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CALIFORNIA RIFLE & PISTOL ASSOCIATION

CRPA LAW ENFORCEMENT COMMITTEE

INFORMATION BULLETIN

Re: Issuance of CCWs to Dual State Residents

Date: April 16, 2019

I. QUESTION PRESENTED

The California Penal Code requires that CCW applicants either "be a resident of the county or a city within the county" in which they apply or have a "principal place of employment or business" there where they spend "a substantial period of time."[1]

Several CCW issuing authorities have asked about the legality of issuing a CCW to individuals who are "residents" of both California and another state ("dual residents"). This memorandum addresses a CCW licensing authority's discretion to determine whether a CCW applicant residing in both California and another state can meet the "resident" requirement of subdivision (a)(3) of Penal Code section 26150.

II. SHORT ANSWER

Issuing authorities have broad discretion in issuing CCWs. That discretion extends to determining whether an applicant is a California resident. More specifically, issuing authorities have the discretion to determine whether a dual resident (that is, an individual who qualifies as a resident of California, and as a resident of another state) can qualify as a "resident" of the issuing authority's jurisdiction for purposes of issuing a CCW; including even a person who is "domiciled" in the other state.

[1] Cal. Penal Code § 26150(a)(3).

III. ANALYSIS

A. Licensing Authorities Have Broad Discretion When Issuing CCW's

There is no express definition for the term "resident" as used in subdivision (a)(3) of Penal Code section 26150 concerning the qualifying criteria for a CCW. But courts have unanimously held that California grants "extremely broad discretion" to sheriffs and other issuing authorities in determining whether an applicant qualifies for a CCW.[2]

B. Determining California "Residency"

Both California courts and the California Legislature have long distinguished between "residence" and "domicile," although the distinction is not always drawn the same way. The California Supreme Court has held that the term "reside" (as used in California Code of Civil Procedure Section 395) "is not necessarily a synonym for 'domicile' " and that "its meaning in a particular statute is subject to varying constructions."[3] For instance, in *Smith v. Smith*, 45 Cal. 2d 235 (1955), the California Supreme Court interpreted the term "resident" in regards to a California statute concerning a court's power to enter judgment against a California "resident" who was served with process while in another state. The defendant, following personal service upon him in New York, argued that the statute's use of the term "resident" did not mean "domicile" but meant "residence in fact." *Id.* at 239. As the Court noted, domicile and residency are not the same. *Id.* But, "statutes do not always make this distinction in the employment of those words." *Id*. And they "frequently use 'residence' and 'resident' in the legal meaning of 'domicile' and 'domiciliary,' and at other times in the meaning of factual residence or in still other shades of meaning." *Id*. Ultimately, the Court held that the term "[r]esidence, as used in the law, is a most elusive and indefinite term," and its meaning in any specific statute depends on the purpose of the act. *Id*. at 240. What is clear, however, is that an individual can, under California law, be a dual resident of both California and another state simultaneously.

[2] *See Gifford v. City of Los Angeles*, 88 Cal. App. 4th 801, 805, 106 Cal. Rptr. 2d 164 (2001) (observing that "Section 12050 gives 'extremely broad discretion' to the sheriff concerning the issuance of concealed weapons licenses") (citation omitted); *Nichols v. Cnty. of Santa Clara*, 223 Cal. App. 3d 1236, 1241, 273 Cal. Rptr. 84 (1990) ("In light of this statute's delegation of such broad discretion to the sheriff, it is well established that an applicant for a license to carry a concealed firearm has no legitimate claim of entitlement to it under state law, and therefore has no 'property' interest to be protected by the due process clause of the Constitution.")

[3] *Burt v. Scarborough*, 56 Cal. 2d 817 at 821 (1961).

C. Federal Law Acknowledges "Dual Residency"

California is not alone in recognizing dual residency, because Federal law does as well — including in the context of firearms. Under the Gun Control Act ("GCA"), while people seeking to purchase a firearm must generally be a resident of the state where the purchase takes place,[4] the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") 4473 form (required with every firearm purchase) expressly contemplates (and thus allows) persons with two states of residence to purchase firearms in either state. It notes that:

> *[I]f the transferee/buyer is purchasing a firearm while staying at his/her weekend home in State X, he/she should list the address in State X in response to question 2.*[5]

ATF's website also states that for purposes of the GCA, "a person is a resident of a state in which he or she is present with the intention of making a home in that state." That would include members of the armed forces who maintain a home in one state and commute to a duty station in another. Such a member would have "two states of residence and may purchase a firearm in either."[6]

The GCA also allows a person to transport a legally obtained firearm from one state of residence to another, so long as the firearm is not prohibited under that state's law, and the purpose of the transport is not to circumvent the GCA. A Seventh Circuit panel reviewed the legislative history of 18 U.S.C. § 922(a)(3) and concluded that a person with dual residences was not prohibited from transporting a firearm legally obtained in one state of residence to another state of residence.[7]

In sum, the GCA recognizes dual residency, meaning that an individual can be a resident of, and thus lawfully purchase firearms in, more than one state. Thus, under federal law, individuals need not have actual "domicile" in a state in which a firearm purchase is being made but need only be a "resident"—meaning they are "residents" of one state, and "domiciled" in a different state.

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[4] See 18 U.S.C. §§ 922(a)(3), 922(a)(5), 922(b)(3), 922(b)(5).

[5] *Id*.

[6] *See What Constitutes Residency in a State*, Bureau of Alcohol, Tobacco, Firearms and Explosives, https://www.atf.gov/firearms/qa/what-constitutes-residency-state.(last visited March 27, 2019)

[7] *United States v. One Heckler-Koch Rifle*, 629 F.2d 1250, 1256-57 (7th Cir. 1980).

D. *Raulinaitis v. Ventura County Sheriff* – "Residence" May -- But Does Not Have to -- Mean "Domicile" for Dual Residents in the Context of a California CCW

Raulinaitis v. Ventura County Sheriffs' Department No. CV 13-2605-MAN, 2013 WL 12203237 (C.D. Cal. Dec. 31, 2013) is the only case to expressly analyze and rule on the definition of "resident" under Penal Code section 26150. In *Raulinaitis*, a plaintiff challenged the Ventura County Sheriff's denial of his CCW application for lack of residency. The plaintiff applicant owned a house in Ventura County, claiming it to be "one of his permanent homes and a place to which he always intends to return and frequently does return."[8] But in addition to that house, the plaintiff also owned houses in two other California counties where he "frequently travels for business and pleasure."[9] The plaintiff's business office was in Los Angeles County, and his wife was living in their Los Angeles County home.[10]

The Ventura County Sheriff considered the term "resident" in Penal Code Section 26150 to "mean a status akin to 'domicile' under California law" and denied the plaintiff's CCW application on the basis that he did not have a domicile in Ventura.[11]

The *Raulinaitis* court's decision explained that because the term "resident" was not defined by the statute, it was necessary to consider the purpose of the residency requirement in order to determine its meaning.[12] The court noted that the residency criterion was first enacted in 1969,[13] and explained that its purpose was to "stop 'shopping' for permits throughout the state."[14] The court then held that "although another fact-finder might conclude otherwise," the conclusion of the Ventura County Sheriff that the plaintiff had not satisfied the residency requirement was "within the realm of reason and that the plaintiff failed to show that it was not."[15]

In so holding, however, the *Raulinaitis* court reiterated that it is not unreasonable for a sheriff to "conclude that the term 'resident,' as used in Section 26150, was subject to [a different]

[8] Order Den. Mot. Summ. J., *Id*., Dkt. 28 at 5-6.

[9] *Id*.

[10] *Id*. at 7.

[11] *Id*. at 17.

[12] *Raulinaitis* at *6 (citing *Smith v. Smith*, 45 Cal. 2d 235, 240 (1955)).

[13] *See* Senate Bill 1272, sponsored by the California Attorney General.

[14] *Raulinaitis* at *6.

[15] *Id*. at *11.

interpretation."[16] This suggests that while issuing authorities *may* define the term "residence" as used in the CCW statutes to mean "domicile," they are not required to.

Given the purpose behind the law, it is completely reasonable to interpret the term "resident" in Penal Code section 26150 as not necessarily meaning "domicile," and to include an individual who is a "resident" of the issuing authority's jurisdiction, but whose "domicile" is in another state.

The residency requirement was intended to prevent forum shopping, i.e., people going to an issuing authority in another jurisdiction which is more likely to issue a CCW. In *Raulinaitis*, the court cites a memorandum written by the Attorney General in 1969 to Governor Reagan stating:

> *The purpose of this bill is to curtail the present practice of "shopping" for concealed weapons permits throughout the state. It is now common practice for citizens to obtain these permits from law enforcement agencies in jurisdictions hundreds of miles from their residence. Senate Bill 1272 would require that an applicant obtain his permit from the sheriff or a chief of police within the county of his residence. It would also help to insure that permits are not granted improvidently. Law enforcement agencies near the residence of the applicant are obviously in a much better position to evaluate the background, reputation, and need for a weapon, of an applicant. Permits to carry concealed weapons should, of course, be restricted to those who are stable and have demonstrated a genuine need to carry a concealed weapon. This bill will help to insure that the issuance of these permits is confined to this class of persons.*[17]

While the *Raulinaitis* court held that it was reasonable for a sheriff to conclude "resident" is akin to "domicile," the court's analysis was confined to the factual situation where the applicant's residences were located in different counties *within California*. It does not contemplate the dual resident scenario discussion here. In any event, the ruling does not preclude another sheriff from deciding that it does not mean "domicile."

Denying individuals a CCW who simply maintain both a residence outside California, and a sole or primary *California* residence in the county or city where they apply (even if that residence is not their domicile), does not advance the purpose of the residency requirement—to restrict forum shopping. A person who legitimately "resides" in a single California county—spends significant time on the property they own or rent, or operate a business there, and has no similar connection

[16] *Id.* at 9.
[17] *Raulinaitis* 2013 WL 12203237, at *7.

with another California county—is not forum shopping by using different California residences to obtain a CCW merely because his primary residence is in another state.

In other words, the residency requirement of Penal Code Section 26150 was not aimed at people who are residents of another state and also residents of the single California county where they apply for a CCW. "Resident" can, therefore, be interpreted by issuing authorities to include such people.

Even if an issuing authority adopts the "domicile" definition, that should not exclude an individual who is a resident of both California and another state (a dual resident), as long as that person's domicile is in the issuing authority's jurisdiction. Such a person would be a state resident for tax purposes.[18] Where that is the case, a CCW holder with dual residency will need to ensure the residence in the issuing authority's jurisdiction—not the out-of-state one—remains the person's domicile to avoid triggering the notification requirement and automatic expiration of the CCW under section 26210.

1. Issuing Authority Policies About Changes of Address or Change of Residency

Should a CCW holder's place of residence change, the licensee must notify the issuing authority within 10 days.[19] The issuing authority will then amend the license to reflect the new address and issue a new license.[20] A CCW cannot be revoked just because the licensee changes residence to another county, provided the licensee has not violated a condition or restriction of the license or otherwise become prohibited from owning or possessing firearms. But if a CCW holder's place of residence "was the basis for issuance of a license," the CCW "shall expire 90 days after the licensee moves from the county of issuance."[21]

These statutory provisions do not necessarily affect CCW holders with dual residences. Simply having dual-residency does not appear to trigger the notification or automatic revocation of a CCW, as long as a dual resident maintains at least one residency in the issuing authority's jurisdiction.[22] A person does not "change" his "place of residence" when leaving one residence to

[18] Cal. Rev. & Tax. Code § 17014.

[19] Cal. Penal Code § 26210(b).

[20] Cal. Penal Code § 26210(a).

[21] Cal. Penal Code § 26210(d).

[22] This is true even if the person claims residency in another state for other purposes (such as when purchasing a firearm as discussed above) because the CCW holder is still maintaining a

which he intends on returning, to stay at another residence *temporarily*. He remains a dual resident of both places simultaneously. The person certainly does not "move from the county of issuance" when doing so. Thus, there would be no need for such a person to notify the CCW issuing authority of such a temporary sojourn, under subdivision (b) of Penal Code section 26210, or for the CCW to "expire 90 days after" that sojourn begins, under subdivision (d) of Penal Code section 26210.

2. Some Sheriffs Have Already Interpreted Penal Code Section 26150 to Include Dual State Residents

The seminal California CCW case, *Peruta v. County of San Diego*, 781 F.3d 1106 (9th Cir. 2015), serves as an example of a sheriff interpreting the "resident" requirement of Penal Code Section 26150 to allow dual residents to qualify for a CCW. When Mr. Peruta filed his case, he alleged that he was denied a CCW permit because he was not "domiciled" in California. *Peruta*, 758 F. Supp. 2d at 1109. Mr. Peruta "maintains several residences across the United States," including a residence in San Diego, where he "maintains a permanent mailing address" and a motor home in which he would stay for "extended periods of time.[23] In response, the San Diego Sheriff insisted that "the residency requirement was not a factor in the denial" of Mr. Peruta's CCW.[24]

To the contrary, the San Diego Sheriff expressly "defines residence . . . to include any person who maintains a permanent residence in the County **or spends more than six months of the taxable year within the County if the individual claims dual residency but also allows 'part-time residents' to apply on a 'case-by-case basis.'** "[25] Tellingly, neither the courts nor the Attorney General objected to San Diego County's position that Mr. Peruta—a part time California resident—satisfies Section 26150's residency requirement. This is because such an interpretation of "resident" is reasonable.

E. Conclusion

The State has expressed an interest in preventing California residents from "shopping" between counties for CCW permits. This interest, however, is in no way served by interpreting residency to require individuals to maintain only residences (or "domiciles") in California and no

second residence in the county of issuance.

[23] Order Den. Mot. Dismiss, *Id*., Dkt. 7 at 1.

[24] *Peruta*, 758 F. Supp. 2d at 1109. The District Court also noted that all the plaintiffs, including Mr. Peruta, are not disqualified under California law from purchasing or possessing firearms, *Id*., which includes a California residency requirement. *See* Cal. Penal Code § 26845 (requiring proof of California residence for delivery of handgun).

[25] *Peruta* at 1110 (emphasis added)

other state. Any other interpretation will restrict only those who reside exclusively in one County in California. It is thus lawful to find an applicant who legally resides in a county to be a "resident" under Penal Code Section 26150, even if the applicant has a domicile outside California. The operative question is whether the applicant is a resident of the county in which she is applying and not a resident of another one *in California*.

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