

## DORSEY & SEMRAU

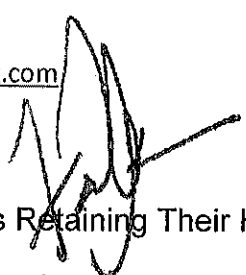
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### MEMORANDUM

**TO:** Ed Cooney, Vice President  
Conner, Strong & Buckelew  
VIA EMAIL TO [ecooney@connerstrong.com](mailto:ecooney@connerstrong.com)

**FROM:** Fred Semrau, Esq. 

**RE:** Liability as to Retired Police Officers Retaining Their Handguns

**DATE:** February 26, 2018

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Dear Ed:

There was discussion at a prior coverage meeting about retired police officers who take their firearms with them upon retirement.

### LEGAL ANALYSIS:

I. Transfer of weapons in general.

The transfer or disposition of weapons is regulated by New Jersey statute. N.J.S.A. 2C:39-9d states as follows:

Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any weapon including gravity knives, switchblade knives, daggers, dirks, stiletos, billies, blackjacks, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings, or in the case of firearms if he is not licensed or registered to do so as provided in chapter 58, is guilty of a crime of the fourth degree.

The New Jersey Supreme Court has recognized that "the Legislature intended to give wide scope to the phrase 'disposed of.'" State v. Rovito, 99 N.J. 581, 584-585 (1985). Specifically, to "dispose of" is liberally defined in the statute to mean "to give, give away,

lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession." N.J.S.A. 2C:39-1d.

"Chapter 58" referred to in N.J.S.A. 2C:39-9d above is a statute that requires a permit in order to purchase or transfer a handgun. That statute specifically states as follows:

No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a handgun unless the purchaser, assignee, done, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a handgun as provided by this section.

N.J.S.A. 2C:58-3a.

The statute further provides that neither a firearms purchaser identification card nor a handgun permit may be issued "[t]o any person where the issuance would not be in the best interest of the public health, safety or welfare." N.J.S.A. 2C:58(c)(5).

Relevant case law confirms that, under the law, there are many ways of "disposing of" weapons. See, e.g., Crossroads Gun Shop v. Edwards, 214 N.J. Super. 244, 246 (Law Div. 1986) (holding that licensed gun retailer violated the statute by operating a pistol target range immediately adjacent to his gun shop and allowing individuals to rent pistols and fire them on the range whether or not they had valid firearms purchaser permits); State v. Rovito, supra (holding that a police officer violated the statute by removing his service revolver at a party, placing it on the floor and asking if anyone wanted to play Russian roulette, whereupon the victim picked up the gun and fatally wounded himself); State v. Cunningham, 186 N.J. Super. 502, 511 (App. Div. 1982) (holding that when the police lawfully take possession of a firearm, the return of that firearm to an owner who is disqualified from obtaining a permit to acquire it constitutes a transfer that is prohibited by statute).

A knowing sale, gift, transfer, assignment, or other disposition in violation of the foregoing statutes is a crime of the fourth degree. See N.J.S.A. 2C:39-10(a)(1). If the recipient of the firearm is under 18 years of age, the seller, giver, etc. commits a second degree crime, and if the recipient is under 21, it is a third degree crime. See N.J.S.A. 2C:39-10(e) and 10(f).

## II. Transfer of weapons to retired law enforcement officers.

Under federal law, the Law Enforcement Officers Safety Act ("LEOSA") of 2004, 18 U.S.C. § 926C, allows qualified retired law enforcement officers the right to carry their handguns in another state:

(a) Notwithstanding any other provisions of the law of any State or any political subdivision thereof, an individual who

is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. . . .

18 U.S.C. § 926C(a).

In New Jersey, N.J.S.A. 2C:39-6 allows eligible retired New Jersey and federal law enforcement officers the right to carry handguns within the state:

(l)(1) The retired law enforcement officer shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

N.J.S.A. 2C:39-6(l)(1).

Most municipalities purchase insurance policies that reimburse them when they are held liable for harm their police officers inflict while employed. See Article, Does the Path to True Police Reform Run Through Liability Insurers? By Tom Jackman, April 11, 2016. Coverage exists as long as the liability incident occurred while the police officer was acting within his or her "professional scope of employment." See Article, Do Cops Need Personal Liability Insurance? By Megan Wells, PoliceOne Contributor, July 20, 2016.

However, retired police officers possess no greater rights than that of any average citizen with a concealed weapon carry permit. Once police officers retire, all the rules for average citizens apply to them. See Article, Concealed Weapon Liability for Retired Officers, by Tom Feledy, Retired SFPD, October 1, 2013.

According to Officer Feledy, one way for retired police officers to shield themselves from liability is to get a one million dollar rider on their homeowners insurance policy. Id. Another way is to determine if their municipality's liability insurance policy allows for "Retired Associate Membership" for which the retired police officer pays a small yearly premium. Id.; see also Article, Carrying While Retired: 7 Things Cops Need to Know, by Duane Wolfe, The Warrior's Path, August 5, 2017, indicating that a number of insurance companies provide insurance for civilians and retired cops who may find themselves in need of legal representation after a shooting.

However, one could argue that it is the municipality who is approving the transfer of this weapon to a retired police officer and only a municipality would have the personnel and confidential information regarding this officer. Accordingly, although there is not case law to necessarily support this issue on point, it is our opinion that a governmental agency can be at least joined in a claim with respect to the use of force by a retired police officer under such circumstances.

CONCLUSION:

I believe we should evaluate carefully what the protocol is with respect to a police officer leaving with their firearms and it would be appropriate under the circumstances that if the officer were entitled to such firearms, that they sign and understand a complete and concise release prior to the transfer of such firearms.

If you have any questions, please do not hesitate to contact me.

FCS:sdj

Cc: Joseph Hrubash, Senior Vice President, PERMA  
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Cate Kiernan, Vice President, PERMA