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AUG 15 2018  
OPINION 18-0082

Honorable James K. Armes, III  
State Representative – District 30  
2255 University Pkwy.  
Leesville, LA 71446

47-A FIREARMS & FIREWORKS  
60 LAW OFFICERS – Authority & Jurisdiction

18 U.S.C. §926B  
18 U.S.C. §926C  
La. R.S. 14:95  
La. R.S. 40:1379.1.3  
La. R.S. 40:1379.1.4.

A military police officer must be currently employed by, or retired from, a "state or municipal law enforcement agency or sheriff's office" to be considered a "qualified law enforcement officer" or "qualified retired law enforcement officer" under La. R.S. 40:1379.1.3 or La. R.S. 40:1379.1.4. However, these statutes do not limit the authority given to a military police officer to carry a concealed firearm under LEOSA provided the military police officer meets all of the requirements enumerated in 18 U.S.C. §926B or 18 U.S.C. §926C.

Dear Representative Armes:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked the following two questions:

1) Are military police officers and retired military police officers considered a "qualified law enforcement officer" or "qualified retired law enforcement officer," respectively, for purposes of R.S. 40:1379.1.3 and R.S. 40:1379.1.4?

and;

2) If military police officers and retired military police officers are not considered qualified law enforcement officers or qualified retired law enforcement officers under R.S. 40:1379.1.3 and R.S. 40:1379.1.4, respectively, does this limit a military police officer's authority to carry a concealed firearm under Law Enforcement Officer Safety Act ("LEOSA")?

Louisiana Revised Statutes 40:1379.1.3 and 40:1379.1.4 allow state and municipal law enforcement officers to carry concealed firearms under certain conditions. As to your first question, La. R.S. 40:1379.1.3 and La. R.S. 40:1379.1.4 each require that an individual meet a lengthy and enumerated list of requirements to be considered a "qualified law enforcement officer" or "qualified retired law enforcement officer." However, since your question focuses on military police officers and retired military police officers, the most relevant issue is whether the military police officer in question was employed by a state agency.

For example, La. R.S. 40:1379.1.3(B)(1) requires, among other things, that an individual “[i]s an active, full-time employee of a state or municipal law enforcement agency or sheriff’s office.” Likewise, La. R.S. 40:1379.1.4(B)(1) requires that before the individual retires or separates from his employer he “was an active, full-time employee of a state or municipal law enforcement agency or sheriff’s office.”

Therefore, assuming the individual meets all other requirements under the relevant statute, whether a military police officer or retired military police suffices as a “qualified law enforcement officer” or “qualified retired law enforcement officer” under La. R.S. 40:1379.1.3 and La. R.S. 40:1379.1.4 turns on whether the individual was employed as a military police officer by a state agency. So, if the military police officer in question is (or was) only employed by the federal government, then these Louisiana laws would not permit the officer to carry a concealed firearm without obtaining a permit. See La. R.S. 40:1379.3; La. R.S. 40:1379.1.1; La. R.S. 40:1379.3.2.

We assume that the crux of your second question is whether a current or former federal military police officer may carry a concealed firearm in Louisiana without a permit because of the federal LEOSA. If the federal military police officer meets all of the requirements enumerated in either 18 U.S.C. §926B or 18 U.S.C. §926C, the answer is yes.<sup>1</sup>

Since a federal military police officer is “authorized under regulations governing armed forces to apprehend persons,” the provisions of the United States Code governing concealed firearms apply to military police officers.<sup>2</sup> The United States Congress, acknowledging the inherent risks and sensitive nature of policing, passed 18 U.S.C. §926B and 18 U.S.C. §926C, which was designed to allow “retired and active police officers [to] carry a concealed weapon anywhere within the United States.” H.R. Rep. No. 108–560, at 3–4 (2004), 2004 U.S.C.C.A.N. 805, 805-06; see also *Williams v. Puerto Rico*, 910 F.Supp.2d 386, 399-400, n.17 (D.P.R. 2012).<sup>3</sup>

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<sup>1</sup> Please review all of the requirements in 18 U.S.C. §926B or 18 U.S.C. §926C. For example, the statutes state that it “shall not be construed to supersede or limit the laws of any State that... permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property...” 18 U.S.C. §926B(b)(1); 18 U.S.C. §926C(b)(1). Louisiana Law permits private persons to restrict the use of private property as a matter of ownership, lease, usufruct, and the like. La. C.C. art. 477(A) (ownership); La. C.C. art. 2668 (lease); La. C.C. art. 535 *et seq.* (usufruct). Therefore, as a general matter, a private owner, lessee, or usufructuary of private property is entitled to prohibit the possession of concealed firearms on his own private property. This reading of Louisiana property law conforms with other state law that recognizes “the right of a property owner, lessee, or other lawful custodian to prohibit or restrict access of those persons possessing a concealed handgun” who have a statewide permit. La. R.S. 40:1379.3(O).

<sup>2</sup> See, 10 U.S.C. § 807; 18 U.S.C. §926B.

<sup>3</sup> 18 U.S.C. §926B applies to active qualified law enforcement officers while the other law mentioned here, 18 U.S.C. §926C, affects *retired* qualified law enforcement officers. While the observations made in this opinion would also be true of the law affecting both active and retired qualified law enforcement officers, it is worth mentioning that some of the language in 18 U.S.C. §926B differs from its counterpart, 18 U.S.C. §926C.

Louisiana Revised Statute 14:95(A)(1) generally prohibits carrying a concealed firearm without a permit. *See State ex rel. J.M.*, 2013-1717 (La. 01/28/14), 144 So.3d 853, 865-866. There are statutory exceptions to this general firearms prohibition for certain branches of law enforcement. *E.g.* La. R.S. 14:95(A)(5)(b)(i); La. R.S. 14:95(G); La. R.S. 14:95(I); La. R.S. 40:1379.1.3; La. R.S. 40:1379.1.4. The relevant subsection, La. R.S. 14:95(G), exempts, among others, all retired “persons vested with police power when in the actual discharge of official duties,” who, among other things, served as law enforcement officers for twelve years and maintain annual Peace Officer Standards and Training firearms certification. This is not necessarily going to exempt all retired federal military police officers.

Preemption is a concept that allows state and federal courts to enforce the Supremacy Clause of the United States Constitution, specifically Article VI, Clause 2, which grants Congress “virtually unfettered power” to invalidate state law. *State v. Sarrabea*, 2013-1271 (La. 10/15/13), 126 So.3d 453, 459 (citing *Arizona v. United States*, 567 U.S. 387, 132 S.Ct. 2492, 2500, 183 L.Ed.2d 351 (2012)).<sup>4</sup> Congress fully understood that this legislation might have some preemptive effects, stating that 18 U.S.C. §926B and 18 U.S.C. §926C “would override State laws” that were in conflict with those statutes. 2004 U.S.C.C.A.N. at 805; H.R. Rep. No. 108–560, at 3–4 (2004). Indeed, 18 U.S.C. §927 expressly authorizes conflict preemption, but only where “there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.”

The Louisiana Supreme Court described conflict preemption as a situation where state and federal law conflict “either because ‘compliance with both state and federal regulations is a physical impossibility’ or because the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress...’” *Sarrabea*, 126 So.3d at 459 (citing *Arizona*, 132 S.Ct. at 2500-2501).<sup>5</sup>

If preemption occurs, it need not necessarily invalidate an entire statute. *See* La. R.S. 24:175. A state statute may be invalid under certain circumstances but retain a plainly legitimate sweep under other circumstances that are not preempted by federal law. *See e.g. Cramer v. Ass’n Life Ins. Co.*, 569 So.2d 533, 541 (La. 1990) (holding former La. R.S. 22:657 was preempted only “as applied to a claim under an employee welfare benefit plan subject to ERISA...”). Stated slightly differently, “state law actions can be

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<sup>4</sup> The Supremacy Clause, U.S. Const., art. VI, cl.2, provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

<sup>5</sup> There is a general presumption against preemption and laws should be read to avoid a conflict between federal and state law. *Sarrabea*, 126 So.3d at 462, n. 14.

preempted as applied" to situations that create a conflict with federal law. *See Franks Inv. Co. LLC v. Union Pac. R. Co.*, 593 F.3d 404, 414 (5th Cir. 2010).

Here, there can be an "as applied" conflict between the state statutes La. R.S. 14:95(A) on the one hand and the federal statutes 18 U.S.C. §926B and 18 U.S.C. §926C on the other. This "as applied" conflict is not between LEOSA and the entirety of Louisiana's regime regulating concealed firearms. Rather, this conflict is limited to the text of the state statutes La. R.S. 14:95 on the one hand and the federal statutes 18 U.S.C. §926B and 18 U.S.C. §926C on the other. Likewise, this conflict will be very rare because of the numerous conditions and exceptions imposed by both state and federal law.<sup>6</sup> However, if a person would qualify to carry a concealed firearm in Louisiana under both state and federal law, *except* for the sole fact that the person is a *federal* military police officer, then LEOSA will preempt state law and permit the officer to carry a concealed firearm.

Accordingly, La. R.S. 14:95, La. R.S. 40:1379.1.3, and La. R.S. 40:1379.1.4 do not limit the authority given to a military police officer to carry a concealed firearm under LEOSA provided the military police officer meets all of the requirements enumerated in either 18 U.S.C. §926B or 18 U.S.C. §926C.

We hope this sufficiently answers your inquiry. If we may be of further assistance, please do not hesitate to contact our office.

With best regards,

JEFF LANDRY  
ATTORNEY GENERAL

By: 

Winston White  
Assistant Attorney General

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<sup>6</sup> For example, a law enforcement officer is not "qualified" under the statute if that officer is "under the influence of alcohol or another intoxicating or hallucinatory drug or substance." 18 U.S.C. §926B(c)(5). As another example, the statute also requires that the firearm to have "been shipped or transported in interstate or foreign commerce..." 18 U.S.C. §926B(a).