

GEORGE C. JEPSEN  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

(860) 808-5319

Office of The Attorney General  
**State of Connecticut**

April 24, 2012

Peter J. Martin, Esq., Chairperson  
State Marshal Commission  
165 Capitol Avenue, Room 483  
Hartford, CT 06106

Dear Mr. Martin:

You have asked this Office's opinion about whether the State Marshal Commission may require a State Marshal to comply with the Commission's policies on carrying firearms in the course of his/her official duties if that State Marshal has previously retired from law enforcement and is a "qualified retired law enforcement officer" as that term is defined under the Law Enforcement Officers' Safety Act (LEOSA), codified at 18 U.S.C. § 926C. For the reasons more fully outlined below, it is our opinion that the State Marshal Commission may require compliance with its policies when an individual is acting in his or her official capacity as a State Marshal even if the individual is also a qualified retired law enforcement officer for purposes of the federal law.<sup>1</sup>

The State Marshal Commission's Firearms Policy requires that, before being authorized to carry firearms in the course of their official duties, each Marshal shall successfully complete the following Connecticut Police Officer Standards and Training Council (POSTC) approved basic police recruit or refresher (in-service) training or certification requirements, as appropriate, under the supervision of a Connecticut POSTC certified law enforcement firearms instructor:

- POSTC-approved firearms training course within the preceding year;

---

<sup>1</sup> A "qualified retired law enforcement officer" is defined in 18 U.S.C. § 926C(c). For purposes of this opinion, we have assumed the State Marshals at issue meet the federal requirements as qualified retired law enforcement officers.

- POSTC-approved practical shooting decision training course within the preceding three years; and
- POSTC-approved use of force training course within the preceding three years.

In addition, the State Marshal Commission requires that, before a State Marshal can be authorized to carry a firearm in the course of his/her official duties, he/she must possess a valid Connecticut permit to carry pistols or revolvers, have successfully completed a law enforcement oriented psychological examination by a licensed psychiatrist or clinical psychologist approved by POSTC for such purposes, and have received from the State Marshal Commission written approval to carry a firearm in the course of his/her official duties. Finally, the State Marshal Commission Firearms Policy requires that only approved firearms and ammunition may be carried, and that each State Marshal, so authorized, must provide proof of liability insurance in the amount of one million dollars (\$1,000,000) naming the State of Connecticut, the Department of Administrative services, the State Marshal Commission and their officers, agents and employees as additional insureds. The policy applies only when the State Marshals are acting in their official capacity.

Title 18 U.S.C. § 926C(a) provides “Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).” Subsection (b) of 18 U.S.C. § 926C provides that the provisions of LEOSA shall “not be construed to supersede or limit the laws of any State that 1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or 2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.”

Notably, LEOSA specifically preserves states' authority to establish eligibility requirements for qualified retired law enforcement officers to carry firearms. See 18 U.S.C. § 926C(d). Although case law interpreting the law is limited because of its fairly recent enactment, one district court has noted: “At a minimum, LEOSA provides a federal right for qualified retired law enforcement officers who possess the requisite identification to lawfully carry concealed firearms across state lines.” *Johnson v. New York State Dep't of Correctional*

*Services.*, 709 F. Supp. 2d 178, 182 (N.D.N.Y. 2010). The court in *Johnson* interpreted the language of § 926C(a) as demonstrating only “an intent to bar criminal prosecutions of retired law enforcement officers who carry concealed weapon in interstate commerce and not to preempt states’ authority to issue identification needed to carry a concealed weapon pursuant to the statute.” *Id.* at 188. In addition, courts that have had occasion to examine the issue have unanimously determined that Congress did not intend to create either an explicit or an implicit private cause of action under federal law for enforcement of any right granted under LEOSA. *See, e.g., Moore v. Trent*, 2010 U.S. Dist. LEXIS 133038 (N.D. Ill. 2010); *Toracco v. Port Authority of New York*, 539 F. Supp. 2d 632 (E.D.N.Y. 2008); *Boss v. Kelly*, 2007 U.S. Dist. LEXIS 62348 (S.D.N.Y. 2007).

Beyond this, the question of whether LEOSA was intended to preempt all state laws, policies or practices with regard to the carrying of firearms must be answered in the negative. LEOSA is part of Chapter 44 of Title 18, Firearms. Title 18 U.S.C. § 927 specifically provides:

No provision of this chapter [18 U.S.C. § 921 et seq.] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

Here, the two provisions are easily reconcilable. Individuals, acting in their official capacity as State Marshals, must comply with the Commission’s policies in order to carry a firearm. When off-duty, those same individuals, as qualified retired law enforcement officers, may carry a concealed weapon provided they comply with subsection (d) of 18 U.S.C. § 926C.

An examination of the practices of other agencies with regard to a comparable issue reflects a similar interpretation of LEOSA’s intended limitations. Specifically, the Office of the Attorney General, Washington, D.C. has opined, with regard to federal law enforcement personnel employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives Division of the Department of the Treasury, and the Drug Enforcement Administration, the Federal Bureau of Investigation, and the U.S. Marshals Service of the U.S. Department of Justice, that:

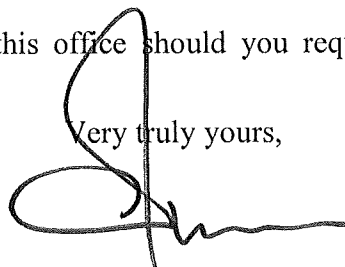
[A]ny component's regulations or procedures with respect to on-duty agents or officers will continue to be in effect. Those requirements, regulations, and procedures separately remain in effect, notwithstanding any provision of the [Law Enforcement Officers Safety Act of 2004].

*See Office of the Attorney General, Memorandum for the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, the Administrator, Drug Enforcement Administration, The Director, Federal Bureau of Investigation, The Director, Federal Bureau of Prisons, The Inspector General and The Director, United States Marshals Service re Guidance on the Application of the Law Enforcement Officers Safety Act of 2004 to Current and Retired Department of Justice Law Enforcement Officers, dated January 31, 2005, at p. 3, available online at <http://www.handgunlaw.us/documents/USAG-HR218.pdf> (last visited on April 23, 2012).*

As a result, it is our opinion that the provisions 18 U.S.C. § 926C are not intended by Congress to preclude the State Marshals Commission from establishing and enforcing reasonable qualifications for, and limitations upon, the right of a State Marshal to carry a firearm in the course of his/her official duties. We leave to the State Marshal Commission to determine and express no opinion on whether the LEOSA identification required under 18 U.S.C. §926C(d) should satisfy any of the necessary qualifications for a State Marshal, who is also a qualified retired law enforcement officer, to carry a firearm in the course of his/her official duties.

Please do not hesitate to contact this office should you require further articulation, for any reason.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Jepsen", with a large, stylized initial "G" and a long horizontal flourish at the end.

GEORGE JEPSEN  
ATTORNEY GENERAL