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

Sheriff is chief law-enforcement officer of office of sheriff for purposes of issuing concealed weapons permits to retired deputies.

The Honorable John R. Newhart
Sheriff for the City of Chesapeake
March 26, 2002

Issue Presented

You inquire regarding the definition of the term "chief law enforcement officer," as used in § 18.2-308(B)(8) of the Code of Virginia, and the discretion provided to a sheriff, rather than the chief of police, to issue concealed weapons permits to retired deputies.

Response

It is my opinion that the sheriff is the chief law-enforcement officer of the office of the sheriff for the purposes of § 18.2-308(B)(8).

Background

Section 18.2-308(A) generally makes the carrying of a concealed weapon a Class 1 misdemeanor. Section 18.2-308(B) excludes from the prohibition those persons or situations fitting within one of eight enumerated categories. Section 18.2-308(B)(8) covers "any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth," if such officer meets the specified requirements. The first requirement is that the officer must have retired "(i) with a service-related disability or (ii) following at least fifteen years of service." The second requirement is that the officer must carry with him "written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired."

Discussion

A rule of statutory construction requires that, where there is no ambiguity in a statute, the statute is not to be construed but is to be
given effect in accordance with its plain meaning and intent.\textsuperscript{5} Section 18.2-308(B)(8) clearly and unambiguously provides the requirements that must be satisfied for a retired law-enforcement officer to be exempt from the prohibitions contained in § 18.2-308. In addition to a service requirement, the officer must carry "written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired."\textsuperscript{6} The term "chief law-enforcement officer," referred to in § 18.2-308(B)(8), clearly is identified to be such officer of "the last such agency from which the officer retired."

A 1990 opinion of the Attorney General responds to a sheriff’s question regarding whether the phrase "principal law-enforcement officer" means the same thing as the phrase "chief law-enforcement officer," and concludes that there is no distinction between the "chief" and "principal" law-enforcement officer.\textsuperscript{7} The opinion notes that the words "chief" and "principal" are mere adjectives describing the status of the law-enforcement officer.\textsuperscript{8} It is, therefore, clear that, in the Commonwealth of Virginia, the "chief law-enforcement officer" of a sheriff’s office is the sheriff.

Conclusion

Therefore, it is my opinion that a retired deputy sheriff’s identification card, which is issued by the sheriff and identifies the holder as a retired deputy sheriff, satisfies the statutory requirement of § 18.2-308(B)(8). I am of the opinion that the sheriff is the chief law-enforcement officer of the office of the sheriff for the purposes of § 18.2-308(B)(8).

\textsuperscript{1}A second violation of § 18.2-308 constitutes a Class 6 felony, and a third violation constitutes a Class 5 felony. Va. Code Ann. § 18.2-308(A) (Michie Supp. 2001).

\textsuperscript{2}Section 18.2-308(B)(8) provides that § 18.2-308 shall not apply to:

"Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff’s office within the Commonwealth and any special agent retired from the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of
special agents, issued by the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.

"For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit."

3 Va. Code Ann. § 18.2-308(B)(8) (Michie Supp. 2001). The officer also must not have been terminated from service for cause. Id.

4 Id.

5 See Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1996 Op. Va. Att'y Gen. 152, 153; see also Schluderberg-Kurdle Co. v. Trice, 198 Va. 85, 88, 92 S.E.2d 374, 377 (1956) (holding that words of any instrument should be given their commonly accepted meaning, and if no ambiguity exists, there is no need to do more than accept plain meaning of instrument and give effect to instrument accordingly)

6Section 18.2-308(B)(8) (emphasis added).


8 Id. at 100.