Federal Law Enforcement Officers Safety Act

Number: INFORMAL

Date: May 11, 2011

Mr. Gustavo Menendez
8900 Southwest 50th Terrace
Miami, Florida 33165

Dear Mr. Menendez:

You request this office's opinion as to whether you will qualify, when you retire as an auxiliary law enforcement officer from the Florida Highway Patrol, to carry a concealed weapon under the federal Law Enforcement Officers Safety Act of 2004. You state that as an auxiliary officer, you qualify "on all aspects of the law, except the collection of [a] pension from the agency."

Initially, I must advise you that the authority of the Attorney General to issue opinions is prescribed by law and is limited to public officials on questions relating to their own official duties under state law. This office requires that the head of the agency request an opinion of this office. Such a request should be submitted on the agency letterhead and accompanied by a memorandum of law prepared by the agency attorney. Moreover, this office generally does not issue opinions involving the interpretation solely of federal law, although in Attorney General Opinion 05-45, this office generally considered the provisions of the federal act. A copy of the opinion is enclosed.[1]

In an effort to be of some assistance, however, I would note that 18 U.S.C. s. 926C, relating to the carrying of concealed firearms by qualified retired law enforcement officers, defines the term "qualified retired law enforcement officer" in subsection (c). The law, which was amended in 2010 by the "Law Enforcement Officers Safety Act Improvements Act of 2010," defines the term to mean an individual who:

"(1) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) before such separation, 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 separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) separated 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) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined

by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);

(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."

Prior to its amendment in 2010, subsection (c)(4) required that the individual have "a nonforfeitable right to benefits under the retirement plan of the agency[.]"[2] Other changes to the act included amending language in the definition referring to retirement and substituting language relating to separation.[3]

Thus, the definition of qualified retired law enforcement officer in 18 U.S.C. s. 926C no longer includes language that such an individual have a nonforfeitable right to benefits under the agency's retirement plan. You may wish to discuss this issue with the attorney who advises your agency.

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

Enclosure: AGO 2005-45

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[1] You may access the opinion online at: http://myfloridalegal.com/opinions. During the 2007 session, the Florida Legislature adopted section 943.132, Florida Statutes. Under the statute the Criminal Justice Standards and Training Commission within the Department of Law Enforcement is responsible for adopting rules to implement the act. You may wish, therefore, to contact the commission on this matter. *See* Rule 11B-27.014, Fla. Admin. C. You may access the rule,

which was amended in 2010, on the Department of State's website at: https://www.flrules.org/.

[2] *See* s. 2(c)(1)(D), Pub. L. 111-272, which rewrote paragraph (4).

[3] Prior to the 2010 amendment, 18 U.S.C. s. 926C(c) defined "qualified retired law enforcement officer" to mean 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." (e.s.)