

**CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY - OTHER ILLEGAL WEAPONS.**

**Retired law-enforcement officer is exempt from prohibition against carrying concealed handgun if he meets service-related disability, or years of service, requirement and carries retired officer identification card containing affirmation by retiree's agency chief of need to carry concealed weapon. Retired officer who satisfies such statutory requirements is not prohibited from carrying concealed handgun into ABC-licensed club or restaurant.**

The Honorable Gary W. Waters

Sheriff for the City of Portsmouth

September 21, 1998

You inquire regarding § 18.2-308 of the *Code of Virginia*, which regulates the carrying of concealed weapons in the Commonwealth.

You ask first whether a valid retired identification card issued and signed by the head of a retired officer's law-enforcement agency meets the requirements of § 18.2-308(B)(8).

Section 18.2-308(A) generally makes the carrying of a concealed weapon a Class 1 misdemeanor.<sup>1</sup> Section 18.2-308(B) excludes from the prohibition those persons or situations fitting within one of eight enumerated categories. Section 18.2-308(B)(8) covers "[a]ny State Police officer retired from the Department of State Police, [and] any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth" if such officer meets the specified requirements.<sup>2</sup> The first requirement is that the officer must have retired "(i) with a service-related disability or (ii) following at least fifteen years of service."<sup>3</sup> The second requirement is that the officer must carry with him "written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired."<sup>4</sup>

A rule of statutory construction requires that, where there is no ambiguity in a statute, the statute is not to be construed but is to be given effect in accordance with its plain meaning and intent.<sup>5</sup> Section 18.2-308(B)(8) clearly and unambiguously provides the requirements that must be satisfied for a retired law-enforcement officer to be exempt from the prohibitions contained in § 18.2-308. In addition to a service requirement, the officer must carry "written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired."<sup>6</sup> It is my opinion that if a retired officer identification card contains this information, the card satisfies the written proof requirement of § 18.2-308(B)(8). If the card identifies the holder as a retired law-enforcement officer but does not contain the additional required information, it does not satisfy the requirement.

You also ask whether persons who satisfy the requirements in § 18.2-308(B)(8) also are excluded from the prohibition in § 18.2-308(J3) against carrying a concealed handgun into a club or restaurant licensed by the Virginia Alcoholic Beverage Control Board "to sell and serve alcoholic beverages for on-premises consumption."<sup>7</sup> Section 18.2-308(B) provides that "[t]his section shall not apply to" the listed classes. (Emphasis added.) The "section" to which § 18.2-308(B) refers is clearly § 18.2-308, the statute within which subsection B is contained. Consequently, the language "[t]his section" clearly indicates a legislative intent to exclude from all of § 18.2-308 the persons who are within the classes enumerated in § 18.2-308(B). Accordingly, it is my opinion that a retired law-enforcement officer who meets the criteria outlined in § 18.2-308(B)(8) is not

prohibited from carrying a concealed handgun into a club or restaurant licensed to sell and serve alcoholic beverages.

<sup>1</sup>A second violation of § 18.2-308 constitutes a Class 6 felony, and a third violation constitutes a Class 5 felony.

<sup>2</sup> Section 18.2-308(B)(8) provides that § 18.2-308 shall not apply to:

"Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network.

"For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit."

<sup>3</sup>Section 18.2-308(B)(8). The officer also must not have been terminated from service for cause. *Id.*

<sup>4</sup>*Id.* The Alcoholic Beverage Control Board issues the proof of consultation and favorable service for special agents retired from the Board. *Id.*

<sup>5</sup>See *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1996 Op. Va. Att'y Gen.152, 153.

<sup>6</sup>Section 18.2-308(B)(8).

<sup>7</sup>Section 18.2-308(J3) provides: "No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a concealed handgun permit."