

STATE OF CONNECTICUT
BOARD OF FIREARMS PERMIT EXAMINERS

FINAL DECISION
DECLARATORY RULING ON PETITION CONCERNING APPLICATIONS

I. INTRODUCTION

On September 28, 2009, the Board of Firearms Permit Examiners received a petition for declaratory ruling from Jack Goldberg (hereafter "Petitioner") requesting a ruling on sixteen separate issues. At a meeting of the Board on October 8, 2009 the Board voted to issue a declaratory ruling in response to Question 3, to the extent that this question comes within the Board's jurisdiction. With respect to the petitioner's other questions, as phrased Questions 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 did not express questions which fall within the Board's statutory jurisdiction to issue a declaratory ruling under Conn. Gen. Stat. §4-176(a). Accordingly, the Board has declined to issue a declaratory ruling with respect to those questions.

II. FACTS

The Board agreed to issue a declaratory ruling on the following issue: "With respect to a permit to carry a pistol or revolver, is a person unsuitable if he does not supply to the issuing authority upon demand any additional information beyond that required by the standard state application form?"

The Petitioner's request is a pure issue of law which does not require the presentation of evidence. The Board is aware, however, of the practice in some jurisdictions of requiring additional material to be submitted with the original application which are not specified in the statute, such as letters of reference, medical releases, detailed resumes, and credit histories.

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ANALYSIS OF THE ISSUES PRESENTED BY THE PETITION

A. SCOPE OF OUR ANALYSIS

The Petitioner's question was not precise as to when in the "process" additional information might be required. We therefore take this opportunity to address the information an applicant must provide at various stages of the permit process in order for the issuing authority to make a reliable determination of an applicant's eligibility and suitability for a permit to carry pistols and revolvers outside his place of business or residence.

Accordingly, we address what is required of an applicant upon submission of his application, and what additional information may be requested during the course of the issuing authority's investigation.

B. SUBMISSION OF ORIGINAL APPLICATION

Connecticut has a two-tiered process for the issuing of pistol permits. An applicant makes an initial application to the police chief or where there is no police chief, the first selectman of the town, who are by law required to conduct an investigation concerning his eligibility for a permit and whether he is a "suitable" person to be issued a permit.

Connecticut General Statutes §29-28(b) provides that

Upon the application of any person having a bona fide residence or place of business within the jurisdiction of [an issuing]...authority¹, [the issuing authority] may issue a temporary state permit to such person to carry a pistol or revolver within the state, provided such authority shall find that such applicant intends to make no use of any pistol or revolver which such applicant may be permitted to carry under such permit other than a lawful use and that such person is a suitable person to receive such permit.

Upon receipt of a temporary state permit, the commissioner of public safety may issue or deny a permanent state permit. Conn. Gen. Stat. §28-29a(b).

The Board of Firearms Permit Examiners hears appeals from denials and revocations of pistol permits by issuing authorities. Any person aggrieved by the issuing authority's decision may appeal to the Board. The Board conducts a de novo review of the issuing authority's decision. Unless the Board finds that a denial by the issuing authority was for "just and proper cause", the Board "shall order such permit or certificate to be issued,..." Conn. Gen. Stat. §29-32b(b).

The statutes prescribe the manner in which an application is to be processed by the issuing authority. Section 29-28a(a) provides that "[r]equests for temporary state permits under section 29-28 shall be submitted...on application forms prescribed by the Commissioner of Public Safety." That section further states that "Upon written request by any person for a temporary state permit not on a prescribed application form, or upon request by any person for such application form, the local authority shall supply such forms."

¹ An issuing authority is a chief of police where there is an organized police department, or the warden or first selectman of a town where there is no police department. Conn. Gen. Stat. §29-28.

In addition to the application on the form prescribed by the commissioner, the applicant must submit: (1) proof of completion of a course approved by the commissioner in safety and use of pistols and revolvers; Conn. Gen. Stat. §29-28(b)(1); (2) proof that the applicant is not an alien illegally or unlawfully in the United States; Conn. Gen. Stat. §29-28(b)(9); (3) proof that he is not less than twenty-one years of age; Conn. Gen. Stat. §29-28(b)(10); (4) fingerprints for a criminal record check Conn. Gen. Stat. §29-29(a) and (b); and (5) the fees prescribed by law; Conn. Gen. Stat. §29-30.

The issuing authority then conducts an investigation to determine whether the applicant is “suitable” within the time frame prescribed by the statute. Conn. Gen. Stat. §29-28(d).

The Board is aware that some police chiefs or first selectmen require applicants to submit additional materials with their application which are not specified in the statute. Specifically, several towns require one or more “letters of reference” to be submitted with the application. Such letters are of little utility in the initial suitability determination inasmuch as they are solicited directly by the applicant from persons presumably friendly to him. Other towns require submission of documents and information far in excess of the statutory requirements, such as credit checks, medical releases, and detailed personal resumes. A careful analysis of the applicable law by this Board reveals no authorization for such requirements contained in the statutes.

Indeed, nothing in the statute authorizes an issuing authority to add to the requirements of the statute or to the form prescribed by the Commissioner of Public Safety at the time a person submits an application for a permit to carry pistols and revolvers. This is clear from the comprehensive list of matters recited in Conn. Gen. Stat. § 29-28(b) which would foreclose eligibility and the detailed and precise manner in which the General Assembly chose to address the nature of the application in Conn. Gen. Stat. §29-28a(a). This is also clear in light of the Attorney General’s 1968 opinion in a closely analogous context, wherein that official advised this Board that:

If the legislature had intended that each municipal police department devise an appropriate application form for the carrying of handgun, it would not have expressly provided that the application forms be prescribed by the Commissioner of State Police. *The clear and obvious intent of the General Assembly was to provide a uniform application for state-wide use by issuing authorities.* The authority to prescribe such a form having been granted to the Commissioner of State Police, a municipal police department may not alter, change or add to the prescribed form no matter how laudable the intent or motive for doing so.

Report of the Attorney General, pp 141-142. July 9, 1968 (Emphasis added).

“In exercising its judgment as to whether facts fall within the ambit of the term ‘just cause,’ the board must find that the facts constitute a ‘reasonable ground’ for the adverse action as opposed to a ‘frivolous or incompetent ground.’” *Cassella v. Civil Service Commission*, 202 Conn. 28, 37, 519 A.2d 67 (1987). In light of the strong legislative policy favoring “a uniform application for state-wide use by issuing authorities”, it is the determination of the Board that the statute does not permit an issuing authority to require submission of additional material at the time an applicant files his application on a form prescribed by the commissioner together with the required statutory fees and proof of (a) completion of a course approved by the commissioner in safety and use of pistols and revolvers, (b) that the applicant is not an alien illegally or unlawfully in the United States, (c) that he is not less than twenty-one years of age, and (d) fingerprints for a

criminal record check. Refusal to submit additional material with the initial application, such as letters of reference, does not, ipso facto, render the applicant unsuitable. Further, such failure to submit this additional material does not relieve an issuing authority of its statutory duty to conduct an investigation into the applicant's suitability and to process the application within the statutory time frame. Accordingly, an applicant's failure to submit these additional materials with the initial application would not constitute "just and proper cause" for denial.

B. REQUESTS FOR ADDITIONAL INFORMATION DURING THE INVESTIGATION

An issuing authority is not a mere rubber stamp. The statutes contemplate a bona fide investigation of an applicant's suitability. The determination of an applicant's suitability by the issuing authority, and if required by the Board, is necessarily constrained by "General Statutes §§ 29-28 through 29-38 [which] clearly indicate a legislative intent to protect the safety of the general public from individuals whose conduct has shown them to be lacking the essential character or temperament to be entrusted with a weapon." *Dwyer v. Farrell*, 193 Conn. 7, 12-13 (1984). Although Connecticut's firearms licensing laws do not specifically define the terms "suitable" and "unsuitable," the decision in *Smith's Appeal from County Commissioners*, 65 Conn. 135 (1894) affords an appropriate definition:

A person is "suitable" who by reason of his character-his reputation in the community, his previous conduct as a licensee-is shown to be suited or adapted to the orderly conduct of a business which the law regards as so dangerous to public welfare that its transaction by any other than a carefully selected person duly licensed is made a criminal offense.

While Conn. Gen. Stat. §29-28(b) provides a list of mandatory disqualifications, the issuing authority and the Board possess discretionary authority to consider other conduct that establishes cause for a finding that the applicant is not a suitable person to carry firearms. *Crane v. Chairman, Board of Firearms Permit Examiners*, Unreported Decision, (Conn. Super., Aug. 25, 1999) (No. CV 980068024S), (Dyer, J).

It therefore follows logically that the issuing authority may require an applicant to provide additional information concerning eligibility or suitability once an issue arises during the course of the investigation carried out in furtherance of the applicant's initial application.

The Superior Court addressed this issue in *Basilicato v. State*, 46 Conn.Supp. 550, 760 A.2d 155 (1999), *aff'd per curiam* 60 Conn. App. 503, 760 A.2d 140 (2000). In that case, the applicant applied to the chief of police of the town of West Haven pursuant to General Statutes § 29-28 for a pistol permit. In that application he made mention of the fact that he had been treated for mental or emotional problems and that he had lost time from work resulting from stress, and that he had been disabled from working since October 1, 1991, because of the condition. On May 30, 1996, the officer conducting the investigation of the applicant's suitability requested that the applicant obtain from his stress management counselor a letter indicating that she saw "no problems with the possessing or carrying of a handgun." The plaintiff declined to comply with that request, and the chief of police declined to issue the permit. On appeal to the Board, we determined that the police chief appropriately withheld the permit on the basis of the applicant's failure to furnish him with the requested information. The board found that the consideration of an applicant's mental and emotional stability is relevant to determine suitability to possess a pistol permit. Our decision was affirmed on appeal to the Superior Court. The Appellate Court affirmed the judgment of the trial court.

Common sense and the interest of public safety affirm that the issuing authority is not confined to issues of mental health in requesting additional information to resolve specific issues uncovered by the investigation or revealed in the application. This Board has consistently refused to issue permits when appellants have submitted incomplete or inaccurate applications because we ourselves rely on the issuing authority's investigation in carrying out our statutory mandate. It is certainly appropriate for issuing authorities to investigate issues concerning an applicant's mental health status, criminal history, pattern of domestic violence, drug or alcohol abuse, extremist conduct, reckless, negligent, or irresponsible conduct, poor judgment, dishonesty, bad character, association with known criminals or disruptive persons, or any other issue which tends to undermine confidence in an applicant's potential for safely carrying firearms outside the confines of his home or business.

Once such issues have been uncovered, either on the face of the application or statutorily required submissions or in the course of the issuing authority's investigation, the issuing authority may require the applicant to submit such information, documents, or other material sufficient to resolve the question of eligibility or suitability.

The statute does not prescribe the form or the time frame in which such additional submissions must be made and the Board declines to do so. Most issues will certainly be resolved informally. We can foresee issues arising at the moment the application is filed based on an applicant's answers to the questions on the required form. The issuing authority may not refuse the application at this point, but may immediately request more specific information at that time. We decline to exalt form over substance in a process which should be flexible enough to accommodate both the public and private interests involved.

When such issues arise and the issuing authority seeks further specific information, failure to provide such information may, by itself, be sufficient to deem an applicant unsuitable; however such a determination must be made on a case by case basis from all of the facts and circumstances of the case.

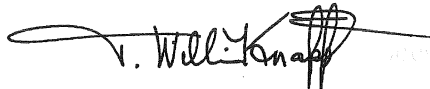
IV. CONCLUSION

Unanimously adopted by the Board this 14th day of January, 2010.

BY THE BOARD



JOSEPH T. CORRADINO
Chairman



T. WILLIAM KNAPP
Secretary of the Board

ARTHUR C. CARR
M. PETER KUCK
KENNETH V. TRAMADEO
KYLE E. OVERTURF
Members of the Board