal to or greater" standard is met lies with SLED in its discretion subject to judicial review. It is our opinion, based upon an examination of North Carolina law and applying the foregoing standard, that a court would likely conclude that North Carolina's concealed weapons law is substantially similar to the South Carolina statute. Accordingly, SLED would have a substantial basis to determine that reciprocity between North Carolina and South Carolina for purposes of each state honoring the other's concealed weapons permit law is afforded. Such, however, is a matter for SLED, rather than the Attorney General, to determine.

Yours very truly,

Henry McMaster

HM/an