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DEPARTMENT OF JUSTICE
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OPINION 13-0109

16 – CRIMINAL LAW – Crimes & Offenses

La. R.S. 14:95.5

La. R.S. 14:95.5 provides a general prohibition against possessing a firearm on the premises of any commercial establishment in which alcoholic beverages are sold in individual servings for consumption on the premises, subject to certain exceptions contained in La. R.S. 14:95.5(C), one of which applies to a law enforcement officer acting in the performance of his official duties.

The Honorable Henry L. Burns
State Representative, District 9
954 Highway 80, Suite 400
Haughton, LA 71037

Dear Representative Burns:

Our office received an opinion request from you concerning whether state law permits a law enforcement officer to possess a firearm while on the premises of an alcoholic beverage outlet. Specifically, you have asked our office to interpret what it means for an officer to be "acting in the performance of his official duties" as this phrase is used in La. R.S. 14:95.5(C).

La. R.S. 14:95.5, *Possession of firearm on premises of alcoholic beverage outlet*, provides:

A. No person shall intentionally possess a firearm while on the premises of an alcoholic beverage outlet.

B. "Alcoholic beverage outlet" as used herein means any commercial establishment in which alcoholic beverages of either high or low alcoholic content are sold in individual servings for consumption on the premises, whether or not such sales are a primary or incidental purpose of the business of the establishment.

C. The provisions of this Section shall not apply to the owner or lessee of an alcoholic beverage outlet, or to an employee of such owner or lessee, or to a law enforcement officer or other person vested with law enforcement authority acting in the performance of his official duties.

D. Whoever violates the provisions of this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

As the above statute makes clear, the law prohibits any person from possessing a firearm in any commercial establishment where alcoholic beverages are sold in individual servings for consumption on the premises unless the person falls within an exception described in Section C. La. R.S. 14:95.5(C) provides that this prohibition does not apply to the owner or lessee of an alcoholic beverage outlet, an employee of such owner or lessee, or to a law enforcement officer or other person vested with law enforcement authority acting in the performance of his official duties. Thus, you have asked this office to provide an opinion as to when a law enforcement officer is "acting in the performance of his official duties" for purposes of the application of La. R.S. 14:95.5(C). This interpretation is significant considering the broad definition of "alcoholic beverage outlet" as including within its scope many types of restaurants or eateries that also serve alcoholic beverages.

In answering your question, we must give weight to the qualifying language in La. R.S. 14:95.5(C). The legislature could have provided a blanket exemption for law enforcement officers. However, the legislature qualified and limited the exception to apply only when the law enforcement officer is acting in the performance of his official duties. Therefore, because the legislature added this qualification, we must interpret this provision to mean there are times during which the exception applies to law enforcement officers, and times during which it does not.¹ With respect to the rules of statutory construction, the legislature has instructed that words and phrases must be read within their context and shall be construed according to the common and approved usage of the language. La. R.S. 1:3. See also, La. C.C. art. 11, which instructs that words of a law be given their generally prevailing meaning.

For the purposes of seeking guidance as to the types of activities which are included in the duties of a law enforcement officer, we look to the definition of "peace officer" in La. R.S. 40:2402(3)(a): "peace officer" means any full-time employee of the state, a municipality, a sheriff, or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state...."² Additionally, we note

¹ Please also note that there was a proposed amendment to La. R.S. 14:95.5 in the 2013 Louisiana Legislative Session. House Bill No. 48 of the 2013 Louisiana Legislative Session ("HB 48"), as it was originally filed, proposed to eliminate the language "acting in the performance of his official duties" from La. R.S. 14:95.5(C), which would have accomplished a blanket exception to the prohibition of carrying a firearm on the premises of an alcoholic beverage outlet for law enforcement officers. However, HB 48 was then amended whereby it sought to instead amend the definition of "alcoholic beverage outlet" in La. R.S. 14:95.5(B), and provide that the general prohibition of possessing firearms on the premises of an alcoholic beverage outlet would have applied only to commercial establishments selling alcoholic beverages which have been issued a Class A-General retail permit. This would have narrowed the number of establishments to which this statute could apply. However, HB 48 did not pass in its original or amended form.

² We note that other statutes define law enforcement officer as including different types of individuals for purposes of the application of such laws. See, for example, La. R.S. 15:33, La. R.S. 15:1314, La. R.S. 37:1782, La. R.S. 14:30, La. R.S. 14:329 and La. R.S. 15:1302. However, we have referred to the

that municipalities may give further illustrative examples of the kind of work a law enforcement officer may engage in, such as exercising independent discretion in meeting emergencies; patrolling a specified beat or district; pursuing and apprehending fleeing suspects; preserving order; administering first aid, conducting preliminary investigations, gathering evidence, obtaining witnesses and making arrests at the scene of a crime; when assigned, investigating crimes; searching for and preserving evidence; questioning suspects and witnesses.³

We must also acknowledge the unique nature of being a law enforcement officer. While most law enforcement officers have specific hours that they work, we must also reference that some law enforcement officers are "on-call," meaning that they must be available at times beyond those hours which they are scheduled to perform the duties of a law enforcement officer. When they are on-call, they may get called upon to perform law enforcement duties; they may not. Further, even officers who are not on-call would consider it a duty of a law enforcement officer to perform certain duties if able, e.g., prevent a crime from occurring or apprehend a criminal, even if off-duty.

Since the clear and unambiguous statutory language makes a distinction as to when the exception to the general prohibition against possessing a firearm on the premises of an alcoholic beverage outlet applies to a law enforcement officer, we now consider the following scenarios for a law enforcement officer entering an eatery or commercial establishment where alcoholic beverages are sold in individual servings for consumption on the premises: (1) if the law enforcement officer is off-duty and entering the establishment for the purpose of being a patron; (2) if the law enforcement officer is off-duty and entering the establishment for the purpose of performing duties related to being a law enforcement officer; (3) if the law enforcement officer is on-duty, yet entering the establishment for the purpose of being a patron; and (4) if the law enforcement officer is on-duty and entering the establishment for the purpose of performing duties related to being a law enforcement officer.

We begin with the initial scenario: an off-duty law enforcement officer who enters the premises of an "alcoholic beverage outlet" as described by La. R.S. 14:95.5(B) for the purpose of being a patron.⁴ An example of this is a law enforcement officer who is not on the clock and is going out to dinner at a restaurant with his family. A law enforcement officer who is not on-duty and enters an establishment for the purpose of being a patron of a place that sells alcohol beverages in individual servings for consumption on the premises is not "acting in the performance of his duties" as this

definition of peace officer in La. R.S. 40:2402 to provide some statutory guidance on some examples of the general duties of a law enforcement officer.

³ See http://brgov.com/dept/brpd/pdf/Police_Duties.pdf (applicable to Baton Rouge Police Officers) and <http://www.nola.gov/getattachment/NOPD/Join-NOPD/CS-Recruit-job-flyer-2-2013.pdf> (a recruitment flyer for New Orleans Police Department). Accessed on July 16, 2013.

⁴ Again, for the purposes of this request, we refer to entering the premises for the purpose of being a patron as consuming food or non-alcoholic beverages.

phrase is commonly understood. Therefore, in this scenario, it is the opinion of this office that the law enforcement officer is prohibited from possessing a firearm on the premises of such an establishment by the clear language of La. R.S. 14:95.5. Under similar circumstances, the same would hold true for an off-duty, on-call law enforcement officer. That is to say, if an off-duty, on-call officer has entered the premises of an alcoholic beverage outlet for the purpose of being a patron, he or she is not in the performance of his law enforcement officer duties such that the exception of La. R.S. 14:95.5(C) would apply.

The second scenario also involves an off-duty law enforcement officer, yet he or she is entering the premises for the purpose of performing duties related to being a law enforcement officer, as these duties are generally described *supra*. An example of this is a law enforcement officer who is not on the clock, but hears on his radio that a local bar/restaurant is being robbed, and he is very close to the scene and responds. When he enters the bar/restaurant after calling himself to duty, he is entering for the purpose of attempting to prevent the crime from being carried out and protect citizens from injury. In this scenario, although the officer is technically off-duty, his general response to protect the peace and perform a duty which is required of him as a law enforcement officer would certainly qualify as "acting in the performance of his duties." Therefore, in this scenario, it is the opinion of this office that a law enforcement officer qualifies under the exception provided for in La. R.S. 14:95.5(C) to the general prohibition of possessing a firearm on the premises of an alcoholic beverage outlet. The same would hold true for an off-duty, on-call law enforcement officer who enters the premises for the purpose of performing duties related to being a law enforcement officer.

Both of the remaining scenarios involve a law enforcement officer entering an "alcoholic beverage outlet" while he or she is on-duty. For the purposes of this opinion, we use the term "on-duty" to refer to a law enforcement officer who is on the clock and engaged in actions which are proper in the scope of his position as a law enforcement officer. Regardless of whether the reason for entering the commercial establishment is to perform a duty required of him or her as a law enforcement officer or to consume food or non-alcoholic beverages while on duty, it is the opinion of this office that when an officer is on-duty, he or she is "acting in the performance of his official duties," and would therefore not be prohibited from possessing a firearm on the premises of an alcoholic beverage outlet.

In summary, La. R.S. 14:95.5 provides a general prohibition against possessing a firearm on the premises of an alcoholic beverage outlet, as that term is defined by La. R.S. 14:95.5(B). However, La. R.S. 14:95.5(C) creates an exception for a law enforcement officer, but only when acting in the performance of his official duties. It is the opinion of this office that an on-duty law enforcement officer who enters the premises of an alcoholic beverage outlet, whether to consume food or non-alcoholic beverages or to engage in duties required of him as a law enforcement officer, is not prohibited from possessing his firearm in such an eatery, as he is "acting in the performance of his official duties." If an off-duty or on-call law enforcement officer

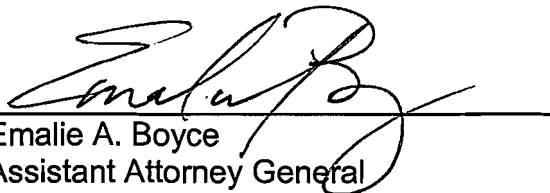
enters the premises of an alcoholic beverage outlet for the purpose of performing some duty of a law enforcement officer, then it is the opinion of this office that the officer is "acting in the performance of his official duties," and is therefore not prohibited from possessing his firearm while at that establishment. However, if an off-duty or on-call law enforcement officer enters the premises of an alcoholic beverage outlet for the purpose of being a patron of said outlet, then he is not "acting in the performance of his official duties," and would therefore be prohibited from possessing his firearm while on the premises.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

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