

Department of Labor State of Georgia



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UNOFFICIAL OPINION U97-13

To: Judge
Probate Court of Houston County

May 9, 1997

Re: Under Georgia law, active duty military personnel are exempted from the requirement of a **firearms** permit. The exemption is not limited to the performance of military duty. These personnel may, upon request, obtain a **firearms** permit if otherwise qualified. Their dependents may be issued a permit if otherwise qualified only upon establishing residency in this state. Law enforcement officers are also exempt from the requirement to obtain a permit.

This unofficial opinion is issued in response to the questions you have raised concerning the proper application of O.C.G.A. § [16-11-130](#) to military and law enforcement personnel. For clarity, I have set forth each of your questions and responded seriatim.

First, you have inquired if active duty military personnel are exempt from the permit requirements. The exemptions are set forth in O.C.G.A. § [16-11-130](#). I note that this Code Section exempts certain persons from "Code Sections 16-11-126 through 16-11-128." Thus, persons so exempt are exempted not only from the requirement of a permit to carry a **firearm** (O.C.G.A. § [16-11-128](#)), but are also exempt from the provisions regarding the carrying of concealed weapons (O.C.G.A. § [16-11-126](#)), carrying deadly weapons to or at public gatherings (O.C.G.A. § [16-11-127](#)), and carrying weapons within school safety zones or at school functions (O.C.G.A. § [16-11-127.1](#)) But see O.C.G.A. § [16-11-127.1\(c\)\(3\)](#), which appears to limit the exemption to persons actually participating in military training programs.

Under prior versions of this statute, it was clear that the exemption applied only to the performance of official duties. See, e.g., *Talley v. State*, 129 Ga. App. 479, 481 (1973); 1987 Op. Att'y Gen. U87-28. However, at that time the exemptions applied to these persons while engaged in the pursuit of official duties or when authorized by law. Since that time, the statute has been amended. Official Code of Georgia Annotated § [16-11-130\(a\)](#) now provides that the exemptions apply to "persons . . . employed in the offices

listed below." Persons in the military service of the State of Georgia or of the United States are among those so listed. O.C.G.A. § [16-11-130\(a\)\(3\)](#). Thus, it is my unofficial opinion that active duty military personnel are exempt under Georgia law from the requirement for a **firearms** permit.

Secondly, you have asked if the exemption is limited to the performance of military duties on the base. As noted above, under the current version of the statute, persons so employed are exempt; the statute no longer limits the scope of the exemption to the performance of official duties. Thus, my response to your question is in the negative.

In your third question, you ask if active duty military personnel may, notwithstanding the exemption, apply for and be issued a **firearms** permit. Permits may be issued only to a resident of this state whose domicile is in the county of application. O.C.G.A. § [16-11-129\(a\)](#). Generally, military personnel are not residents of Georgia and thus they were not eligible for the permits under a former version of the statute. See 1976 Op. Att'y Gen. U76-71. Under the current statute, however, an active duty member of the armed services who, although not a domiciliary of this state, resides in the county or on a military reservation in the county may nevertheless obtain a **firearms** permit if otherwise eligible. O.C.G.A. § [16-11-129\(a\)](#). Thus, it is my unofficial opinion that a member of the armed services may, provided that he is otherwise eligible for the permit, apply for and be issued a **firearms** permit notwithstanding the fact that he is not domiciled in Georgia.

Your fourth question concerns the residency requirements for an active duty military applicant. Under the plain language of the statute, a member of the armed services may, if otherwise eligible, obtain a permit if he resides in the county of application or on a military reservation located in whole or in part in that county at the time of application.

Fifth, you inquire regarding the eligibility of a spouse for a permit. As noted supra, military personnel (and their dependents) are generally not residents of Georgia and thus the dependents are not eligible for the permits. See 1976 Op. Att'y Gen. U76-71. However, this is not an ironclad rule; a member of the armed services may choose to establish a domicile in Georgia and, if this is done, the member's dependents would be eligible for a permit if otherwise qualified. In making a determination of residency, the Probate Judge should consider such factors as payment of Georgia income or property taxes, place of residence, registration to vote, registration of automobiles, whether the dependent is licensed to drive by this state, and other similar factors. See, e.g., 1981 Op. Att'y Gen. U81-26. If satisfied that the dependent has established residency in this state, the Court may consider the application for a **firearms** permit.

Finally, you have inquired about the scope of the exemption from the concealed weapon, public gathering, school zone, and license provisions applicable to full-time peace officers. Peace officers are exempted from these provisions by O.C.G.A. § [16-11-130\(a\)\(1\)](#). The scope of the exemption is the same as that for active duty military personnel. Thus, it is my unofficial opinion that the exemption for peace officers is not limited to their duty hours.

In sum, it is my unofficial opinion that active duty military personnel are exempt from the requirement of a **firearms** license. The exemption is not limited to military activity on the military reservation. Although not domiciled in this state, active duty military personnel may nevertheless obtain a **firearms** license if they are otherwise qualified. Dependents of military personnel are not eligible for a **firearms** license unless the Probate Judge first determines that they have established domicile in that county. Full-time peace officers are entitled to the same exemption as are active duty military personnel.

Prepared by:

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