

October 3, 2012

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

SYLLABUS:

2012-034

Pursuant to R.C. 2923.125(F), a person who has not previously renewed his license to carry a concealed handgun is not required to file with the county sheriff a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license even when his license has been expired for more than 30 days.



MIKE DEWINE

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OPINION NO. 2012-034

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

Dear Prosecutor Walsh:

You have requested an opinion about the renewal of a license to carry a concealed handgun. Specifically, you ask whether a person who has not previously renewed his license to carry a concealed handgun is required to file with the county sheriff a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license when the person's license has been expired for more than 30 days.

R.C. 2923.125 permits a person to apply for and acquire from a county sheriff a license to carry a concealed handgun. A person who files an initial application for a license to carry a concealed handgun must submit to the county sheriff a color photograph of himself; a competency certification as described in R.C. 2923.125(B)(3); a set of his fingerprints; the prescribed fee unless waived; and a certification that he has read the pamphlet prepared by the Ohio Peace Officer Training Commission (OPOTC) pursuant to R.C. 109.731 that in everyday language (1) explains Ohio's laws governing firearms, dispute resolution, and use of deadly force with a firearm; (2) instructs a reader about dispute resolution; and (3) provides information regarding the use of deadly force with a firearm. R.C. 2923.125(B).

The competency certification described in R.C. 2923.125(B)(3) must indicate one of the following:

- The person has completed a firearms safety, training, or requalification or firearms safety instructor course, class, or program described in R.C. 2923.125(B)(3)(a)-(c) or R.C. 2923.125(B)(3)(e)-(f) within the 3 years immediately preceding the application;
- The person is currently an active or reserve member of the armed forces of the United States and through participation in the military service acquired experience with handling handguns or other firearms that is equivalent to the training the person could have acquired in a course, class, or program described in R.C. 2923.125(B)(3)(a)-(c);
- The person was honorably discharged from military service in the active or reserve armed forces of the United States within the 6 years immediately preceding the application and through participation in the military service acquired experience with

handling handguns or other firearms that is equivalent to the training the person could have acquired in a course, class, or program described in R.C. 2923.125(B)(3)(a)-(c);

- The person is a retired state highway patrol trooper who retired from such employment within the 6 years immediately preceding the application and through participation in such employment acquired experience with handling handguns or other firearms that is equivalent to the training the person could have acquired in a course, class, or program described in R.C. 2923.125(B)(3)(a)-(c);
- The person is a retired peace officer or federal law enforcement officer described in R.C. 2923.125(B)(1) who retired from such employment within the 6 years immediately preceding the application and through participation in such employment acquired experience with handling handguns or other firearms that is equivalent to the training the person could have acquired in a course, class, or program described in R.C. 2923.125(B)(3)(a)-(c); or
- The person is a retired person described in R.C. 109.77(B)(1)(b) and R.C. 2923.125(B)(1) who retired from such employment within the 6 years immediately preceding the application and through participation in such employment acquired experience with handling handguns or other firearms that is equivalent to the training the person could have acquired in a course, class, or program described in R.C. 2923.125(B)(3)(a)-(c).

R.C. 2923.125(B)(3).

After considering a person's application for a license to carry a concealed handgun and supporting documentation, the results of a criminal records check and incompetency records check, and other pertinent information, a county sheriff may issue or decline to issue the person a license to carry a concealed handgun. *See* R.C. 2923.125(D); *In re Forster*, 161 Ohio App. 3d 627, 2005-Ohio-3094, 831 N.E.2d 518 (Geauga County); *Lownsbury v. Hassinger*, 150 Ohio Misc. 2d 52, 2008-Ohio-7136, 903 N.E.2d 1289 (C.P. Medina County); 2004 Op. Att'y Gen. No. 2004-046; 2004 Op. Att'y Gen. No. 2004-038.

A license to carry a concealed handgun issued under R.C. 2923.125 expires five years after the date of issuance when the license is issued on or after March 14, 2007. R.C. 2923.125(D)(2)(a); R.C. 2923.126(A). If the license was issued prior to March 14, 2007, the license expired four years after the date of issuance. R.C. 2923.125(D)(2)(a); R.C. 2923.126(A).

Provisions pertaining to the renewal of a license to carry a concealed handgun issued under R.C. 2923.125 are set forth in R.C. 2923.125(F). A person who intends to renew his license is required to file with a county sheriff a renewal application, a fee unless waived, a certification that the person has reread the pamphlet prepared by OPOTC pursuant to R.C. 109.731, and proof of a (1) competency certification of the type described in R.C. 2923.125(B)(3) for an initial renewal or (2) renewed competency certification of the type described in R.C. 2923.125(G)(4) for a second or subsequent renewal. R.C. 2923.125(F)(1). Thus, a person who has not previously renewed his license

to carry a concealed handgun is required to file with the county sheriff proof of a competency certification of the type described in R.C. 2923.125(B)(3) when renewing his license. R.C. 2923.125(F)(1)(a).

To satisfy the competency certification requirement, a person may use an “expired license” to carry a concealed handgun that was issued pursuant to R.C. 2923.125 as “prima-facie evidence” that he at one time had a competency certification of the type described in R.C. 2923.125(B)(3). *Id.* This means that a person who has not previously renewed his license to carry a concealed handgun may satisfy the requirement that he provide proof of a competency certification of the type described in R.C. 2923.125(B)(3) by providing a county sheriff with information that establishes he has an expired license to carry a concealed handgun that was issued pursuant to R.C. 2923.125. And, a sheriff must accept such information unless contradictory evidence exists. *See generally* 1993 Op. Att’y Gen. No. 93-072 at 2-349 (“[t]he term ‘prima facie evidence’ means ‘[s]uch evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient’” (quoting *Black’s Law Dictionary* 1190 (6th ed. 1990))); 1989 Op. Att’y Gen. No. 89-091 at 2-436 (prima facie evidence “is evidence which establishes a fact in issue, unless overcome by other evidence to the contrary”).

If a person submits to a county sheriff a renewal application, the prescribed fee unless waived, a certification that the person has reread the pamphlet prepared by OPOTC pursuant to R.C. 109.731, and sufficient information to establish he has an expired license to carry a concealed handgun that was issued pursuant to R.C. 2923.125, the sheriff “shall renew the license if the sheriff,” after reviewing the results of a criminal records check and incompetency records check, “determines that the [person] continues to satisfy the requirements described in [R.C. 2923.125(D)(1)].” R.C. 2923.125(F)(2) (emphasis added). The use of the term “shall” in R.C. 2923.125(F)(2) “connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary.” *State v. Golphin*, 81 Ohio St. 3d 543, 545-46, 692 N.E.2d 608 (1998); *accord Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992).

No provision in the Revised Code authorizes a county sheriff to require a person to file a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license to carry a concealed handgun when the person has not previously renewed his license. In fact, R.C. 2923.125(F)(2) states that a county sheriff “shall renew” the person’s license “if the sheriff determines that the [person] continues to satisfy the requirements described in [R.C. 2923.125(D)(1)], *except that the [person] is not required to meet the requirements of [R.C. 2923.125(D)(1)(l)].*” In other words, a person who has not previously renewed his license to carry a concealed handgun is not required to comply with R.C. 2923.125(D)(1)(l) when applying to renew his license.

R.C. 2923.125(D)(1)(l) requires, *inter alia*, a person to submit “a competency certification of the type described in [R.C. 2923.125(B)(3)].” Insofar as R.C. 2923.125(F)(2) does not require a person who has not previously renewed his license to comply with R.C. 2923.125(D)(1)(l), a county sheriff may not require the person to file a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license. Accordingly, if a person who has not previously renewed his license complies with R.C. 2923.125(F)(1) and continues to satisfy the requirements of R.C.

2923.125(D)(1) other than R.C. 2923.125(D)(1)(l), the county sheriff has a mandatory duty to renew the person's license when the person submits sufficient information to establish that he has an expired license to carry a concealed handgun that was issued pursuant to R.C. 2923.125.

There are no express exceptions to this duty in the Revised Code. Absent a legislative exception, a county sheriff may not require a person who has not previously renewed his license to file a competency certification of the type described in R.C. 2923.125(B)(3) in lieu of information establishing that the person has an expired license to carry a concealed handgun that was issued pursuant to R.C. 2923.125. *See generally Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910) (“we must observe the rule that an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph 1) (“[a]n exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”).

You have explained that it has been suggested that a person who has not previously renewed his license to carry a concealed handgun may not use an expired license to renew his license when his license has been expired for more than 30 days. Or, put another way, a person may use an expired license to renew his license only during the 30-day period following the expiration of his license. This assertion is based on language set forth in R.C. 2923.126(A) pertaining to the expiration of a license to carry a concealed handgun that is issued pursuant to R.C. 2923.125. R.C. 2923.126(A) states that a person “who has been issued a license under [R.C. 2923.125] shall be granted a grace period of thirty days after the [person's] license expires during which the [person's] license remains *valid*.” (Emphasis added.)

For the reasons that follow, we are not persuaded that this language in R.C. 2923.126(A) creates an exception to the duty imposed upon a county sheriff by R.C. 2923.125(F)(2). First, nothing in R.C. 2923.126 indicates that the language creates an exception to the mandate set forth in R.C. 2923.125(F)(2). Rather, the purpose of this language is to keep a license to carry a concealed handgun valid for 30 days after it expires. During this 30-day period, a person may legally carry a concealed handgun even though his license has expired.

Further, if the language of R.C. 2923.126(A) were interpreted as creating an exception to R.C. 2923.125(F)(2)'s mandate, a person would never be able to use an expired license to carry a concealed handgun as prima-facie evidence that the person at one time had a competency certification of the type described in R.C. 2923.125(B)(3). Pursuant to R.C. 2923.126(A), during the 30-day period after the person's license expires, the license remains valid. Consequently, when a person renews his license during this 30-day period and uses his license as proof of having a competency certification, the person is using a *valid* license as prima-facie evidence that the person at one time had a competency certification of the type described in R.C. 2923.125(B)(3).

If a person has a valid license during the 30-day period after his license expires and it is also determined that he is not permitted to use an expired license after the 30-day period to satisfy the competency certification requirement, a person would never be able to use an expired license to carry

a concealed handgun as prima-facie evidence that the person at one time had a competency certification of the type described in R.C. 2923.125(B)(3). However, as explained earlier, R.C. 2923.125(F)(1)(a) explicitly permits a person who has not previously renewed his license to carry a concealed handgun to use an expired license as prima-facie evidence that he at one time had a competency certification of the type described in R.C. 2923.125(B)(3). Given that it is a fundamental rule of statutory construction that all words in a statute are to have effect and none are to be disregarded, it follows that R.C. 2923.125(F)(1)(a) authorizes a person to use an expired license during the time following the 30-day period as prima-facie evidence that he at one time had a competency certification of the type described in R.C. 2923.125(B)(3). *See generally D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶19 (“words in a statute do not exist in a vacuum. [A court] must presume that in enacting a statute, the General Assembly intended for the entire statute to be effective. Thus, all words should have effect and no part should be disregarded” (citation omitted)); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) (“[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act”); *Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph 1) (“[i]n the construction of statutes ... none of the language employed therein should be disregarded”).

As R.C. 2923.126(A) does not create an exception to the duty imposed upon a county sheriff by R.C. 2923.125(F)(2), a county sheriff may not require a person who has not previously renewed his license to carry a concealed handgun to file a competency certification of the type described in R.C. 2923.125(B)(3) in lieu of information establishing that the person has an expired license to carry a concealed handgun that was issued pursuant to R.C. 2923.125 even when his license has been expired for more than 30 days. Therefore, pursuant to R.C. 2923.125(F), a person who has not previously renewed his license to carry a concealed handgun is not required to file with the county sheriff a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license even when his license has been expired for more than 30 days.

In conclusion, it is my opinion, and you are hereby advised that, pursuant to R.C. 2923.125(F), a person who has not previously renewed his license to carry a concealed handgun is not required to file with the county sheriff a competency certification of the type described in R.C. 2923.125(B)(3) to renew his license even when his license has been expired for more than 30 days.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General