Federal Law Enforcement Officers Safety Act

Number: INFORMAL

Date: November 10, 2009

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

Dear Mr. Menendez:

You ask this office's opinion as to your eligibility, 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.

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. 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) 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.)

Thus, the federal act defines who constitutes a qualified retired law enforcement officer for purposes of the federal act and provides that one such qualification is that such officer has a nonforfeitable right to benefits under the retirement plan of the agency. 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