



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

Department of Criminal Justice Information Services

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TO: Firearm Licensing Review Board
FROM: Board Counsel
RE: Open Session Minutes of the May 21, 2018 Meeting
DATE: May 30, 2018

A meeting of the Firearm Licensing Review Board (Board) was held on Monday May 21, 2018 at 10:00 a.m. in the second floor conference room of the Massachusetts Information Technology Center, located at 200 Arlington Street, Chelsea, Massachusetts.

Board Member Attendees:

Michaela Dunne – Department of Criminal Justice Information Services Appointee (Chair)
Attorney Martin Healy – Governor’s Appointee
Attorney Matthew Landry – Office of the Attorney General Representative
Attorney Shannon Sullivan – Executive Office of Public Safety and Security Representative
The Honorable Patrick Hurley – Retired Judge Appointee
Chief Vincent Alfano – Massachusetts Chiefs of Police Association Representative
Lieutenant Alan Zani – Massachusetts State Police Representative

DCJIS Staff Attendees:

Attorney Agapi Koulouris – General Counsel
Attorney Daniel Maltzman- Assistant General Counsel
Alyssa Ardizzoni- Program Coordinator

Board Business:

The Board meeting was called to order at 10:10 a.m.

The first matter of business was the review of the June 6, 2017 open session minutes. Attorney Sullivan moved to approve the June 6, 2017 open session minutes. The motion was seconded by Attorney Healy, and the motion carried unanimously (7-0).

Next, Attorney Koulouris updated the Board on an issue regarding how FLRB decisions impact petitioners that are disqualified from possession or purchase of firearms and ammunition under Federal Law 18 U.S.C. 922(g). Attorney Koulouris explained that the FLRB recently paused its meetings to review the impact of FLRB decisions and the intersection between federal and state laws. Specifically, 18 U.S.C. 922(g)(1) states that, “it is unlawful for an person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to possess in commerce, any firearm or ammunition.” In addition, 18 U.S.C. 921(a)(20) further defines a crime punishable by imprisonment for a term exceeding one year to not include any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. As such, misdemeanors that are punishable by a term of imprisonment or more than two years are a disqualifying conviction under the aforementioned federal law.

Attorney Koulouris also explained that the FLRB pursuant to M.G.L. c. 140, § 130B has the authority to restore the right to possess and apply to a licensing authority for a firearms license for certain misdemeanor offenses punishable by 2 ½ years or less. As such, individuals who successfully have their firearms rights restored by the FLRB are prohibited under federal law from possessing or purchasing a firearm or ammunition. Likewise, Massachusetts law, G.L. c. 140, § 129B(14) and 131(q) prohibits the purchase, possession or transfer of a firearm that is in violation of federal or state law. G.L. c. 140, § 129B(14) and 131(q) states, “Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such a manner that is, prohibited by state or federal law.”

Attorney Koulouris explained that DCJIS and EOPSS staff met with Counsel from the Bureau of Alcohol, Tobacco and Firearms (ATF) on April 20, 2018. DCJIS understood that the ATF’s position was that all individuals that have firearms rights restored by the FLRB remain federal prohibited from possession under federal law based on the Supreme Court’s ruling in Logan v. U.S., 552 U.S. 23 (2007). The ATF confirmed that all individuals that have had firearms rights restored by the FLRB remain prohibited under federal law. During this meeting, representatives from the ATF also explained that individuals that have had their ability to possess a firearms identification card (FID) based on the five year restoration of rights under G.L. c. 140, § 129B also remain federally prohibited as the restoration of rights in this statute does not meet the “unless clause” criteria set forth in the Caron v. U.S., 524 U.S. 308 (1988).

The Board members discussed the ATF’s position on these matters and the statutes and cases that impact firearms licensing and possession. Attorney Koulouris also explained that the FLRB statute remains in effect and requires that the FLRB meet periodically but, not less than every ninety days to consider petitions submitted to the FLRB for review. Based on this information, the Board members noted that although there is a conflict with the federal and state firearms licensing laws they are still required by the FLRB statute to meet and consider petitions. The Board members also commented that notifications concerning this issue should be made to petitioners, licensing authorities and perhaps through the bar associations or Office of the Attorney General.

Executive Session:

At this point in the open session, Chairperson Dunne indicated that the Board would be entering into Executive Session to review firearms related matters that are protected pursuant to G.L. c. 30A, § 21(a)(7) and G.L. c. 4, § 7. The Board would reconvene in open session to discuss additional matters related to the notification of current and prospective FLRB petitioners. A roll-call vote was taken to enter into Executive Session and the motion carried unanimously (7-0). The Board entered into executive session at approximately 10:15 a.m.

At the end of all discussion, Chairperson Dunne indicated that the Board should exit Executive Session. The motion was seconded by Attorney Healy and carried unanimously. A roll call vote was taken and the motion carried unanimously (7-0). The Board then reconvened in open session.

Board Business continued:

The next meeting of the Board was discussed and was tentatively scheduled for June 5, 2018.

Next, the Board members discussed the notifications to be sent to current and prospective petitioners concerning the conflict with federal and state firearms licensing laws and their ability to have their firearms rights restored by the FLRB. The Board members reviewed draft notices provided by Board Counsel. Judge Hurley suggested that the notification be amended to include language to explain that licensing authorities have been notified of this issue so that petitioners are aware. Attorney Koulouris noted the amendment and agreed to update the notification to the petitioners as well as the instructions for

petitioners available on the DCJIS website. Attorney Koulouris noted that the notices to the licensing authorities and petitioners would be mailed within the week. In addition, DCJIS would also be updating the FLRB petitioner instructions on the website to include this information. The Board members also suggested that the notice to the licensing authorities also be provided to the Massachusetts Chiefs of Police Association. Attorney Koulouris agreed to forward this information to the Association.

The Board members also briefly discussed how this may impact any police officers that currently possess a firearms license where firearms rights have either been restored by the FLRB or through the restoration provision in G.L. c. 140, § 129B. Attorney Sullivan explained that it is her understanding that there is an exception in federal law as well as state law that allows police officers to possess a firearm in the course of their duties for some types of criminal convictions. Board Counsel agreed and stated that DCJIS staff would further research this question.

At this point a motion was made to adjourn. The motion was seconded and carried unanimously (7-0). The motion was seconded by Attorney Healy and carried unanimously. At approximately 11 a.m., the Board adjourned.