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RE: Licensing entities setting a law abiding example under RSA 159

Dear Chief X ,

I have been retained by Gun Owners of New Hampshire to educate and inform licensing entities regarding certain unlawful processes, procedures, and requirements being employed by some licensing entities in the issuance of licenses to carry under RSA 159. This letter is intended as a friendly tutorial illustrating what this counsel understands to be unlawful practices and an effort at saving much needed tax dollars as well as professional and personal embarrassment to licensing entities in a time of tight budgets. Suits filed under RSA 159 have, and could cost cities, towns and other authorized licensing entities and individuals a small fortune. See *Emerson v. Stratford & a.*, 139 N.H. 629 (1995) and related cases.

Despite the fact that Earl Sweeney, Director of Police Standards and Training has admonished chiefs both privately and in the Police Standards and Training Newsletter to “stick to the rules when issuing pistol permits” this counsel receives regular calls for aid from residents (and non-residents) as result of too many licensing entity’s refusal to follow the law.

New Hampshire takes its firearms rights seriously, and in fact provides an explicit remedy for the violation of RSA 159. RSA § 159:6-f I, provides that, “If any licensing entity or employee or member of the city council or board of selectmen, **in violation of the provisions of this chapter, refuses to comply with this chapter, such entity or person shall be liable for reasonable attorney’s fees and costs incurred in a lawsuit under this chapter to enforce the terms of this chapter**, provided that the court finds that such lawsuit was necessary in order to obtain compliance with this chapter by the licensing authority. . . In any case in which fees are awarded under this chapter, **upon a finding that an employee, or other official of a licensing**

entity has acted in bad faith in refusing to comply with this chapter, the court may award such fees personally against such employee or other official.” (Emphasis added)

I have represented many individuals who have applied for and been denied a license to carry a pistol pursuant to New Hampshire RSA §159:6. The myriad of interpretations of a straightforward and plain meaning statute such as RSA 159 constantly astound me. In fact, the language of the statutes is so clear, that I have only had to file suit on one occasion to date. When I have sent certified letters to the licensing entities and legal counsels concerning my client’s applications for license, legal counsels have invariably called me immediately (usually very apologetic and embarrassed at the entity’s ignorance of the provisions of the law) and a license is promptly issued. In all cases to date, I believe the licensing entity’s counsel quickly recognized unlawful actions on the part of the licensing entity and acted to avoid the awarding of counsel fees and costs.

The creativity of ‘interpretation’ and modification of the law is endless. Quite simply follow the law. Don’t add conditions or subtract words. The law says what it means, and means what it says. RSA § 159:6-c states that “Any person whose application for a license to carry a loaded pistol or revolver has been denied pursuant to RSA § 159:6 . . . may within 30 days thereafter, petition the district or municipal court in the jurisdiction in which such person resides to determine whether the petitioner is entitled to a license. The court shall conduct a hearing within 14 days after receipt of the petition. **During this hearing the burden shall be upon the issuing authority to demonstrate by clear and convincing proof why any denial, suspension, or revocation was justified, failing which the court shall enter an order directing the issuing authority to grant or reinstate the petitioner’s license . . .**” (Emphasis added).

RSA § 159:6-e provides that, “Any person aggrieved by a violation of the licensing sections of this chapter by a licensing entity may petition the superior court of the county in which the alleged violation occurred for injunctive relief. The court shall give proceedings under this chapter priority on the court calendar.”

The basis for most licensing entity’s unlawful denial of a license is on the basis of ‘suitable person.’ This is not an appropriate forum for personal vendettas or playing favorites! The statute defines ‘proper purpose’ and ‘suitable person’ and unless a person can be legally categorized under a prohibited category of one who cannot even possess a firearm such as a felon as defined in RSA 159:7, or who has been convicted of a qualifying misdemeanor crime of domestic violence (18 U.S.C. 922 (g) et. seq.), or who is subject to any outstanding domestic violence order(s) in this state (RSA 173-B) or any other state, the applicant is a ‘suitable person’ and a license must issue. If the definition of ‘suitable person’ were to be expanded, I believe that

licensing entities would face dramatically increased litigation and the costs associated with that litigation.

Despite this very explicit language, some entities do as they choose until challenged. I have enclosed copies of two “don’t” letters as illustrations. One is from the town of Croydon and one from the town of Andover (with my secretary’s name and home address removed). The one from the town of Andover is noteworthy. Because of the nature of my practice, my own personal secretary applied for a license under RSA 159. The day after the town of Andover received her application for a license to carry, a woman from the town of Andover called to inquire as to whether or not any of the three references listed were relatives. My secretary answered in the affirmative, and was told that that reference would have to be identified, deleted, and another non- relative reference provided. When I learned of this phone call, I explained to my secretary that the law made no such distinction with respect to references. It was then that my secretary told me that her license would not be issued until the three references provided letters of reference. I was stunned. Nowhere in the law does it allow a licensing entity to demand letters of reference or withhold a license until such letters are received. Nowhere in the law is any provision linking the issuance of a license to responses from references addressing reasons for which an application should have a license. Fourteen days passed. No grant or denial. Ironically the same woman from the town of Andover called my office to speak with my secretary to inform her that none of the letters of reference had yet to arrive. I explained to the town’s representative that more than 14 days had passed and that the license must be either granted or denied in conformity with the statute and that no letters would be forthcoming. I was informed that the state police had not yet returned the background check on my secretary.

I politely provided the town’s representative with the information contained in this letter, asked her to check with the town legal counsel and urged her to avoid a suit and issue my secretary’s license. The license was issued the next day. To quote the pertinent part of RSA § 159:6 “. . . The license shall be issued within 14 days after application, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy kept in the office of the person to whom the application was made. . . . The director of state police is hereby authorized and directed to prepare forms for such licenses and to supply the same to officials of the cities and towns authorized to issue the licenses. No other forms shall be used by officials of cities and towns. . . .” Had our elected officials chosen to do so, they could have changed the format of the DSSP 85 form that is currently in use. To date they have not, and neither can you!

Additionally, as of May 30, 2003 [effective date July 29, 2003] the senate and house of representatives in General Court has made the law even clearer when it passed HB 766 which amends RSA 159:6 to add II which reads, ” ***No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant.***” It is my personal belief that this section was added as a direct response to the unlawful requirements of many licensing entities. Had the legislature chosen to do so, it could have changed the format of the DSSP 85 form that is currently in use. It has not done so to date.

I believe the laws pertaining to a license to carry to be straightforward and easily complied with, and I hope this letter illustrates the “dos” and “don’ts” of license issuing. Please know that our organization is made up of many of your friends and supporters from across the state. We are committed to preserving the firearm rights of New Hampshire citizens and fully support your lawful efforts at insuring safe communities. According to the F.B.I. as reported in the Manchester Union Leader in October of 2002, New Hampshire was recently rated the safest state in the nation and is annually rated in the top several states, usually sharing the honor with Vermont. The history of New Hampshire is one in which firearms rights and safe communities have always gone hand in hand. We want to work with you in promoting both firearms and safe communities. As such, I would be please to answer your questions at any time.

Very truly yours,

Penny S. Dean

PSD
Enclosures

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