

**POLICE DEPARTMENT
CITY OF NEW YORK**

December 26, 2018

Memorandum from: Commanding Officer, Legal Bureau

Re: **APPLICATION OF N.J.S.2C: 39-C, PROHIBITING POSSESSION
LARGE CAPACITY AMMUNITION MAGAZINES, TO RETIRED
LAW ENFORCEMENT**

A. Introduction

This memorandum provides a legal opinion in response to numerous inquiries to the Legal Bureau regarding the application of a recently amended New Jersey Law which prohibits the possession and carrying of ammunition magazines capable of holding more than 10 rounds to retired members of the service. As a preliminary matter, retired law enforcement seeking to possess and carry such magazines while traveling into or through the State of New Jersey, should consult the advice of their own legal counsel. Nevertheless, the Legal Bureau's interpretation of this law is outlined below.

B. Discussion

New Jersey Statutory Law

N.J.S.2c:39-C(j) prohibits any person from knowingly possessing a large capacity ammunition magazine. Violation of the law is a crime in New Jersey. A large capacity ammunition magazine is defined as a "box, drum, tube, or other container which is capable of holding more than 10 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm."¹

The law specifically exempts possession of these magazines by on-duty law enforcement officers, as well as off-duty law enforcement officers. Off-duty law enforcement officers are permitted to possess a magazine capable of holding a maximum of 17 rounds of ammunition. The law also permits off-duty officers to possess a magazine capable of holding more than 17 rounds of ammunition provided the magazine is used with a service firearm issued to the officer by the officer's employer for use in the officer's official duties.

¹ N.J.S.2c: 39-1(y).

The law, however, is less explicit when addressing retired law enforcement officers. The law only permits possession of magazines capable of holding up to 15 rounds of ammunition to retired law enforcement officers provided that they are authorized to possess and carry a handgun pursuant to New Jersey Law (N.J.S.2c: 39-6).

N.J.S.2c: 39-6(1) states that law enforcement officers who retired in good standing may apply to the Superintendent of the NJ State Police for approval to carry a handgun, subject to the below conditions:

- Retired in good standing;
- Was regularly employed and full-time;
- Be 75 years or younger;
- Semi-annually qualify in the use of a handgun in accordance with the Attorney General's Guidelines, at their own expense;
- Have been a full-time member of a "qualifying" police department or law enforcement position;
- and be domiciled in the state.

"Qualifying" police departments and law enforcement positions include NJ State Police, state law enforcement agencies, county or municipal police departments in NJ, or a qualified retired law enforcement officer as defined in the federal Law Enforcement Officer's Safety Act (H.R. 218).

The permit system is designed for retired New Jersey police officers, and other retired officers who are domiciled in New Jersey. The law is completely silent on permits for non-resident retirees. Thus, any retired officer not living in New Jersey is disqualified from receiving a NJ retired officer permit under this provision.

Consequently, NJ only narrowly exempts retired law enforcement from its magazine restriction if the retiree possesses an NJ-issued permit.² There is no general retired law enforcement exemption from the magazine restriction. Thus, those ineligible for a NJ retired law enforcement officer handgun permit, such as non-resident retirees, would not be permitted to possess a magazine capable of holding up to 15 rounds of ammunition.

Interplay Between NJ Law and H.R. 218

H.R. 218, the "Law Enforcement Officer Safety Act," permits qualified retired law enforcement officers³ to carry concealed firearms provided that they possess photographic

² See *In re Casaleggio*, 420 N.J. Super. 121, 128-129 (App. Div. 2011) (holding that LEOSA does not create its own separate route for an applicant to receive a permit.).

³ Under H.R. 218, a "qualified retired law enforcement officer" is one who has retired in good standing from service with a public agency; served as a law enforcement officer with the power to arrest, investigate, prosecute or incarcerate any person for violation of the law; during the most recent 12-month period, has met, the state's standards for training and qualification for active law enforcement to carry firearms, is not under the influence of drugs or alcohol, is not prohibited by federal law from receiving a firearm; was regularly employed as a law enforcement officer for an aggregate of 15 years or more or 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. 18 USC 926C.

identification issued by the agency for which they were employed and have now separated. Qualified retirees also must demonstrate they have been tested and found by the agency to meet the active duty standards for qualification in firearms training as established by that agency. This information may appear on their identification; but it can also be displayed on a certification obtained by the retiree from the state he/she resides, or from a certified firearms instructor, indicating that the retiree meets that state's firearms qualifications.

H.R. 218, however, applies to the possession and carrying of firearms. It does not apply to magazines. Thus, H.R. 218 would not preempt NJ's prohibition on large capacity magazines. The Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has informally advised several police organizations that H.R. 218 generally bars criminal prosecution of law enforcement officers who carry concealed firearms in interstate commerce, but that state and local prohibitions on magazines and magazine capacity are valid.⁴

C. Conclusion

In summary, the State of New Jersey only exempts retired law enforcement officers from its prohibition on magazines capable of holding more than 10 rounds if the retired officer is authorized to possess a retired handgun license in New Jersey. Retired law enforcement licenses are issued only to retirees domiciled in New Jersey. Thus, it is recommended that non-resident retired officers traveling into or through New Jersey exercise extreme caution when considering whether to carry magazines capable of holding more than 10 rounds.



Kerry R. Sweet
Deputy Chief

KRS/rb

⁴ For examples, see *Fraternal Order of Police*, H.R. 218: the "Law Enforcement Officers' Safety Act," available at <https://www.fop.net/legislative/issues/hr218/hr218faq.pdf> (stating "[t]he Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has ruled that State and local laws and regulations applying to magazines do apply and the exemption provided by LEOSA applies only to firearms and ammunition."); Roy Barondes, *Allowing Off-Duty Law Enforcement Personnel to Lock and Load Should be National Standard*, THE HILL (March 5, 2018), available at <https://thehill.com/opinion/campaign/376739-allowing-off-duty-law-enforcement-personnel-to-lock-and-load-should-be> (stating "The Bureau of Alcohol, Tobacco, Firearms & Explosives has reportedly taken an odd position on LEOSA. Popular sources report the ATF asserts LEOSA does not preempt state restrictions on common firearm features.").