



OLR RESEARCH REPORT

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LAW ENFORCEMENT OFFICERS SAFETY ACT (LEOSA) AND GUN PERMIT REQUIREMENT

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You asked whether, under the federal LEOSA, Connecticut State Police must require retired law enforcement officers to submit a Connecticut gun permit as a condition of getting LEOSA certification to carry firearms throughout the country.

This office does not give legal opinions and this report should not be construed as such.

SUMMARY

The statutory text of LEOSA does not require retired law enforcement officers who meet LEOSA standards to submit a gun permit to get LEOSA certification to carry concealed weapons. Nothing in the act's legislative history or court cases interpreting LEOSA suggests such a requirement.

Within certain limitations and under certain conditions, LEOSA allows qualified active and retired law enforcement officers to carry concealed firearms anywhere in the country "notwithstanding any other provision of the law of any State or any political subdivision thereof." LEOSA creates an affirmative defense to criminal prosecutions for alleged violations of state and local statutes and ordinances prohibiting the carrying of concealed weapons. To carry a concealed weapon under LEOSA, the retired law enforcement officer must, among other things, (1) be eligible to possess firearms under federal law and (2) "meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm" (18 USC § 926C, as amended by PL 111-272)

According to the State Police, in order to determine an applicant's eligibility to carry firearms under federal law, the division must access the National Instant Criminal Background Check System (NICS) (the federal database used in determining a person's eligibility to acquire or possess firearms) and can do so only if the applicant has a gun permit. But LEOSA's text imposes no explicit duty on agencies to conduct NICS checks to determine eligibility. We found examples of agencies that interpret LEOSA without requiring such checks. Kentucky State Police, for example, merely requires applicants to sign a notarized statement attesting to their eligibility. Maryland State Police will accept an officer's signed affidavit or conduct its own investigation. Delaware requires applicants to undergo a criminal history record check and sign an affidavit attesting to their eligibility but does not require them to have a gun permit.

With regard to the requirement that retired officers meet the active-duty standard for qualification in firearms training, Connecticut police officers do not need a gun permit to carry firearms. Thus, it would appear that LEOSA would not require the State Police to require retired police officers to possess a gun permit under this provision.

At least one state attorney general has interpreted LEOSA as exempting qualified retired law enforcement officers from a permit requirement. According to a 2005 Florida attorney general's opinion, LEOSA, by permitting retired law enforcement officers to carry concealed weapons provided that they meet the act's criteria, would preempt the Florida state statute requiring such officers to obtain a concealed weapons permit (AGO 2005-45, August 2, 2005). Connecticut's attorney general has not issued an opinion on LEOSA.

No state or federal court has interpreted the permit issue as it pertains to retired law enforcement officers. But in *The People of the State of New York v. Booth*, the court held that federal law exempted an active-duty law enforcement officer from prosecution even though he possessed an unlicensed handgun (862 NYS 2d 767 (2008)).

Additional information on the law and the State Police training program is available at <http://www.ct.gov/dps/cwp/view.asp?a=2153&q=303746>.

LEOSA

LEOSA is a federal law that exempts qualified current law enforcement officers and “qualified retired law enforcement officers” from state laws and local ordinances prohibiting the carrying of concealed weapons (excluding machine guns, silencers, and destructive devices) (18 USC §§ 926B and 926C, as amended by PL 111-272).

Under LEOSA, qualified law enforcement officers may carry concealed weapons anywhere in the country subject to two limitations. Private property owners may restrict or prohibit such weapons on their property and states may restrict or prohibit them in or on state or local government property, installations, buildings, bases, or parks (18 USC § 926C(e), as amended by PL 111-272). Also, the act does not supersede federal laws governing the carrying of firearms on aircraft or federal property or in federal buildings or national parks.

Eligibility Criteria for Retired Officers

Under LEOSA, a “qualified retired law enforcement officer” means someone who:

1. separated in good standing from service with a public agency as a law enforcement officer;
2. served as a law enforcement officer for an aggregate of at least 10 years;
3. was legally authorized to make arrests and engage in or supervise people performing specified law enforcement functions;
4. during the most recent 12 months, met the standards for qualifying in firearms training for active law enforcement officers, as determined by his or her former agency or state of residency or, if the state has not set any standards, a law enforcement agency in the state or the standards used by a certified firearms instructor qualified to conduct firearms qualification tests for active-duty officers in the state;
5. has not (a) been officially found unqualified on mental health grounds by a qualified medical professional employed by the agency or (b) entered into a separation agreement acknowledging their disqualification on mental health grounds; and

6. may legally possess firearms under federal law (18 USC § 926C, as amended by PL 111-272).

Federal law prohibits certain people from receiving or possessing firearms, including anyone under indictment for or convicted of a felony, unlawfully using or addicted to controlled substances, discharged from the U.S. Armed Forces under dishonorable conditions, or convicted of a misdemeanor crime of domestic violence (18 USC § 922g).

A retired officer carrying a concealed firearm under LEOSA must carry photo identification from his or her former agency indicating that he or she met, in the past 12 months, the active-duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as he or she intends to carry.

Alternatively, the officer must have (1) a photo identification from his or her former agency and (2) a certificate issued by the state where he or she lives or by a certified, qualified firearms instructor showing that he or she has met, in the past 12 months, the:

1. “active duty standards for qualifications in firearms training, as established by the state to carry a firearm of the same type as the concealed firearm” or
2. “standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm,” if the state has not established standards (18 USC § 926C as amended by PL 111-272).

STATE POLICE POLICY AND LEOSA INTERPRETATIONS

Eligibility to Carry Firearms

Current State Police policy requires retired law enforcement officers to submit a Connecticut gun permit as a condition of initial LEOSA certification. According to the State Police, the gun permit is necessary because the division does a NICS check to verify an applicant’s eligibility to possess and carry firearms under federal law and it can only access the NICS if the applicant submits a gun permit.

But LEOSA imposes no explicit duty on agencies to conduct NICS checks. Law enforcement agency practices vary around the country. Some agencies, such as Delaware State Police, require applicants to undergo background checks and sign an affidavit attesting to their eligibility. And some agencies, such as Kentucky State Police, merely

require applicants to sign a notarized statement attesting to their eligibility. Maryland State Police will accept an officer's signed affidavit or conduct its own investigation.

Florida law exempts law enforcement officers from the requirements of the state's concealed weapons licensing statute. But it requires that retired law enforcement officers get a permit. According to a 2005 attorney general's opinion, LEOSA:

by permitting retired law enforcement officers to carry concealed weapons provided that they meet the criteria specified in the federal act, would, in my opinion , preempt the state statute requiring retired law enforcement officers to obtain a concealed weapons permit (AGO 2005-45, August 2, 2005).

Training Standards and Qualifications

LEOSA expressly permits states to set "standards for training and qualification" consistent with those of "active law enforcement officers." Thus, if the state standards for active law enforcement officers include a gun permit, the agency may require retired officers to meet this standard. Neither state law nor State Police policy requires current officers to have a gun permit as a condition of firearms qualification. Thus, this provision of LEOSA does not expressly require the State Police to require a permit.

CASE LAW ON ACTIVE-DUTY LAW ENFORCEMENT OFFICERS

We found no state or federal case law addressing the permit issue as it applies to retired officers. But a New York court has ruled on the issue as it applies to active-duty officers. In *The People of the State of New York v. Booth*, 862 NYS.2d 767 (2008), the police stopped the defendant for speeding and found a loaded handgun under the driver's seat. The defendant stated that he did not have a license to possess a firearm but had a waiver from the U.S. Coast Guard to use the firearm to practice.

Based on testimony that the defendant was a Coast Guard member permitted to carry a weapon and generally take part in law enforcement duties, and the Coast Guard identification found in his possession at the time of the incident, the court held that the defendant was exempt from prosecution under § 926B(a) of LEOSA even though he possessed an unlicensed handgun. The court dismissed the indictment.

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