



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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The Honorable Christopher A. Corbett  
Commonwealth's Attorney for Patrick County  
P.O. Box 1270  
Stuart, Virginia 24171

Dear Mr. Corbett:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether the federal Law Enforcement Officers Safety Act of 2004 exempts U.S. Army counterintelligence special agents ("Agents") who have retired from service from the requirement to obtain a permit to carry a concealed handgun in the Commonwealth.

## Response

It is my opinion that U.S. Army counterintelligence special agents who have retired from service meet the definition of a "qualified retired law enforcement officer" for purposes of § 926C(c)(2) of the Law Enforcement Officers Safety Act of 2004. However, whether the remaining requirements of the Act are satisfied is a question of fact and not a question of the interpretation of state or federal law.<sup>1</sup>

## Applicable Law and Discussion

Federal law supercedes and limits state law pursuant to the Supremacy Clause of the Constitution of the United States.<sup>2</sup> Therefore, the federal act, Law Enforcement Officers Safety Act of 2004<sup>3</sup> ("Safety

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<sup>1</sup>See *infra* note 14 and accompanying text.

<sup>2</sup>See U.S. CONST. art. VI, cl. 2; *but see* 18 U.S.C.S. § 926C(b) (LexisNexis 2005) (placing limits on application of Safety Act with respect to proscriptions by private property owners and state properties).

<sup>3</sup>See Pub. L. No. 108-277, 118 Stat. 865 (codified at 18 U.S.C.S. §§ 926B–926C).

Act”), controls the issue about which you inquire.<sup>4</sup> Section 926C(c) of the Safety Act defines a “qualified retired law enforcement officer” as

an individual who—

(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(2) before such retirement, *was authorized by law to engage in* or supervise the prevention, detection, *investigation*, or prosecution of, or the incarceration of *any person for, any violation of law, and had statutory powers of arrest*;

(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms;

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm. [Emphasis added.]

Section 4-2 of Army Regulation 381-20 outlines investigations under the jurisdiction of Agents.<sup>5</sup> Additionally, § 8-12(a) of Army Regulation 381-20 grants apprehension authority to Agents.<sup>6</sup> Since Agents are authorized to investigate and have statutory powers to arrest within their jurisdiction, it is my opinion that the second requirement of the Safety Act is satisfied.<sup>7</sup>

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<sup>4</sup>I note, however, that retired Agents do not meet the requirements for the Commonwealth’s exemption for law-enforcement officers carrying concealed weapons. See VA. CODE ANN. § 18.2-308(B)(7) (Supp. 2006) (providing exemption to local or state law-enforcement officers; statute does not mention or include federal law-enforcement officers).

<sup>5</sup>See DEP’T OF THE ARMY, ARMY REG. 381-20, MIL. INTELLIGENCE, THE ARMY COUNTERINTELLIGENCE PROGRAM, § 4-2, at \*13 (Nov. 15, 1993), available at <http://fas.org/irp/DIR/doddir/army/ar381-20.pdf> (noting examples of crimes to investigate include treason, espionage, and terrorist activities).

<sup>6</sup>See *id.*, § 8-12(a), at \*24 (authorizing Agents “to apprehend any person subject to” Uniform Code of Military Justice regardless of location; citing Rules for Courtmartial 302 as additional authority). Rule 302(a)(1) defines “apprehension” as “the taking of a person into custody.” JOINT SERV. COMM. ON MIL. JUSTICE, MANUAL FOR COURTS-MARTIAL UNITED STATES, Rule 302 (“Apprehension”), at \*66 (2005 ed.), available at <http://www.army.mil/usapa/epubs/pdf/mcm.pdf>. “Apprehension is the equivalent of ‘arrest’ in civilian terminology.” *Id.* (“Discussion” Rule 302(a)(1)).

<sup>7</sup>See 18 U.S.C.S. § 926C(c)(2) (LexisNexis 2005).

Whether retired Agents satisfy the first,<sup>8</sup> third,<sup>9</sup> fourth,<sup>10</sup> fifth,<sup>11</sup> sixth,<sup>12</sup> and seventh<sup>13</sup> qualifications is a factual determination and not a matter of the interpretation of state law.<sup>14</sup> Should retired Agents satisfy the remaining six qualifications, they would meet the definition of a “qualified retired law enforcement officer” for purposes of the Safety Act and would not be subject to the requirements of § 18.2-308.

### Conclusion

Accordingly, it is my opinion that U.S. Army counterintelligence special agents who have retired from service meet the definition of a “qualified retired law enforcement officer” for purposes of § 926C(c)(2) of the Law Enforcement Officers Safety Act of 2004. However, whether the remaining requirements of the Act are satisfied is a question of fact and not a question of the interpretation of state or federal law.<sup>15</sup>

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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<sup>8</sup>See 18 U.S.C.S. § 926C(c)(1) (LexisNexis 2005) (providing that officer must retire in good standing from agency).

<sup>9</sup>See 18 U.S.C.S. § 926C(c)(3) (LexisNexis 2005) (providing that officer serve agency for minimum of fifteen years before retirement or retire due to service-related disability).

<sup>10</sup>See 18 U.S.C.S. § 926C(c)(4) (LexisNexis 2005) (providing that officer must have nonforfeitable right to benefits under retirement plan of agency).

<sup>11</sup>See 18 U.S.C.S. § 926C(c)(5) (LexisNexis 2005) (providing that officer must meet certain state standards for active law-enforcement officers).

<sup>12</sup>See 18 U.S.C.S. § 926C(c)(6) (LexisNexis 2005) (providing that officer may not be under influence of alcohol or narcotics).

<sup>13</sup>See 18 U.S.C.S. § 926C(c)(7) (LexisNexis 2005) (providing that officer may not be prohibited by federal law from receiving firearm).

<sup>14</sup>For many years, Attorneys General have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. See Op. Va. Att’y Gen.: 2003 at 21, 24; 2001 at 73, 74; see also Op. Va. Att’y Gen.: 1999 at 132, 132; 1986-1987 at 1, 6 (interpreting § 2.1-118, predecessor to § 2.2-505); accord 1991 Op. Va. Att’y Gen. 122, 124.

<sup>15</sup>See *id.* and accompanying text.