

**To: New Jersey Law Revision Commission**  
**From: Vito J. Petitti**  
**Re: Retired Police Right to Carry**  
**Date: March 7, 2016**

## **MEMORANDUM**

### **Introduction**

A member of the public apprised the Commission of a recent article by a Star-Ledger columnist regarding retired campus police officers denied the right to carry concealed weapons in New Jersey.<sup>1</sup> Although N.J.S. 2C:39-6(l) lists a number of categories of eligible retired police, campus police officers are not specifically included. According to the author, there is a discrepancy as to whether police at a state university are viewed as working for a state agency. The subject retired campus police officers view the denial of a right-to-carry permit as flying in the face of the law's intent, to increase public safety. The State Police – responsible for administering the law – are said to be following the statute and indicate that it needs to be clarified to include public university police.

### **Discussion**

Preliminary research indicates that campus police officers in New Jersey were granted peace officer powers in 1970 in an apparent response to campus violence, but those powers were originally limited to on-duty times and within the limits of school property. In 1985, the statute was amended to allow campus police officers to carry weapons at *all* times while in the State of New Jersey, with the approval of the commissioning institution.

Campus police receive training approved by the Police Training Commission and annual weapons requalification is required.<sup>2</sup> Although campus police apparently receive similar training – at least at the major universities – to their state, county, and municipal counterparts, and could actually have *more* experience with crime than small-town or park police, the New Jersey statute nevertheless does not provide a legal way for them to carry concealed weapons in the State after retirement.

### **New Jersey Law**

By the provisions of N.J.S. 18A:6-4.5, under Title 18A, which regards Education, those appointed and commissioned by public and private educational institutions possess all the

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<sup>1</sup> Mark Di Ionno, *Confusing N.J. Gun Laws Deny Some Ex-cops Right to Carry*, N.J.com, <http://www.nj.com> (last visited 3/3/2016).

<sup>2</sup> Valarie L. Brown, M.A., J.D., *The Campus Security Act and Campus Law Enforcement*, 70 Ed. Law Rep. 1055 (1992).

powers of policemen and constables in criminal cases and offenses against the law anywhere in the state.<sup>3</sup>

Subsection b. of N.J.S. 2C:39-5, entitled Unlawful possession of weapons, contains the proscription against the knowing possession of any handgun without first having obtained a permit to carry.<sup>4</sup>

Subsection (l) of N.J.S. 2C:39-6, entitled Exemptions, directly impacts requests for concealed carry permits by retired police officers in New Jersey and provides a list of eligible retired law enforcement personnel; campus police is not among them. N.J.S. 2C:39-6(l) provides, in relevant part:

\* \* \*

Nothing in subsection b. of N.J.S. 2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing . . . and who was regularly employed as a full-time member of the **State Police**; a full-time member of an **interstate police force**; a full-time member of a **county or municipal police department** in this State; a full-time member of a **State law enforcement agency**; a full-time **sheriff, undersheriff** or **sheriff's officer** of a county of this State; a full-time **State or county corrections officer**; a full-time **county park police officer**; a full-time **county prosecutor's detective or investigator**; a full-time **federal law enforcement officer**; or is a **qualified retired law enforcement officer**, as used in the federal . . . Law Enforcement Officers Safety Act of 2004 . . . domiciled in this State from carrying a handgun in the same manner as law enforcement officers . . . [Emphasis added.]<sup>5</sup>

\* \* \*

### Relevant Case Law

In the 1980 case, *PBA Local v. Degnan*, a union representing state campus police sought a judgment declaring that it was a state police agency, arguing that campus police working for a state police agency were themselves state police and therefore exempt from prohibition against possession of guns under N.J.S. 2C:39-5. The Superior Court held that state campus police were *not* state police under N.J.S. 2C:39-6a.(7), and were thus not exempt from the prohibition.<sup>6</sup>

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<sup>3</sup> N.J. Stat. Ann. § 18A:6-4.5 (West).

<sup>4</sup> N.J. Stat. Ann. § 2C:39-5 (West).

<sup>5</sup> N.J. Stat. Ann. § 2C:39-6(l) (West).

<sup>6</sup> *PBA Local 278 New Jersey State Campus Police v. John Degnan*, Attorney General of the State of New Jersey; Department of Higher Education; Kean College of New Jersey; Trenton State College; William Paterson State College; Montclair State College; Stockton State College, 175 N.J.Super. 102 (1980).

In the more recent *In re Casaleggio*, the Superior Court of New Jersey, Appellate Division, determined that retired assistant prosecutors and deputy attorneys general do not qualify as full-time members of a State law enforcement agency for the purpose of obtaining permits to carry handguns. The court characterized the omission of assistant prosecutors and deputy attorneys general from N.J.S. 2C:39-6(l) as significant, particularly in light of the inclusion of “full-time county prosecutor’s detective[s] [and] investigator[s]” . . . and found that the “specific, exclusive list of occupations” was consistent with the statute’s restrictive nature.<sup>7</sup>

Interestingly, *In re Casaleggio* contains a discussion of legislative intent, which focuses on job descriptions rather than public safety. Referring to *Statement to S. Bill No. 916 (March 7, 1996)*, in which the Legislature indicated that it targeted retired police officers, the court pointed out that assistant prosecutors and deputy attorneys general are lawyers first and foremost whose essential responsibility is to provide legal advice, and are thus not police officers.<sup>8</sup> The plaintiffs in the case which is the subject of this Memorandum would argue, of course that they *were* police officers.

In yet another application of N.J.S. 2C:39-6(l), the Appellate Division, in the unpublished *In re Wheeler*, found that the plaintiff was employed full-time by the Newark Fire Department as an arson investigator eligible to carry a weapon in the performance of his duties, but clearly was not a full-time member of any eligible agency listed under the statute.<sup>9</sup>

In a more modern if anecdotal example of possible disparate treatment of campus police officers, the original version of Assembly Bill 4343, introduced in January 2016, required county and municipal police departments to establish a cultural diversity training course and plan. A February 2016 amendment to the bill would seem to address the disparity by requiring institutions of higher education to appoint campus police officers to develop and adopt a campus cultural diversity training course and action plan for the campus police department.

## **Federal Law**

Codified as 18 U.S.C. §§ 926B & C, the Law Enforcement Officers Safety Act (LEOSA) mentioned within N.J.S. 2C:39-6(l), above, was intended to afford active and retired law enforcement officers the privilege of carrying a concealed firearm in all 50 states, the District of Columbia, Puerto Rico, and other U.S. possessions notwithstanding any other provision of the law in any state or political subdivision thereof.<sup>10</sup> But LEOSA is of no help to retired campus police in New Jersey because it requires them to have been employees of a local, state, or federal governmental agency to carry a firearm under its provisions.

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<sup>7</sup> In the Matter of the Denial of the Application of Giles W. Casaleggio for a Retired Law Enforcement Officer Permit to Carry a Handgun, 420 N.J.Super. 121 (App. Div.) (2011).

<sup>8</sup> 420 N.J.Super. 121, 126.

<sup>9</sup> In the Matter of Jonathan R. Wheeler, Superior Court of New Jersey (App. Div.), 2009 WL 4251625.

<sup>10</sup> James M. Baranowski, *Does the LEOSA Carry Law Apply to You?* [www.policemag.com](http://www.policemag.com) (last visited 3/4/2016).

## **Conclusion**

Staff seeks authorization from the Commission to undertake a project to conduct additional research and outreach in this area in order to determine whether a modification to the statutory language could clarify the New Jersey firearms statutes in a way that resolves the issues raised herein.