

The Law On Gunslinging, Part 2: Officers and Concealed Guns Legal Question of The Week Vol. 2, Number 12 May 22, 2009

Brian Beasley
Stuck in a Gun Rut and
Legal Adviser, HPPD

Welcome back to yet another edition of the Legal Question of the Week. For those that are keeping score at home, you probably remember that our last update concerned where an ordinary citizen was permitted to openly carry a firearm. For this installment, we will examine where you, the fine upstanding sworn law enforcement officer that you are, may carry a CONCEALED firearm.¹

Once again, the place to start is with Federal law and the definition of a “qualified law enforcement officer.”² According to 18 U.S.C. 44 §926B(c), a “qualified law enforcement officer” is an 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.³

¹ For those of you who are tired of firearm related topics, I apologize. The solution, however, is simple. Either (1) start submitting better questions to the Legal Office or (2) pray for the U.S. Supreme Court to drop another bombshell landmark decision with lots of people with funny names along with criminals and/or law enforcement officers doing wacky things. Unless one of those two things occurs, we might be stuck talking about guns well into 2010.

² Contrary to how it sounds, this term has nothing to do with whether the law enforcement officer is qualified to be a law enforcement officer, only whether the law enforcement officer is qualified to carry a concealed weapon. I leave it to you to determine whether certain law enforcement officers might be unqualified to be law enforcement officers, while being qualified under this section to carry concealed weapons as a “qualified law enforcement officer.” Wow – I think I even made MY head hurt by doing that.

³ If you meet these criteria, congratulations! You may keep reading. If you do not meet these criteria, please stop reading here – you have more important issues you should be working on.

If you meet the definition of a “qualified law enforcement officer,” this federal statute allows you to carry a concealed firearm “notwithstanding any other provision of the law of any State or any political subdivision thereof”⁴ so long as you are also carrying “the photographic identification issued by the governmental agency for which [you] are employed as a law enforcement officer.” This means that you may carry a concealed gun regardless of any state (or local) laws, but remember that there are some federal laws that would still apply. In addition to school zones⁵ and federal facilities,⁶ you have to be wary of federal parks⁷ and airports.

There are some pretty elaborate rules regarding airports, as you might imagine after 9/11. Law enforcement officers may carry their firearm on a flight for which screening is required only if they have a need to have the weapon accessible as determined by the employing agency⁸ and they have completed the training program called “Law Enforcement Officers Flying Armed.”⁹ Otherwise, they have to check their weapon like everyone else. For more information on guns and flying, check the following link: http://www.tsa.gov/travelers/airtravel/assistant/editorial_1666.shtm

Even though the Federal concealed carry for law enforcement officers trumps state law, there are two exceptions¹⁰ you need to know about.¹¹ First, this federal statute does not supersede state laws that “permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property.” Second, it does not supersede state laws that “prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.” Let’s take these each in turn.

North Carolina, for example, prohibits concealed carry in a place “where notice that carrying a concealed handgun is prohibited” by the person in control of the premises.¹² Several other states have similar laws. While in the great state of North Carolina,¹³ this prohibition does not apply to you under G.S. 14-415.22 so long as you are

⁴ The federal government loves to thumb its nose at the states by showing them that their laws are only as good as the federal government says they are.

⁵ 18 U.S.C. 44 §922(q).

⁶ 18 U.S.C. 44 §930. Both school zones and federal facilities have several exceptions allowing possession of firearms, including an exception for a law enforcement officer acting in his or her official capacity.

⁷ I put parks here mainly because it has been somewhat in the news lately. I could do a whole legal update about guns in federal parks (wouldn’t that be exciting?) but suffice it to say for now that although federal statutes do not prohibit carrying concealed in a federal park, there are regulations issued by the National Parks Service and the Fish and Wildlife Service which prohibit this. There is currently legislation pending in Congress to allow concealed carry in federal parks.

⁸ “Feeling naked/nekkid” without your gun is not a good enough need for this exception to apply.

⁹ I am not making up this name. For some reason, this strikes me as a class that involves lots of coloring of policemen and airplanes.

¹⁰ Actually there are three exceptions if you count that fact that you still can’t carry a machinegun, a firearm silencer, or destructive device as defined by 18 U.S.C. 44 §921.

¹¹ Surprise! As I’ve said before, if there weren’t exceptions to everything, you wouldn’t need lawyers. While you may see that as a positive all around, it would be very bad for the economy. Especially my personal economy.

¹² N.C.G.S. 14-415.11(c)

¹³ The official blue berry of the great State of North Carolina is the blueberry according to N.C.G.S. 145-18(c). I wonder what finished second in the voting?

acting in the discharge of your official duties or off-duty so long as you are not consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in your body.¹⁴ However, when you travel out-of-state, make sure you are aware of whether or not you may carry concealed in these areas. I suggest you call the state attorney general's office for the state where you are traveling.

The same holds true for the federal exception for state laws that prohibit possession of firearms on State government property. N.C.G.S. 14-269.4 is our statute prohibiting this, but section (1a) of that statute exempts you if you are a law enforcement officer carrying out your duties or off-duty with no alcohol or drugs in your system. Again, other state's laws may not permit you to carry concealed on their state property. The way to check is not to walk around their property with a concealed gun until someone catches you – in this case, it is better to seek permission than to try and ask for forgiveness.

Along those same lines, we must pause here for station identification and a

CRITICAL DISCLAIMER!

Merely because something might be legal DOES NOT MEAN that it is allowed by your department. You MUST be familiar with your department's General Orders or firearm policies. If you violate a General Order, and your only defense is that your legal advisor told you that it wasn't against the law – you are in a whole heap of trouble!¹⁵ For my High Point officers, General Order 3.13 is the one you need to read and abide by.

A quick word about retired law enforcement officers. This group has a similar federal statute that permits concealed carry. It is 18 U.S.C. 44 §926C and to be a “qualified retired law enforcement officer” you must be a person 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 or 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;

¹⁴ This is referred to as the G.S. 14-269(b) exception. This exception also exempts officers meeting these criteria from prohibitions prohibiting handguns at most locations, including educational property, parades, and the courthouse. G.S. 14-415.22 also exempts those that fall under the 14-269(b) exception from having to get a concealed carry permit.

¹⁵ In fact, the only way you could be in more trouble is if your defense is that some other department's legal advisor told you it wasn't against the law. That's going to go over real well for you, and probably result in your Chief or Sheriff calling me or worse, my Chief. I'll wave to you as we both go down together...
KNOW YOUR DEPARTMENT'S POLICY!

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.

Your identification requirements are different as well, as the statute requires you to carry either:

1. a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; OR
2. (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and
(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Along with these differences, retired officers should understand that they are not covered by the N.C.G.S. 14-269(b) exception, so even in North Carolina, they may not carry concealed in areas where handguns are posted as prohibited by the person in charge of the premises or on State government properties.¹⁶ You are, however, still exempted from having to get a state concealed carry permit if you meet the "qualified retired law enforcement officer" definition.¹⁷

Have a safe and happy Memorial Day!

Brian T. Beasley

Police Attorney

High Point Police Department

¹⁶ And lots of other places including, but not limited to, educational property, parades, and places where admission is charged.

¹⁷ N.C.G.S. 14-415.25. The statute that follows, N.C.G.S. 14-415.26, gives retired law enforcement officers who do not meet the federal definition another possible way to get a state concealed carry permit. The statute that follows that, N.C.G.S. 14-416, makes the handling of poisonous reptiles a public nuisance and class 2 misdemeanor. You know, in case you are into that sort of thing.