



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC 20226

SEP 11 2008

Mr. James Pasco
Fraternal Order of Police
Executive Director
309 Massachusetts Avenue, NE
Washington, DC 20002

Dear Mr. Pasco:

There was recently an article in the Rapid City Journal concerning the indictment of a Seattle police officer for carrying a concealed firearm into a bar on August 9, 2008. The article quoted a spokesperson with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I am sending this letter because we at ATF thought your membership would wish to have clarification on the Law Enforcement Officers Safety Act of 2004, which was the subject of the statements quoted in the Rapid City Journal.

On July 22, 2004, Congress passed and the President signed the Law Enforcement Officers Safety Act of 2004 ("Act"), codified at Title 18, U.S.C., Sections 926B and 926C. With certain limitations and conditions, this law exempts active and retired "qualified law enforcement officers" from State laws and local ordinances prohibiting the carrying of concealed weapons. The Act does not purport to affect any State or local laws and ordinances that permit restrictions of concealed firearms on private property, or any such laws that restrict the possession of firearms on any State or local government property, installation, building, base, or park.

However, to be eligible for the exemption, law enforcement officers must carry identification from their law enforcement agencies and be a "qualified law enforcement officer" or "qualified retired law enforcement officer." The Act specifies certain requirements for a person to be considered qualified. These requirements include being authorized by the agency to carry a firearm, not be the subject of any disciplinary actions by the agency, and not be under the influence of alcohol. The officer also must have received within the past year certification from the State in which the officer resides that the officer has met the standards established by the State for training and qualification for active law enforcement officers to carry firearms.

The Act can be raised as a defense to a criminal prosecution or civil forfeiture action brought by State or local authorities for an alleged violation of concealed weapons statutes. Because it is an affirmative defense, the finder-of-fact makes the determination as to whether a person can be eligible for this defense by determining whether the person is a qualified law enforcement officer and was carrying the required identification at the time of the alleged violation.

Mr. James Pasco

To implement the Act, the U.S. Department of Justice (DOJ) established a working group to develop uniform guidelines for DOJ agencies. On January 31, 2005, DOJ issued guidance concerning the application of the Act for its current and retired law enforcement officers. On March 5, 2005, this guidance was published in the Federal Register, 70 Fed. Reg. 10673, so that other Federal agencies and State and local law enforcement agencies could review DOJ's guidance before establishing their own.

The guidance clarified which DOJ law enforcement officers could rely upon the Act and specified the type of identification and documentation that an agency would need to issue in order for an officer to qualify. DOJ did not issue regulations concerning the Act because the Act did not establish any Federal program. Additionally, State and local agencies have many different training certification and identification requirements, and they may wish to refer to DOJ's guidance in issuing guidance to their own officers.

We hope that this answers any questions concerning implementation of the Act for your membership. I apologize for any confusion to your members.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. Larry Ford".

W. Larry Ford
Assistant Director

Office of Public and Governmental Affairs