

3-day waiting periods for handgun purchases

Number: AGO 92-47

Date: January 04, 1996

Subject:
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The Honorable Curtis A. Golden
State Attorney
First Judicial Circuit

RE: WEAPONS AND FIREARMS--WAITING PERIOD--GUN CONTROL--HANDGUNS--three day waiting period for purchase of handguns. ss. 790.0655 and 790.33, F.S.

Dear Mr. Golden:

You ask the following question:

Do the 3-day waiting periods for handgun purchases which are required by ss. 790.0655(1)(a) and 790.33(2)(a), F.S., refer to a 72-hour waiting period or would any part of three working days satisfy the requirement?

In sum:

1. A "day" for purposes of s. 790.0655(1)(a), F.S., which mandates a 3-day waiting period for purchase of a handgun, is 24 hours. Thus, 72 hours must elapse between the purchase and the delivery at retail of any handgun, exclusive of weekends and legal holidays.
2. For purposes of s. 790.33(2), F.S., a "working day" would appear to refer to the hours between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays.

The requirement of a three day waiting period between the purchase and delivery at retail of handguns is prescribed by s. 8(b), Art. I, State Const., which states:

"There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, 'purchase' means the transfer of money or other valuable consideration to the retailer, and 'handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph."

This section of the Constitution provides that the Legislature "shall enact legislation implementing subsection (b) of this section . . . which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony." [1]

In response to this constitutional mandate, the Legislature enacted s. 790.0655, F.S.[2] Pursuant to this section:

"There shall be a mandatory 3-day waiting period, which shall be 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. 'Purchase' means the transfer of money or other valuable consideration to the retailer. 'Handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. 'Retailer' means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(14)."[3]

The statute also provides that records of handgun sales must be available during normal business hours to law enforcement agencies for inspection.[4]

Although the statute contains no definition of the term "day," in those instances where the Legislature has used words of common usage, such words should be construed in their plain and ordinary sense.[5] A "day" is commonly understood to be a 24-hour period.[6]

While no definition of the term "day" is contained in Ch. 790, F.S., in those instances in which the Legislature contemplated less than a 24-hour day, it made specific provision for a shortened day. In s. 790.065, F.S., which relates to the sale and delivery of firearms, the terms "business day" and "working hours" are used to express the limited nature of those terms.

Section 790.065(2)(c)2., F.S., provides that "[w]ithin 24 working hours, the [Department of Law Enforcement] shall determine . . . whether the potential buyer is prohibited from receiving or possessing a firearm." The statute defines "working hours" as "the hours from 8 a.m. to 5 p.m.[.] [sic] Monday through Friday, excluding legal holidays."[7]

In a situation where computer downtime is scheduled, there is electronic failure, or a similar emergency which is beyond the control of the Department of Law Enforcement, the department must immediately notify the licensee of the reason for and estimated length of the delay, pursuant to s. 790.065(3), F.S. This statute further provides that "[a]fter such notification, the department shall forthwith, and in no event later than the end of the next *business day* of the licensee, either inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to Florida and Federal law or provide the licensee with a unique approval number."[8] (e.s.)

The Legislature has specified those instances in which a day of less than 24 hours is acceptable under the terms of the statute and s. 790.0655(1)(a), F.S., contains no such qualifying language. Therefore, it is my opinion that the use of the term "day" in s. 790.0655(1)(a), F.S., refers to a 24-hour day. Thus, since s. 790.0655(1)(a), F.S., requires a waiting period of 3 days excluding weekends and holidays between the purchase and delivery of a handgun, it would be a violation of the statute to deliver a handgun purchased on a Friday at 4 p.m., before the following Wednesday at 4 p.m.

You have also asked whether a "working day," as that phrase is used in s. 790.33(2), F.S., means a 24-hour day. Pursuant to s. 790.33(2)(a), F.S.:

"Any county may have the option to adopt a waiting-period ordinance requiring a waiting period of up to, but not to exceed, 3 working days between the purchase and delivery of a handgun. For purposes of this subsection, 'purchase' means payment of deposit, payment in full, or notification of intent to purchase. Adoption of a waiting-period ordinance, by any county, shall require a majority vote of the county commission on votes on waiting-period ordinances. This exception is limited solely to individual counties and is limited to the provisions and restrictions contained in this subsection."

While the statute does not state what is meant by a "working day," the commonly understood meaning of "workday," is "a day on which work is performed as distinguished from Sunday or a holiday." [9] A definition of the phrase "working hours" is contained in s. 790.065(2)(c)2., F.S. Pursuant to the statute "working hours" means the hours from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

Therefore, it is my opinion that the phrase "working day" as used in s. 790.33(2), F.S., refers to the hours between 8 a.m. and 5 p.m., Monday through Friday, [10] excluding legal holidays. Thus, if a county adopts a waiting period ordinance requiring a delay of 3 working days between the purchase and delivery of a handgun, and a purchase is made at 4 p.m., Friday, delivery could not take place before 4 p.m., on the following Wednesday. However, while s. 790.33(2), F.S., authorizes counties to adopt a waiting period ordinance, the mandate of s. 8(b), Art. I, State Const., would continue to apply.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 8(c), Art. 1, Fla. Const.

[2] See s. 1, Ch. 91-24, Laws of Florida.

[3] Section 790.0655(1)(a), F.S. Pursuant to s. 790.0655(2), F.S., the three day waiting period does not apply when a handgun is being purchased by the holder of a concealed weapons permit or when another handgun is being traded in. Violation of the statute providing the three day waiting period is made a third degree felony by s. 790.0655(3), F.S.

[4] Section 790.0655(1)(b), F.S.

[5] *Pedersen v. Green*, 105 So.2d 1, 4 (Fla. 1958). See also *State v. Egan*, 287 So.2d 1, 4 (Fla. 1973), and *Gasson v. Gay*, 49 So.2d 525, 526 (Fla. 1950).

[6] See Webster's Third New International Dictionary 578 (unabridged ed. 1981) (defining "day" to mean "the period of the earth's rotation on its axis ordinarily divided into 24 hours, measured

by the interval between two successive transits of a celestial body over the same meridian"); and The American Heritage Dictionary of the English Language 338 (new college ed. 1979) (defining "day" as "The 24-hour period during which the earth completes one rotation on its axis"). Cf. s. 211.01(4), F.S., relating to the tax on the severance of oil and gas and defining "day" to mean "the standard calendar period of 24 consecutive hours ending at 12 o'clock midnight"; and s. 607.01401(6), F.S., dealing with corporations and stating that "day" for purposes of that chapter means "a calendar day."

[7] *And see* s. 790.065(2)(c)3, F.S., which requires the office of the clerk of court to respond to any request from the Department of Law Enforcement for data on the disposition of an indictment, information, or arrest of a potential firearms buyer, as soon as possible, but no later than 8 working hours.

[8] Section 790.065(3), F.S.

[9] *See* Webster's Third New International Dictionary 2634 (unabridged ed. 1981). *And see* The American Heritage Dictionary of the English Language 1475 (new college ed. 1979), defining "workday" as "[a]ny day on which work is done."

[10] While it is arguable that Saturday is a "working day" for most retail establishments, I would note that, in order to read s. 790.33(2), F.S., in conformance with s. 8, Art. I, State Const., Saturdays must be excluded from any calculation of a 3 day waiting period. The constitutional provision excludes "weekends" from the mandatory period of three days.