

March 3, 2008

Martha Coakley, Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Dear Madam Attorney General,

Gun Owners' Action League is a full-time non-profit organization representing the state's licensed firearms owners. The purpose of this letter is to detail for your office the many problems and breaches of the law that are occurring within the state's firearms licensing system and to request your prompt action in overhauling the system. It should be noted at the outset that this particular request is not about Chief's discretion, unfair license restrictions or even an opinion that the licensing of a civil right is unconstitutional. Rather, this request is one simply asking that the state take responsibility of an out-of-control system and curb the illegal activities being conducted by its licensing agents.

Over the past year Gun Owners' Action League has brought to light many illegal activities conducted by several of the state's local licensing agents, including:

- Cambridge, Methuen, Peabody, Andover, North Andover and Holden are charging more than the fee set in statute;
- Requiring a note from a doctor for purposes other than that described in the statute (Andover, North Andover, Lawrence);
- Inconsistent acceptance of state certified courses (Lowell);
- Requiring additional training for renewals (Dedham, Watertown, and Brookline);
- Using an application other than the one required by law (Boston);
- Firearms registration by the local police department (Chester).

In doing so, we have sought the assistance of the Governor and the Inspector General to stop the many abuses of the law that are occurring. The Inspector General's office did take action to stop the city of Cambridge from overcharging. However, that office has told us bluntly they "will take no further action on this matter" and suggested that "using the December letter from this office in discussions with such municipalities may assist you to attain a successful outcome of the practice of unauthorized overcharging." No one at the state level is willing to take the responsibility for taking control of this system. Thus, we turn to you.

These infractions committed by licensing agents carry with them very stiff penalties as spelled out in Chapter 140, Section 131(k): *Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.* It should be made clear that we wish no harm come to the men and women who man the local police forces that help maintain local public safety. However, it is equally clear that licensing

agents, working as agents of the state, should be required to follow the law just as they require GOAL members to follow the law.

Yes, there is a remedy – to take police chiefs to court. But individual citizens often do not have the financial wherewithal to take their police department or the state to court. Gun Owners' Action League, which represents the interests of gun owners, does not have the legal standing to bring suit itself. Thus, a pattern of chronic individual abuses has been allowed to take root and fester in the Commonwealth.

These abuses will be explained in this letter. We appreciate your patience with its length.

Background

In 1998, the state legislature rewrote the licensing statutes – section 129B (Firearms Identification Card) and section 131 (License to Carry a Firearm) of Chapter 140. Both sections of law mandate that the license/card should be issued or denied within 40 days of the date of application.¹

Many misdemeanor crimes that would disqualify individuals from obtaining a Card or License were added to the statute. The FID Card, which had previously been “valid until revoked” became a renewable fingerprint and photo ID.

In addition to making the Card and License harder to obtain, the new legislation also doubled the number of Licenses and Cards. A separate “restricted” FID Card was create to cover the purchase and possession of chemical sprays. The License to Carry was split into two Classes, A & B.

On or about 2002, the state began implementing a new computerized licensing system – the Massachusetts Instant Record Check System, or MIRCS – with both police departments and firearms dealers. It should be noted that this system was created and implemented without any legislative authorization. The new system also creates new digital Licenses and Cards similar in size to a driver's license. The Criminal History Systems Board is the state agency that maintains the firearms records and creates the actual licenses and cards.

These few facts are necessary to understand the problems with Massachusetts Firearms Licensing.

MIRCS problems

In September 2007, GOAL wrote to the Governor to alert him to a slowdown in processing licenses. We stated “At the start of 2007, a citizen would have to wait an average of 30 days to receive their license, after the sit-down appointment at their local police department. At the present time, our office is receiving daily complaints from persons whose license renewals are taking *80 to 120 days*. Our concern is that 90 days after their expiration date, a person will be in illegal possession of their firearms, and face a civil fine of \$500 to \$5000.”²

In reply, a few weeks later, Mr. Gregory Massing, General Counsel to the Executive Office of Public Safety told us that the delays were due to the “significant increase in the number of license applications being processed by the local licensing authorities in 2007...” He proudly stated that “Of the 1913 license applications the CHSB received from local licensing authorities for processing from September 3 to September 7, for example, only 48 (2.5%) were outside the 40 day statutory timeframe

¹ Chapter 140, §129B (3) and §131 (e)

² Chapter 140, §129b(12) and §131(m)

processing..” Please note that these applications were already outside the 40 day time limit when they were received for processing by the CHSB!

While the number of delayed licenses may not seem like much, if you extrapolate the four days chosen to a 365 day year, more than four thousand citizens are not getting their licenses in the time period the law sets forth. We remind you that this number only represents the delays that (CHSB) is aware of on their end, and does not include licenses that are not submitted to CHSB.

As you can see from the enclosed copy, the entire tone of the letter could be summed up as “the problem occurred because there were too many applications, but most of them are on time, so we’re not going to take any action.”

The root of the delays in the MIRC system is that police departments, acting as licensing agents of the Commonwealth, are not punished or reprimanded for failure to act in a timely fashion. Although the law requires that background checks must be submitted in a timely fashion, we have never heard that anyone is punished for failure to act in that fashion.

As an example, the licensing authority in Worcester routinely places a low priority on the authorization of firearms licenses. That is, although all the background checks are complete, licenses await final authorization for 30 days or more. The licensing department staff routinely tells applicants to expect a processing time of three months or more.

Although we wrote to the Governor’s office four times between September 2007 and November 2007 to document these delays, no further action was taken by the administration.

The problems that arise with the MIRC system are that it is too human dependent. Its complexity means that in most departments only one person is authorized or trained to handle it. If that employee is on vacation, sick leave, or out for training, a citizen is often out of luck. There are no laws or regulations governing how citizens are treated when they try to make these appointments.

In Braintree, when the sole employee who could run the MIRC System was out on maternity leave during the fall of 2007, the town stopped processing license applications for four months! Only after GOAL complained did the CHSB step in to run emergency training for another employee to use the system. How many citizens were placed in jeopardy of a charge of illegal possession, or unable to exercise their firearms rights, by that police department’s lack of action?

Although action was taken to remedy the situation, no punishment was ever levied against the police department or its employees. Thus any town in Massachusetts can feel free to follow this example with impunity.

Overcharging for Licenses

In November 2007, GOAL wrote to the Inspector General with regard to the City of Cambridge overcharging license applicants by \$20 (the fee is set statutorily at \$25 for the restricted FID Card and \$100 for the FID, and Class A and Class B Licenses to Carry a Firearm).

After an investigation, the Inspector General determined that GOAL was correct, and wrote to the City Solicitor to apprise them of this fact. However, the second half of our complaint, that the overcharged fees be reimbursed, was not addressed by the Inspector General (we have since met with the new Police Commissioner in Cambridge, who is investigating this situation created by his predecessor).

In January, we wrote to the Inspector General again, urging that office to take action in the case of four other towns known to be overcharging. All of these charges were documented on the individual police department websites.

- The town of Andover is overcharging residents by \$10 (see http://www.andoverps.net/police/forms/firearms_permit.html)
- The town of Methuen is overcharging residents by \$10 (see http://www.methuenpolice.com/firearms_information.htm)
- The town of Peabody may be charging an extra \$10 (see <http://www.peabodypolice.org/support/armorer/>)
- The town of North Andover may be charging an extra \$10 (see <http://www.napd.us/firearms.html>)

Just two weeks later, we wrote again to the Inspector General, indicating that the Town of Holden was charging a \$10 fingerprint fee to applicants.

In response, the Inspector General's staff called GOAL's Executive Director, and indicated they did not feel they had the power to enforce municipal law. Although we pointed out that the police departments are acting as licensing agents of the Commonwealth, the IG's office has made it clear, through the letter referenced earlier, that they wish to go no further. It is their intent that GOAL should provide copies of the IG's letter to Cambridge to other municipalities in order to stop the overcharging.

Madame Attorney General, it is not the job of a private non-profit corporation to enforce Massachusetts law. While it is certainly within the scope of our mission to ensure that the state is treating our members with equality and within the law, it should not be our job to act as an oversight entity simply because the state chooses not to. We hope that your office will see the need to take action.

Violations of Public Records Statute

Your office is probably aware that the names and addresses of license to carry firearms and firearms identification card applicants are not a matter of public record.³

Yet some police departments routinely require citizens to reveal their intent to obtain a license by obtaining written references in addition to the standard application form. While it is technically true that the police department did not do the disclosure, by requiring an applicant to obtain these letters, they are causing the disclosure.

In November, we wrote the Governor to complain the town of Chester Police Department was requesting "all town residents to register their firearms with their department." A local police department has no statutory authority to register firearms.

Massachusetts law is very specific about what agency should receive and maintain records of firearms transfers – and that is the Criminal History Systems Board. Chapter 140, §123, clause fifth, §128A, §128B and §129C all indicate the CHSB is the appropriate place for general records. The Police Chief is to be notified only in the case of "loss, theft or recovery."

³ This law was passed overwhelmingly more than 20 years ago, when a local newspaper wished to publish the names and addresses of licensed gun owners. Several non-gun owning legislators felt they did not want the public to know they did not own guns.

Non-Standard Items

MGL Chapter 140, §131(g) states that “The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.” This law is clearly being ignored by many of the state’s licensing agents.

First, we note that the §131(l) states that the executive director of the CHSB is to send notice by first class mail of renewal, and “shall enclose therein a form for the renewal of such license”. The CHSB does not comply with this statute, and sends out instead a postcard reminder, with no enclosed application, merely a link to their website where such a form may be downloaded. I’m sure your office realizes that a large percentage of the population does not have access to computers.

It is common practice in some towns to require additional items:

- “Letter from the applicant’s physician stating the applicant has no medical or psychological issues that would preclude him/her from owning, carrying, or legally using a firearm.” (Andover, Lawrence, North Andover)
- Copy of utility bill and proof of residency (Peabody, Lawrence)
- Additional forms (Bridgewater, Boston, Dedham)
- Letter stating proof of need (Boston, Dedham, North Andover, Lawrence)
- Copy of Birth Certificate (Boston)
- Copy of current business certificate (Boston)
- Letter from applicant’s bank (Boston)
- Additional training or testing (Boston, Brookline, Watertown, Dedham)
- Certified copies of vacated protective orders with affidavits (Boston)

The above list is just the tip of the iceberg.

Training

Of particular concern to us is how the training statute is being administered (Chapter 140, §131P). According to the law, and its accompanying regulations, only applicants for licenses and cards after October 1998 should be required to take a Basic Firearms Safety course.

Now it is true that the SJC condoned the practice of requiring training in *MacNutt v Police Commissioner of Boston*. However, that case was decided before the legislature stepped in to require mandatory training, and empowered the Colonel of the State Police to set up a system of authorized courses and trainers. Section 131P clearly says “Persons lawfully possessing a firearm identification card or license to carry firearms on June 1, 1998 shall be exempt from the provisions of this section upon expiration of such card or license and when applying for licensure as required under this chapter.” To require additional training or testing violates the clear intent of the law.

Cities and towns get around this by requiring non-standard training. Boston’s licensing department requires all applicants to go to the Moon Island Range. Brookline demands that a certified instructor fill out a document verifying that the applicant has fired additional targets. Dedham requires a state certified instructor to show that an applicant has been re-instructed in safe use and handling.

In a blatant slap in the face to the legislature’s desire that training be done only once, the city of Lowell says on its website “For new residents renewing a license to carry originally issued by another agency,

the chief requires proof of approved training at the time of application in Lowell. This is even if your original permit was issued prior June 1, 1998. (sic)”

Unequal Treatment Under The Law

Opinions in Massachusetts may vary about whether the ability to own and use firearms is an individual or a collective right. Regardless of one’s personal beliefs on that subject, we should be able to agree that citizens deserve equal treatment under the law.

It is clear, however, that licensed gun owners are not being treated equally in the Commonwealth. Some persons fill out an application, spend 20 minutes at their police department, and receive a license 40 days later. Others must provide copies of bank deposit receipts, write a letter, obtain written references, and schedule an appointment with their physician before they can meet with the licensing authority in their town.

Of particular concern to us is the subjective practice of denying a person with an arrest, but no conviction, a license to carry a firearm. When such a person moves from one city to another, he or she is frequently denied. In other words, the arrest becomes a subjective reason to deny the license that varies with the town of residence of the applicant. This is not equal protection under the law. It is an arbitrary and capricious means of interpreting the law.

Likewise, the practice of issuing restricted licenses depends more on the personal beliefs on firearms ownership of the police chief, than it does on the qualifications of the applicant. As an example, your office could check and see how many licenses for “protection” or “unrestricted” are issued by the city of Waltham, and contrast that with the city of Haverhill. We are sure you will see a vast difference.

Conclusions

Although the legislature intended to create standardized licensing in 1998, the results have been anything but. The procedure, timing, requirements and qualifications vary with the residence of the applicant.

The licensing agents of the Commonwealth, in the absence of any oversight, have felt free to modify the procedures as they see fit. Delays in processing are common. Additional requirements meant to harass the law abiding citizen are heaped upon applicants in some places and not in others.

Madame Attorney General, it is our sincere hope that you will see that it is high time for the state to take control of its licensing agents and inject fairness and uniformity into the firearms licensing system. Licensing agents should be reminded of the standardized items outlined in law and regulation, as well as the penalties for not following procedure.

Should you have any questions about the material in this letter, I would be happy to meet with you and your staff.

Sincerely,

James L. Wallace
Executive Director

Enc: Copies of letter to the Governor
Copies of letter to the Inspector General