



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

The Honorable Jerry Patterson
Chair, Committee on Veteran Affairs and
Military Installations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068

Letter Opinion No. 98-123

Re: Whether a retired military officer may carry a
firearm under the provisions of House Bill 2909
Act of June 1, 1997, 75th Leg., R.S., ch. 1261, § 13,
1997 Tex. Gen. Laws 4766, 4771 (RQ-1131)

Dear Senator Patterson:

You have requested our opinion as to whether a retired military officer may carry a firearm under the provisions of the concealed handgun licensing law, Government Code, chapter 411, subchapter H, as amended in 1997 by House Bill 2909, Act of June 1, 1997, 75th Leg., R.S., ch. 1261, § 13, 1997 Tex. Gen. Laws 4766, 4771.

Prior to 1997, section 28 of article 4413(29ee), V.T.C.S., provided, in relevant part:

Sec. 28. HONORABLY RETIRED PEACE OFFICERS.¹

(a) A person who is licensed as a peace officer under chapter 415, Government Code, and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license under this article on retirement. The application must be made not later than the first anniversary after the date of retirement.

....

(g) A retired criminal investigator of the United States who is designated as a "special agent" is eligible for a license under this section.

The 75th Legislature amended subsection (g) to read as follows: "A retired officer² of the United States who was eligible to carry a firearm in the discharge of his official duties is eligible for a

¹Article 2.12 of the Code of Criminal Procedure defines who are peace officers.

²Article 2.122 of the Code of Criminal Procedure, in listing twelve categories of federal officers who "shall not be deemed peace officers, but shall have the powers of arrest, search and seizure as to felony offenses only under the laws of the State of Texas," continues to describe such persons as "criminal investigators of the United States."

license under this section.” You ask whether the word “officer” in the amended version of subsection (g) may apply to a *military* officer.³

The new language of subsection (g) was not added in either the House or Senate committee that considered House Bill 2909. Rather, it was offered and adopted as one of a series of floor amendments on May 27, 1997. Nothing in the Senate Journal nor in the audio tapes of the proceedings indicates that any explanation was offered for the amendment, nor was the matter debated; and this seems rather odd. For if the word “officer” is read to apply to every retired *military* officer, a very large number of individuals would automatically become eligible to carry a concealed handgun under the less-than-stringent procedures of Government Code section 411.199.

“We ought not to give any legislative act a construction which will throw the law ‘into some degree of confusion,’ if it can be ascertained that the Legislature had fairly expressed any other purpose.” *Trimmier v. Carlton*, 296 S.W. 1070, 1074 (Tex. 1927). We believe it is fair to say that the word “officer” in the context of the amendment is ambiguous. The amended language before us still appears as a subsection of a section which is entitled “Honorably Retired Peace Officers.” It hardly appears reasonable to add an entirely new category of persons—persons who clearly are not encompassed within the term “peace officer”—to a section that details the procedures necessary for a retired *peace officer* to obtain a license. Because of the ambiguity of the term “officer,” the total absence of evidence as to the legislative intent in this matter, and the magnitude of the change that an expansive construction of the term “officer” would effect, we do not believe it proper to construe the term “officer” in this context to include military officers.

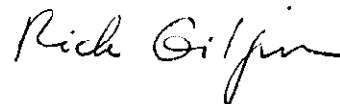
It is our opinion that a retired military officer may not be licensed to carry a concealed handgun under the provisions of Government Code, chapter 411, subchapter H, as amended in 1997 by House Bill 2909.

³You do not indicate what you mean by “military” officer. We note, however, that title 10, subtitle A, of the United States Code relates to general military law and provides the following definitions: “[t]he term ‘military’ refers to any or all of the armed forces,” 10 U.S.C. § 801(8); “[t]he term ‘armed forces’ means the Army, Navy, Air Force, Marine Corps, and Coast Guard,” § 101(a)(4); “officer” refers to a commissioned or warrant officer; “commissioned officer” includes a commissioned warrant officer; and “warrant officer” refers to a person who holds a commission or warrant in a warrant officer grade. § 101(b)(1) - (3).

S U M M A R Y

A retired military officer is not exempted from the statutory requirements imposed upon other licensees seeking to carry a concealed handgun under the provisions of Government Code, chapter 411, subchapter H.

Yours very truly,

A handwritten signature in cursive script that reads "Rick Gilpin".

Rick Gilpin
Deputy Chief
Opinion Committee