

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

*Department of Criminal Justice Information Services*

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May 11, 2018

Attorney Roy Chabra  
Division Counsel  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
10 Causeway Street  
Boston, MA 02222

Dear Attorney Chabra:

I would like to thank you and Attorney Rebecca Kurowski for meeting with myself and staff from the Department of Criminal Justice Information Services (DCJIS) and the Executive Office of Public Safety and Security on April 20, 2018 to discuss the restrictions on possession of firearms and ammunition based on federal law. During the meeting, we discussed the role of the Massachusetts Firearms License Review Board (FLRB) and the interaction of the board's mandate with federal law, as well as the provision in M.G.L. c. 140, § 129B allowing certain individuals who are ineligible to petition the FLRB to obtain a firearms identification (FID) card.

The FLRB is authorized under M.G.L. c. 140, § 130B, to restore the rights or ability to possess firearms to individuals who are prohibited from possessing firearms in Massachusetts due to a conviction for certain misdemeanor offenses punishable by more than two years. Given the limited scope of convictions for which an individual may petition the FLRB for relief, it appears that every petitioner is, unless and until the FLRB acts, federally prohibited from possessing firearms pursuant to 18 U.S.C. § 922(g). Specifically, section 922(g)(1) states that "it is unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to possess in commerce, any firearms or ammunition." 18 U.S.C. § 921(a)(20) further defines a crime punishable by imprisonment for a term exceeding one year to not include any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less, making misdemeanors that are punishable by a term of imprisonment of more than two years a disqualifying conviction under federal law.

18 U.S.C. § 921(a)(20) further provides that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." As we discussed, the meaning of this statute has been the subject of a number of court cases since the mid-1990s.

You made clear your position that in view of the United States Supreme Court's decision in Logan v. United States, 552 U.S. 23 (2007), decisions of the FLRB that purport to restore civil rights that were never lost are ineffective for purposes of determining whether a person is prohibited from possessing a firearm under 18 U.S.C. § 922(g). We have carefully reviewed the statute, the relevant case

law and the points that you raised in our meeting and are persuaded that your view of federal law is correct.

Since every eligible petitioner before the FLRB is federally prohibited from possessing a firearm, the conclusion that a favorable decision from the FLRB has no impact on the person's federal status effectively makes the FLRB process ineffective. Putting aside the issue of potential federal prosecution, pursuant to M.G.L. c. 140, §§ 129B and 131, licenses to carry (LTCs) and FID cards may not be issued to persons whose possession of a firearm, rifle or shotgun, as applicable, would violate federal law. Accordingly, in view of our shared legal conclusion, I will advise the Firearms Records Bureau of DCJIS not to issue LTCs or FID cards to individuals who have received favorable determinations from the FLRB because those individuals remain federally prohibited from possessing firearms.

We have also carefully considered the point you have raised concerning the following provision of M.G.L. c. 140, § 129B:


provided, however, that, except for the commission of a felony, a misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding such application, then the applicant's right or ability to possess a non-large capacity rifle or shotgun shall be deemed restored in the commonwealth with respect to such conviction or adjudication and that conviction or adjudication shall not disqualify the applicant for a firearm identification card

You advised that under the same Supreme Court precedent, this "restoration of rights" provision is ineffective in altering a person's status as a person federally prohibited from possessing a firearm. Again, we are persuaded your interpretation of federal law is correct. As such, I will similarly advise the Firearms Records Bureau not to issue FID cards to individuals to whom this statutory provision applies because those individuals also remain federally prohibited from possessing all firearms, including rifles and shotguns.

The FLRB is scheduled to meet on May 21, 2018, at which time I plan to inform them of the results of our conversation. Please contact me at your earliest opportunity if any of the information summarized herein is inaccurate.

Thank you again for your time. Please feel free to contact me at [agapi.koulouris@mass.gov](mailto:agapi.koulouris@mass.gov) or by phone at 617-660-4654.

Sincerely,



Agapi Koulouris  
General Counsel