

OP. NO. 05-026

LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004.

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL
CORRECTIONAL FACILITIES – JAIL AUTHORITIES – REGIONAL JAILS
AND JAIL FARMS.**

Local or regional jail officer who is not part of local police or sheriff's department may meet definition of 'qualified law enforcement officer' for purposes of federal Law Enforcement Officers Safety Act of 2004. Regional jail authority may generally prohibit its officers, or prohibit particular officer, from carrying concealed weapon absent valid concealed handgun permit.

The Honorable Charles E. Jett
Sheriff for Stafford County
June 21, 2005

Issues Presented

You ask whether a local correctional officer working for a regional jail authority is considered a "qualified law enforcement officer" for purposes of the federal Law Enforcement Officers Safety Act of 2004. You also ask whether a regional jail authority may generally prohibit its officers, or prohibit a particular officer, from carrying a concealed weapon absent a valid concealed handgun permit.

Response

It is my opinion that a local or regional jail officer¹ who is not part of a local police or sheriff's department, may meet the definition of a "qualified law enforcement officer" for purposes of the federal Law Enforcement Officers Safety Act of 2004. Further, it is my opinion that pursuant to state law a regional jail authority may prohibit its officers in general, or an officer in particular, from carrying a concealed weapon absent a valid concealed handgun permit.

Applicable Law and Discussion

The first issue is whether a local correctional officer working for a regional jail authority is considered a "qualified law enforcement officer" for purposes of the federal Law Enforcement Officers Safety Act of 2004.² Section 926(B)(c) of the Act defines a "qualified law enforcement officer" as:

[A]n employee of a governmental agency who—

(1) is 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 has statutory powers of arrest;

(2) *is authorized by the agency to carry a firearm;*

(3) is not the subject of any disciplinary action by the agency;

(4) *meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;*

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.
[Emphasis added.]

Sections 53.1-95.8, 53.1-98, and 53.1-109 each vest the superintendent and jail officers (guards) of local and regional jail authorities "[d]uring the term of their appointment ... with the powers and authority of a conservator of the peace" within certain geographical boundaries and functions performed during the discharge of their duties. According to § 19.2-18, "[e]very conservator of the peace shall have authority to arrest without a warrant."³ Since the superintendent and jail officers have statutory powers to arrest, it is my opinion that the first qualification is satisfied.⁴

Section 53.1-109.01 authorizes regional jail officers "to carry ... weapons ... in the course of [their] assigned duties" provided they have been designated by their superintendent and have completed the basic course in firearms. Should a regional jail officer satisfy the requirements of § 53.1-109.01, he is authorized to carry a firearm. Therefore, it is my opinion that the second qualification is satisfied.⁵

"Every person employed as a jailor or custodial officer under the provisions of Title 53.1 of the Code of Virginia, shall meet compulsory in-service training standards"⁶ The compulsory in-service training standards include an annual qualification using the applicable firearms course.⁷ Since a regional jail officer must qualify annually in the use of a firearm, it is my opinion that the fourth qualification is satisfied.⁸

Whether an officer meets the third,⁹ fifth,¹⁰ or sixth qualification¹¹ is a determination for the individual officer and his jail superintendent and is not a matter of state law.¹² I note, however, that should the officer satisfy these three remaining qualifications, it is my opinion that a local correctional officer would meet the definition of a "qualified law enforcement officer" for the purposes of the Law Enforcement Officers Safety Act of 2004. I should advise that the Act pertains to a qualified law enforcement officer's ability to carry a concealed firearm in a state other than Virginia.¹³

The second issue is whether a regional jail authority may generally prohibit its officers, or prohibit a particular officer, from carrying a concealed weapon absent a valid concealed handgun permit. Pursuant to § 53.1-106(B)(4), "[t]he [regional jail authority] shall have the power to ... [a]ppoint a superintendent ... and necessary jail officers therefor who shall serve at the pleasure of the [authority]." Since a local correctional officer serves at the pleasure of the regional jail authority, it follows that the authority may generally prohibit its officers, or prohibit a particular officer, from carrying a concealed weapon absent a valid concealed handgun permit.

Conclusion

Accordingly, it is my opinion that a local or regional jail officer¹⁴ who is not part of a local police or sheriff's department, may meet the definition of a "qualified law enforcement officer" for purposes of the federal Law Enforcement Officers Safety Act of 2004. Further, it is my opinion that pursuant to state law a regional jail authority may prohibit its officers in general, or an officer in particular, from carrying a concealed weapon absent a valid concealed handgun permit.

¹For purposes of this opinion, local or regional jail officers are those officers appointed pursuant to § 53.1-95.7(3) or § 53.1-106(B)(4).

²See Pub. L. No. 108-277, 118 Stat. 865 (codified at 18 U.S.C.A. §§ 926(B)-926(C) (West Supp. 2005)).

³The power to arrest without a warrant is limited to the instances set out in §§ 19.2-19 and 19.2-81. See Va. Code Ann. § 19.2-18 (LexisNexis Repl. Vol. 2004).

⁴See 18 U.S.C.A. § 926B(c)(1) (West Supp. 2005).

⁵See 18 U.S.C.A. § 926B(c)(2).

⁶6 Va. Admin. Code 20-30-20(B) (West 2003).

⁷See 6 Va. Admin. Code 20-30-80 (West 2003).

⁸See 18 U.S.C.A. § 926B(c)(4).

⁹See 18 U.S.C.A. § 926B(c)(3) (providing that officer may not be subject of disciplinary action by agency).

¹⁰See 18 U.S.C.A. § 926B(c)(5) (providing that officer may not be under influence of alcohol or narcotics).

¹¹See 18 U.S.C.A. § 926B(c)(6) (providing that officer may not be prohibited by Federal law from receiving firearm).

¹²For many years, Attorneys General have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. See Op. Va. Att'y Gen.: 2003 at 21, 24; 2001 at 73, 74; see also Op. Va. Att'y Gen.: 1999 at 132, 132; 1986-1987 at 1, 6 (citing predecessor § 2.1-118); accord 1991 Op. Va. Att'y Gen. 122, 124.

¹³The Law Enforcement Officers Safety Act of 2004 addresses the carry of a "concealed firearm that has been shipped or transported ... in interstate commerce of foreign commerce." 18 U.S.C.A. § 926(B).

¹⁴See *supra* note 1.

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