

OP. NO. 03-044

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – OTHER ILLEGAL WEAPONS.

Active-duty member of Armed Forces whose permanent duty station is located within Virginia, but who dwells in another state, is 'resident' of Commonwealth for purposes of purchasing firearm. Section 18.2-308.2:2 and regulations promulgated by Department of Criminal Justice Services are not in conflict with Federal Gun Control Act.

Mr. Leonard G. Cooke
Director, Department of Criminal Justice Services
August 15, 2003

Issue Presented

You request an interpretation of regulations promulgated by the Department of Criminal Justice Services regarding § 18.2-308.2:2, governing criminal history record information checks for firearm purchases. Specifically, you ask whether a member of the United States Armed Forces who is permanently stationed in Virginia, but resides in another state, may be considered a Virginia resident for the purpose of purchasing a firearm in the Commonwealth.

Response

It is my opinion that a member of the United States Armed Forces, serving on active duty, whose permanent duty station is located within Virginia, but who dwells in another state, is a "resident" of the Commonwealth for purposes of purchasing a firearm. Section 18.2-308.2:2 and the Department regulations are not in conflict with the Federal Gun Control Act.

Background

You relate that a Texas resident who is a member of the United States Armed Forces assigned to a permanent duty station at Fort Belvoir, Virginia, but who resides in Maryland, has been denied the purchase of a handgun. You further relate that this denial was based on a regulation that requires dealers to deny the transfer of a handgun to a non-Virginia resident in accordance with § 922(b)(3) of the Gun Control Act, which makes it unlawful to sell a firearm to a nonresident.

Applicable Law and Discussion

Section 922(b)(3) of the Federal Gun Control Act of 1968, as amended,¹ makes it unlawful for a licensed importer, manufacturer, dealer, or collector to sell or deliver a firearm to any person who does not reside in the state in which the licensee's place of business is located. Section 921(b), however, provides that, for the purposes of the Gun Control Act, "a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located." Thus, while § 922(b)(3) prohibits the sale of firearms to nonresidents of a state, § 921(b) provides members of the Armed Forces with the ability to

purchase firearms within the state in which their permanent duty station is located, by classifying them as residents of that state.

Section 18.2-308.2:2(B. 1) mandates that licensed firearms dealers obtain a criminal history record information check from the Department of State Police prior to effecting a sale, rental, trade or transfer of a firearm to a Virginia resident. Section 18.2-308.2:2 conforms to the Gun Control Act by recognizing the resident status of members of the Armed Forces who are permanently stationed in Virginia. Specifically, § 18.2-308.2:2(B. 1) accommodates members of the Armed Forces by enabling them to establish personal identification *and residence* by providing a photo-identification form issued by the United States Department of Defense together with their permanent orders. Section 18.2-308.2:2(H) directs "[t]he Department of Criminal Justice Services [to] promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section."² Like the statute authorizing them, the regulations promulgated by the Department of Criminal Justice Services ("Department regulations") are drafted to accommodate for the residency status of members of the Armed Forces who are permanently stationed in Virginia.³

You relate that an Armed Forces member was denied the purchase of a handgun, on the basis of the Department regulations, despite the fact that his permanent duty station is located in Virginia. The regulation requires a dealer⁴ to "[d]eny the transfer of a handgun to a non-Virginia resident in accordance with 18 U.S.C. § 922(b)(3)."⁵ This reference to § 922(b)(3) of the Gun Control Act, which makes it unlawful to sell a firearm to a person who does not "reside in" the state in which the dealer's place of business is located, does not present a conflict.⁶ Further, it does not necessitate the denial of a firearms sale to a member of the Armed Forces who is permanently stationed in Virginia but who does not actually *reside in* Virginia.

It is a well-accepted principle of statutory construction that statutes should not be read in isolation.⁷ Statutes relating to the same subject should be considered *in pari materia*.⁸ Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.⁹ Section 922(b)(3) is part of, not independent from, the chapter in which it is located.¹⁰ Its language, including the words "reside in," is subject to the requirement of § 921(b) of the Gun Control Act, which provides that, "[f]or the purposes of this chapter ..., a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located." The words "reside in," as they appear in § 922(b)(3), must be construed consistently with this requirement.¹¹ Because § 921(b) ensures that a member of the Armed Forces is a resident of the state in which his permanent duty station is located, it logically follows that such a member "resides in" that state for the purposes of § 922(b)(3). Any interpretation to the contrary would violate a basic principle of statutory construction that statutes, particularly those within the same statutory scheme, are to be construed harmoniously, and not in conflict with one another, whenever possible.¹²

Conclusion

Accordingly, it is my opinion that a member of the United States Armed Forces, serving on active duty, whose permanent duty station is located within Virginia, but who dwells in another state, is a "resident" of the Commonwealth for

purposes of purchasing a firearm. Section 18.2-308.2:2 and the Department regulations are not in conflict with the Federal Gun Control Act.

¹Pub. L. No. 90-618, tit. I, secs. 101, 102, ch. 44, §§ 921-928, 82 Stat. 1213 (codified as amended at 18 U.S.C.A. ch. 44, §§ 921-930 (West 2000 & Supp. 2003) ("Firearms")).

²See 6 Va. Admin. Code ch. 130, §§ 20-130-10 to 20-130-100. (West 2003) ("Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases") [hereinafter Department regulations].

³See 6 Va. Admin. Code § 20-130-60(C)(1)(a); *id.* § 20-130-20 (defining "resident of Virginia").

⁴The term "dealer," as used in § 18.2-308.2:2 and the Department regulations, means any dealer licensed under the Gun Control Act of 1968, as amended. 18 U.S.C.A. § 921(a)(11) (West 2000); Va. Code Ann. § 18.2-308.2:2(G) (LexisNexis Supp. 2003); 6 Va. Admin. Code § 20-130-20.

⁵6 Va. Admin. Code § 20-130-40(3).

⁶Note that if a conflict did, in fact, exist, any portion of the regulations in conflict with the statute authorizing them would be invalid. See *Commonwealth ex rel. State Water Control Bd. v. Appalachian Power Co.*, 9 Va. App. 254, 262, 386 S.E.2d 633, 637 (1989) ("[W]hen an agency fails to conform to required statutory authority when enacting its regulations, ... [t]he regulation[s are] invalid and the agency's effort to enforce [them] exceeds its statutory authority." (Footnote omitted.)). Further, Article VI of the Constitution of the United States would invalidate any provision conflicting with federal law.

⁷2B Norman J. Singer, *Sutherland Statutory Construction* § 51.02 (West 6th ed. 2000); *Op. Va. Att'y Gen.*: 1999 at 22, 22; 1998 at 19, 21; *id.* at 123, 124; 1996 at 197, 198; 1995 at 146, 147; 1993 at 135, 137; *id.* at 160, 162; 1992 at 108, 112.

⁸See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 *Op. Va. Att'y Gen.* 134, 135. "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." *Black's Law Dictionary* 794 (7th ed. 1999).

⁹See 2B Singer, *supra* note 7; 2000 *Op. Va. Att'y Gen.* 182, 185.

¹⁰See *supra* note 1.

¹¹*Turner v. Commonwealth*, 226 Va. 456, 461, 309 S.E.2d 337, 339 (1983) ("[S]tatutes relating to the same subject should be read and construed together."); see also *United States v. Cent. Pac. R.R. Co.*, 118 U.S. 235, 239 (1886) (holding that acts relating to same subject are to be construed together).

¹²*United Savs. Ass'n of Texas v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme^¾ because the same terminology is used elsewhere in a context that makes its meaning clear, or

because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." (Citations omitted.).

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