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Questions arise over sheriff's yanking of concealed-carry permit

By Jim Phillips



Photo Credits: The Athens NEWS file photo
Photo Caption: Sheriff Pat Kelly

Some citizens of Athens County who currently hold concealed-carry weapon (CCW) permits may get an unpleasant surprise the next time they try to renew them.

Athens County Sheriff Pat Kelly recently announced that his office, which handles CCW permit applications for the county, has begun applying an interpretation of state law that may disqualify some current permit-holders from renewing. The Ohio Attorney General's office, however, has suggested the sheriff may be misreading the law.

On Dec. 19, the sheriff posted a message on his Facebook page, indicating that his office is changing the way the CCW law has been applied in the county in the past.

"Today, Chris McCauley, my concealed-carry administrator, brought to my attention (the fact that) people that were issued a concealed carry permit by the previous administration received their permits in conflict with the law," the post stated. "Upon renewing, you may be told I cannot renew your license."

The problem, according to Kelly, is that apparently some people were granted five-year CCW permits under former Sheriff Vern Castle's administration. According to Kelly's reading of the law, these people shouldn't have gotten the permits, based on their past criminal records.

Kelly refers to a section of the Ohio Attorney General's booklet on Ohio's concealed-carry laws and license application, which lays out the factors that can disqualify someone from getting a permit.

To qualify for a permit, the booklet says, "you must not be under indictment, be charged with, or convicted of any felony. You also must not be under indictment, charged with, or convicted of any offense that involves trafficking in drugs, a misdemeanor offense of violence, or negligent assault."

One county resident who had held a permit, but was denied recently when he tried to renew it, is Shane A. Sloan, who lives in The Plains.

Sloan said he got his permit five years ago when Castle was in office; it was due to expire Dec. 24. When he sought to renew it last month, he said, he was told the process was a relative formality.

"They said, 'Oh, it's a renewal - (it will take) seven to 10 days,'" he recalled.

Later, however, according to Sloan, he was informed that Kelly was denying the renewal, based on a domestic violence offense Sloan was charged with in 2003. Such a charge, as a violent misdemeanor, would clearly be a disqualifier if he had been convicted of it, but Athens County Municipal Court records show Sloan pleaded no contest to a lesser charge, of disorderly conduct.

Sloan says McCauley of the Sheriff's Office told him that "we're going to have to deny you, because the law says 'charged.'" In other words, the fact that Sloan was once charged with a disqualifying offense means he can't hold a permit, despite his not having been convicted of that offense.

"I said, 'That means *currently* charged,'" Sloan recalled - in other words, he maintained that to disqualify him, the charge would have had to be still pending at the time he applied for the CCW permit.

A Columbus attorney who specializes in gun law agreed with this reading of the law.

"Generally speaking, my understanding of the law is... you have to be currently under charges (to be disqualified)," said Derek DeBrosse. "(Being disqualified) simply by having been charged at some point in the past - that's absurd to me. I've never heard that before."

DeBrosse went further, predicting that applying the law in this fashion could put the county at risk of civil litigation.

"(Kelly) needs to talk to his prosecutor down there about this," he said.

In response to emailed questions, Kelly responded Friday that he believes his reading of the law - in which "charged" translates as "having been charged at any time" - is clearly the correct one.

"The law says 'charged with,'" he wrote. "In no way does it say 'currently.' We have read the law at face value. (DeBrosse) is applying his interpretation."

Kelly could not speculate on how many people in the county may be closed out of renewing their current CCW permits by his interpretation of the law.

"We will not know how many are not in compliance until they attempt to renew their licenses," he wrote. "If a person comes to renew and we find (the permit) was issued improperly, we will deny the permit."

Kelly has recommended that people in Sloan's predicament look into having their conviction records sealed, which could re-qualify them for a permit.

McCauley said Friday that he would estimate there are upwards of 3,000 permit holders in the county.

In most cases where a permit gets pulled, he said, it's because the Sheriff's Office has been informed of a charge or conviction when it happens. He said Sloan's case was unusual in that his disqualification wasn't noticed until he applied for renewal.

"That doesn't happen too often," he said.

McCauley also acknowledged that the meaning of the law "could have some interpretation." He said he attempted to get clarification on the precise legal meaning of "charged" as used in the CCW law, but was unsuccessful.

"I even contacted the Attorney General's office," he said. "And at that time they weren't able to give me a clear answer to that either."

When *The Athens NEWS* contacted the state AG's office with a question about the issue, however, a spokesperson indicated that the interpretation of the CCW law being used by the Athens County Sheriff's Office is viewed by the state agency as somewhat unusual.

Eve Mueller, deputy director of communications for the AG's office, stated in an email that section "2923.125 (D) (1) (d) of the Ohio Revised Code says in order for a person to get a license, they can't be 'under indictment.' The Ohio Attorney General's Office interprets 'under' to mean presently. We're not aware of any sheriff in Ohio in 10 years interpreting that to mean 'ever' under indictment."

Mueller added that it would be inappropriate for the Ohio Attorney General's Office to comment about any specific case without having all the facts of that case. She noted that an appeals process is available, if someone does not agree with a sheriff's decision on a CCW permit.

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