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November 21, 2013

The Honorable Kathryn Afzali
6808 Sarazen Drive
Middletown, Maryland 21769

Dear Delegate Afzali:

You have asked for advice concerning the handgun qualification license ("HQL") requirements of Chapter 427 (SB 281) of 2013, "Firearm Safety Act of 2013." Specifically, you have asked whether the HQL requirement is triggered when a person holds or uses a gun as part of a supervised training or recreational activity. It is my view that it is not.[1]

This question has been raised by a constituent who is concerned that the law would prevent him from taking his son or his Boy Scout group out shooting. He has been told by another individual (not in law enforcement) that if he hands a handgun to another person to hold or shoot that person is receiving a firearm within the meaning of Chapter 427 and if the person does not have an HQL both he and the other person have broken the law. If true, this would completely eliminate his activities with his son and his Boy Scout group, as a person under the age of 21 cannot obtain an HQL. Public Safety Article ("PS"), § 5-117.1(d)(1).

In *Chow v. State*, 393 Md. 431 (2006), the Court of Appeals considered whether PS § 5-124(a), which prohibits a person who does not hold a dealer's license from selling, renting, transferring, or purchasing a regulated firearm until 7 days following the time a firearm application is executed by the firearm applicant, applies to a gratuitous temporary exchange or loan between two adults who are otherwise permitted to own and obtain regulated firearms. The Court held that it did not after looking at the way that the term "transfer" was used in other portions of the Regulated Firearms Subtitle, and the statements that had been made concerning the purpose of the law, noting that it had been used in ways that indicated a more permanent change of possession than a temporary loan, and that statements in the legislative history supported that conclusion. Three judges dissented, and would have held that a transfer had taken place based on the facts of that case. That case, however, involved a situation where the firearm was taken completely out of the possession of the owner, and the other party was driving around with it. The dissenting judges pointed out that they agreed:

[1] Similar advice was given by Dan Friedman in a letter to the Honorable Sam Arora dated March 12, 2013.

> that the Legislature did not intend the word 'transfer' to prohibit a firearm owner from allowing a prospective purchaser, lessee, or transferee to test fire the weapon before deciding whether to purchase, rent, or otherwise acquire possession and control of it, any more than it would prevent the owner from allowing another competent person, at a firing range, to shoot the weapon in the presence of the owner. Those kinds of circumstances do not constitute a transfer of the weapon; to give that kind of expansive meaning to the term would be wholly unreasonable and would extend the term well beyond what could have possibly been intended.

Thus, it would not appear that even the dissenting members of the Court would have interpreted the word "transfer" to reach the activities in question.

While the *Chow* case involved the meaning of the term "transfer" and the issue here is the meaning of the term "receive," the structure of the HQL requirement makes clear that they are equivalent parts of the same transaction. Public Safety Article, § 5-117.1(b) provides that a dealer or other person may not "sell, rent, or transfer" a handgun unless the "purchaser, lessee, or transferee" presents a valid HQL, while PS § 5-117.1(c) provides that a person may "purchase, rent, or receive" a handgun only if the person has a valid HQL. As a result, it is my view that the Court would not interpret the word "receive" more broadly than it has interpreted the word "transfer."[2]

Finally, while the *Chow* case involved adults and your constituent is asking about activities involving minors, the activities in question are expressly permitted by the law. Public Safety § 5-133(d) provides that a person who is under the age of 21 years may not possess a regulated firearm, exceptions are provided for:

> (i) the temporary transfer or possession of a regulated firearm if the person is:
>
> 1. under the supervision of another who is at least 21 years old and who is not prohibited by State or federal law from possessing a firearm; and
>
> 2. acting with the permission of the parent or legal guardian of the transferee or person in possession [or]
>
> (iv) the temporary transfer or possession of a regulated firearm if the person

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[2] Like the word transfer, the word "receive" is used elsewhere in the law in ways that indicate that more than a temporary exchange is meant. Criminal Law § 4-302(5), (6), and (9). Moreover, a narrow interpretation to the term "receive" would make it impossible for a person to fulfill the firearms orientation component of the training necessary to receive an HQL that would allow them to receive a handgun under PS § 5-117.1(d)(3)(iii).

is:

1. participating in markmanship training of a recognized organization; and

2. under the supervision of a qualified instructor.

PS § 5-133(d)(2). These provisions were not altered by Chapter 427, providing further evidence that the law was not intended to make this activity impossible.

For the above reasons, it is my view that your constituent may continue to take his son and his Boy Scout group shooting so long as the activity fits within one of the exceptions established by PS § 5-133(d)(2).

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

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