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OPINION	:	No. 79-708
of	:	September 18, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Paul H. Dobson Deputy Attorney General	:	

SUBJECT: CONCEALED FIREARM PERMIT-A city police chief may not issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located.

The Honorable James M. Cramer, District Attorney, County of San Bernardino, has requested an opinion on the following question:

May a city police chief issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located?

CONCLUSION

A city police chief may not issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located.

ANALYSIS

Penal Code section 830.6 authorizes a city police chief to appoint a reserve i.e, volunteer) "city policeman" to carry out assigned specific police functions, and for the duration of the specific assignment a reserve police officer has the authority of a peace officer. (See also Gov. Code, § 38631.) Subject to certain exceptions (Pen. Code, §§ 12026, 12027), Penal Code section 12025 prohibits the carrying of a concealable firearm concealed upon one's person or in one's vehicle in the absence of a license to carry such firearm. Section 12025 does not apply to 'duly appointed peace officers." (Pen. Code, § 12027, subd. (a); see also Pen. Code, § 12031, subd. (a) (1).) Thus, reserve peace officers while on duty are not prohibited by section 12025 from carrying a concealed firearm without a license.

However, when not on duty, reserve peace officers do not have peace officer authority. (See Pen. Code, § 830.6.) Absent any exceptional circumstance specified in Penal Code sections 12026 and 12027, a reserve officer would need a license to carry lawfully a concealed firearm off duty. Penal Code section 12050 sets forth the conditions under which such a license, commonly referred to as a "permit," may be obtained. That section provides:

> "(a) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county, may issue to such a person a license to carry concealed a pistol, revolver, or other firearm for any period of time not to exceed one year from the date of the license, or in the case of a peace officer appointed pursuant to Section 830.6, three years from the date of the license.
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> "(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, and circumstances under which the person may carry a concealed firearm.
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> "(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued on or after the effective date of the amendments to this section enacted at the 1970 Regular Session of the Legislature."

The question presented for analysis is whether the above-quoted section authorizes a city police chief to issue a concealed firearm permit to a person appointed to the position of reserve police officer for the city despite the fact the reserve police officer does not

reside in the county in which the city is located. We conclude that Penal Code section 12050 does not authorize the issuance of such a permit.

In construing the statute to determine the intent of the Legislature, we must first turn to the actual words used. (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 764.) "In the absence of compelling countervailing considerations, we must assume that the Legislature 'knew what it was saying and meant what it said.' (*Tracy v. Municipal Court*, *supra*, at p. 764.)

In the case of Penal Code section 12050 we find no countervailing considerations. Whatever may be thought of the wisdom or policy of an enactment, when the meaning of a statute appears to be plain, clear and unambiguous on its face, the necessity for construction is eliminated. (*County of Madera v. Carleson* (1973) 32 Cal. App. 3d 764.) Subdivision (a) of section 12050 sets forth in plain, unambiguous language that a county sheriff or a city police chief may issue a license to carry a concealed firearm to a person only if three conditions are met. The first condition is that the person be of good moral character. The second condition is that good cause exists for the issuance of the license, and the third condition is "that the person applying is a resident of the county." Subdivision (a) then sets forth the time period for which the license shall be valid. The operative phrase begins with the words "for any period of time . . . ." Thereafter, two time periods are expressed. The first is "not to exceed one year from the date of the license" and the second is "three years from the date of the license." The prepositional phrase "in the case of a peace officer appointed pursuant to section 830.6" clearly relates to and modifies only the reference to the three year time period which immediately follows it. Thus, reserve officers are not exempt from the residence requirement of that section.

We ". . . cannot ignore the plain words of [a] statute unless it appears the words used were, beyond question, contrary to what was intended by the Legislature." (*County of Madera v. Carleson*, *supra*, 32 Cal. App. 3d at pp. 768–769.) The reference to reserve officers in Penal Code section 12050 was added by Statutes of 1977, chapter 987, section 3. The Legislative Counsel's Digest for the bill (AB 641) which was enacted as that chapter states that the amendment to section 12050 ". . . would provide for the licensing of reserve peace officers for the purpose of concealed carrying of concealable weapons for a period of three years." That explanation of the amendment sheds no light on the issue of whether the Legislature intended reserve peace officers to be exempt from the residence requirement of section 12050. It is likely the Legislature never considered the issue. Where the words of a statute are clear, we cannot "add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*People v. Knowles* (1950) 35 Cal. 2d 175, 182–183; *County of Madera v. Carleson*, *supra*, at p. 769.) Thus, we conclude that under Penal Code section 12050 a city police chief is not authorized to issue a concealed firearm permit to a person appointed to the

position of reserve police officer for the city if the reserve officer does not reside in the county in which the city is located.

We have also considered the validity of the residency requirement of Penal Code section 12050 in light of the state and federal constitutional concepts of substantive due process and equal protection of the laws (see Cal. Const., art. I, § 7; U.S. Const. 14th Amend.) and have found no reason to question its constitutionality. An act of the Legislature is presumed constitutional and all presumptions and intendments are in favor of the statute's validity. (*McGowan v. Maryland* (1961) 366 U.S. 420,425; *In re Ricky H*. (1970) 2Cal.3d513,519.)

Substantive due process of law requires that legislative action which creates some deprivation of individual life, liberty or property be reasonable in its goal and application; ". . . , i.e., the law must not be unreasonable, arbitrary or capricious but must have a real and substantial relation to the object sought to be attained." *(Gray v. Whitmore* (1971) 17 Cal. App. 3d 1, 21; see also *Nebbia v. New York* (1934) 291 U.S. 502, 525; *Russell v. Carleson* (1973) 36 Cal. App. 3d 334, 342.)

Traditionally, the constitutional right of equal protection of laws requires that the state action in creating classifications bears some rational relationship to a legitimate governmental purpose. (*Hardy v. Stumpf* (1978) 21 Cal. 3d 1, 7; *Gray v. Whitmore*, *supra*, 17 Cal. App. 3d at p. 21.) However, if the state action creates a "suspect classification" or abridges a "fundamental right," the state must show a "compelling state interest" in justifying the action. (*Hardy v. Stumpf*, *supra*.) Suspect classifications have been held to include those based upon race, sex, national origin, alienage, and poverty. (*Sailer Inn, Inc. v. Kirby* (1971) 5 Cal. 3d 1, 18.) It is apparent that Penal Code section 12050 in no way relates to a suspect class.

We have found no authority which would support a conclusion that the right to carry a weapon concealed on one's person or in one's car is a "fundamental interest" requiring a compelling state interest to justify its regulation. (*Cf. Ex parte Cheney* (1891) 90 Cal. 617, 621.) Penal Code section 12050 does not establish a durational residency requirement, i.e., a requirement that the applicant be a resident for a specified period of time before applying for the permit; thus, the regulation does not penalize or deter a person's right to migrate. (See *Adams v. Superior Court* (1974)12 Cal. 3d 55, 62.)

For these reasons, we believe analysis of both the concepts of substantive due process and equal protection as applied to Penal Code section 12050 involves the same basic issue: whether the residency requirement is rationally related to a legitimate state objective. (*Cf. McGowan v. Maryland*, *supra*, 366 U.S. 420 at p. 425.) Clearly it is. The residency requirement delegates to particular public officials the authority to grant

licenses to residents of particular geographic areas. Every resident of the state has the right to apply for a license. The restriction is merely that residents of each county may apply only to certain public officials in their county of residence. This requirement is apparently based upon the assumption that a local police agency would be best equipped to determine the good moral character of the applicant, the necessity for the license, and the restrictions, if any, which should be placed on it. We do not find such an assumption irrational, arbitrary or capricious. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." (*McGowan v. Maryland*, *supra*, at p. 426.) Here there is clearly a state of facts justifying the residency requirement.

Finally we note that nonresidents of the state are barred from obtaining a license under Penal Code section 12050. The Legislature apparently decided that the interest of a nonresident temporarily in the state who is not otherwise exempt from the concealed weapon prohibition of Penal Code section 12025 (see Pen. Code, §§ 12026, 12027) in carrying a concealed weapon is clearly outweighed by the burden imposed upon a local police agency in determining the good moral character of the applicant, the good cause for issuing the license, and the conditions and restrictions, if any, which should be placed on it. In the absence of any durational residency requirement (see, e.g., *Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250), we see no constitutional infirmity in Penal Code section 12050. (*Cf. Adams v. Superior Court, supra*, 12 Cal. 3d 55, 62.) Thus, we conclude that Penal Code section 12050 is valid and does not permit a city police chief to issue a concealed firearm license to a reserve peace officer who resides in another county.

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