

ATTORNEY GENERAL

In summary, it is clear that the underlying legislative purpose for the expenditure of State aid monies under both chapters 13 and 14 of the County Aid Program is premised on full compliance with the Department of Transportation's specifications as to materials and the design of construction used in such projects. The legislative language clearly contemplates comprehensive supervision and control by the Department of Transportation of projects performed pursuant to the statutory provisions. For these reasons, it is clear that no State aid funds shall be expended for labor, administrative or other purposes on county highway projects which require construction and materials, unless the design of construction and quality of materials strictly conform to State standards and specifications approved by the Department of Transportation.

Very truly yours,

WILLIAM F. HYLAND

*Attorney General*

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September 12, 1975

ANN KLEIN, *Commissioner*  
Department of Institutions and Agencies  
State Office Building  
Trenton, New Jersey

FORMAL OPINION NO. 27 - 1975

Dear Commissioner Klein:

The Division of Correction and Parole has inquired whether a correction officer who has been convicted of a crime under N.J.S.A. 2A:151-5 may legally carry a firearm when required to do so by his superior officer in the performance of his duties. It has been indicated that in certain instances the carrying of a firearm by a correction officer may be part of assigned job responsibilities. This circumstance is most prevalent for correction officers assigned to the towers at the State Prison and officers who accompany inmates to various court proceedings throughout the State.

In order to place the issue in the proper perspective, a discussion of the pertinent statutes bearing on the right of certain convicted felons to carry a firearm is necessary. N.J.S.A. 2A:151-8 provides that any person having been convicted of a crime enumerated in N.J.S.A. 2A:151-5 when armed with or having in his possession a firearm shall be guilty of a misdemeanor. The crimes for which conviction precludes the use or possession of a firearm include assault, robbery, larceny, burglary or breaking and entering whether or not armed with or having possession of a firearm.

N.J.S.A. 2A:151-43(h) excepts from the criminal proscription of carrying a concealed weapon under N.J.S.A. 2A:151-41 "any person or jail warden or their deputies, or any guard or keeper of any penal institution in this State, while engaged in the

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Congress also dealt with firearms control in Title 7 of the Act. That Title, 18 App. U.S.C.A., § 1201 *et seq.*, proscribes the receipt, possession or transportation of firearms by those who have been convicted of a felony in any state or political subdivision thereof. A felony is defined to mean "any offense punishable by imprisonment for a term exceeding one year but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a state and punishable by a term of imprisonment of two years or less," 18 App. U.S.C.A. § 1202(c)(2). A person receives a firearm within the meaning of the Act if he takes a weapon into his possession and control and that weapon has been deemed to have previously traveled in or affected "interstate commerce."

Section 1203(1) of Title 7 of the Act specifically excepts from its provisions "any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison." We have been advised by the United States Department of Justice that this exception applies solely to current inmates and cannot be extended to include the ex-offender who no longer is serving time in a penal institution.

Thus, the only recourse for a rehabilitated ex-offender in order to maintain his right to carry a firearm, even during the course of his official law enforcement responsibilities, is application for relief from disability under 18 U.S.C. § 925 (c) or 18 App. U.S.C.A. § 1203(2). Section 925(c) permits a person previously convicted of a felony *not* involving the use of a firearm to apply to the Secretary of the Treasury for an exemption from the Act. Those persons convicted of a felony involving the use of a firearm may secure relief only under section 1203(2) of the Act by securing a gubernatorial pardon which expressly authorizes him to receive, possess or transport a firearm in commerce.

The Department of Institutions and Agencies should, therefore, take appropriate steps to have qualified ex-offenders in its employment who intend to carry a firearm during the course of their official responsibilities to first secure a waiver pursuant to the provisions of section 925(c) of the Act.

Very truly yours,

WILLIAM F. HYLAND

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