



DIVISION OF LAW ENFORCEMENT
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COPY

January 29, 2008

Mr. Eugene Hoffman, Jr.
751 Sylvan Way
Emerald Hills, CA 94062

Re: Dangerous Weapons License/Permit(s) Application - Notice of Final Decision

Dear Mr. Hoffman:

This is in response to a letter dated December 27, 2007 from your attorney, Jason Davis, requesting that the denial of your application for a Dangerous Weapons License/Permit be reviewed by an Administrative Hearing Officer, as provided in Department of Justice (DOJ) regulations. (Cal. Code Regs., tit. 11, § 4146, subd. (b).) Your request for reconsideration was approved by the Director of the Division of Law Enforcement. Therefore, an Administrative Hearing Officer (who did not participate in the original decision to deny your application) was appointed to review this matter. (See Cal. Code Regs., tit. 11, § 4127, subd. (c).)

The Administrative Hearing Officer reviewed your original application, the denial of your application by the Bureau of Firearms, your attorney's written request for reconsideration of the denial of your application, and the statutes and regulations that govern the issuance of licenses/permits to possess dangerous weapons. The Administrative Hearing Officer determined that the Bureau of Firearms was compelled to deny your application because of your failure to establish good cause for a Dangerous Weapons License/Permit. (Cal. Code Regs., tit. 11, § 4146, subd. (a)(1).) This letter serves as your notice of the final decision of DOJ to deny your application for a license/permit to collect and possess dangerous weapons. (Cal. Code Regs., tit. 11, § 4146, subd. (b).)

Penal Code¹ Section 12286 provides that "[a]ny person who . . . wishes to acquire an assault weapon after January 1, 1990, or a .50 BMG rifle after January 1, 2005, shall first obtain a permit from the Department of Justice *in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.* [Emphasis added.]" The Department of Justice may issue permits for machineguns "upon a satisfactory showing that good cause exists for the issuance thereof to the applicant for the permit." (§ 12230.) You contend that because Section

¹ All statutory references are to the California Penal Code, unless otherwise indicated.

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12286 itself does not state that good cause is required to obtain an assault weapons permit, no good cause is required for such a permit.

In 1989, the legislature drafted and approved Section 12286, which authorized DOJ to issue assault weapon permits “in the same manner as specified in [Section 12230]” at that time, Section 12230 already included language stating that the good cause was required to obtain a machinegun permit. The legislature is presumed to have been aware of that language. By referring to Section 12230, the legislature clearly intended to incorporate the good cause requirement into Section 12286.

In 1990, DOJ adopted regulations which require “good cause” for assault weapon permits. Although the legislature has amended Section 12286 since then, it has never acted to remove or change the good cause requirement. Just as the legislature is presumed to be aware of existing law, it is also presumed to be aware of an agency’s interpretation of the law. (*Gunther v. Lin* (2006) 144 Cal.App.4th 223, 236.) Thus, the legislature presumably knows about and agrees with the “good cause” requirement for assault weapons permits in DOJ’s regulations.

DOJ regulations provide that “[n]o permit or license shall be issued to any applicant who fails to establish good cause for such permit or license and that such permit or license would not endanger the public safety.” (Cal. Code Regs., tit. 11, § 4128, subd. (b).) Furthermore, the regulations go on to define what constitutes “good cause” for issuance of a Dangerous Weapons License/Permit. In fact, the regulations specify that possession for the purpose of maintaining a collection does not establish good cause and “shall not be allowed for short-barreled shotguns, short-barreled rifles, machineguns or assault weapons.” (Cal. Code Regs., tit. 11, § 4128, subd. (c)(4).)

Your application states that “I wish to acquire and keep a small number of Assault Weapons for collection, marksmanship, and hunting.” DOJ regulations specify that such a purpose is not good cause for an assault weapons permit. (Cal. Code Regs., tit. 11, § 4128, subd. (c)(4).) Because the Bureau of Firearms is bound to follow its regulations, it lacks administrative

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discretion to issue a Dangerous Weapons License/Permit for the purpose stated in your application. Therefore, it is the final decision of the Bureau of Firearms to deny your application.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

cc: George Anderson, Director, Division of Law Enforcement
Wilfredo Cid, Chief, Bureau of Firearms
Steve Buford, Program Manager, Bureau of Firearms
Jason Davis, Attorney at Law