

September 13, 2016

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

SYLLABUS:

2016-032

1. A “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3), means a body of persons, nationwide in scope, formed for the purpose of being in favor of, or speaking or writing in support of, gun use, ownership, or education.
2. A county sheriff may use the means he reasonably believes are necessary to determine whether an organization is a “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3).



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OPINION NO. 2016-032

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

Dear Prosecutor Walsh:

We have received your request for an opinion regarding the application and licensure process for a concealed handgun license under R.C. 2923.125. “‘Concealed handgun license’ or ‘license to carry a concealed handgun’ means ... a license or temporary emergency license to carry a concealed handgun issued under [R.C. 2923.125] or [R.C. 2923.1213].”¹ R.C. 2923.11(N)(1). “‘Handgun’ means ... [a]ny firearm that has a short stock and is designed to be held and fired by the use of a single hand” or “[a]ny combination of parts from which” such a firearm “can be assembled.” R.C. 2923.11(C)(1)-(2); *see also* R.C. 2923.11(B)(1) (“‘[f]irearm’ means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant” including “an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable”).

Ohio law prohibits a person from knowingly carrying a concealed handgun unless the person has a concealed handgun license and is not knowingly in a place where carrying a concealed handgun is proscribed by statute.² *See* R.C. 2923.12(A)(2) (prohibiting a person from carrying a concealed handgun); R.C. 2923.12(C)(2) (“[d]ivision (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid concealed handgun license, unless the person knowingly is in a place described in [R.C. 2923.126(B)]”); R.C. 2923.126(B) (listing the places into which a person with a valid concealed handgun license may not carry a concealed handgun); *see also* 2004 Op. Att’y Gen.

¹ “‘Concealed handgun license’ or ‘license to carry a concealed handgun’ also means “a license to carry a concealed handgun issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69].” R.C. 2923.11(N)(1).

² Law enforcement officers need not obtain a concealed handgun license to carry a concealed handgun if properly authorized to carry a concealed weapon and acting within the scope of their duties. R.C. 2923.12(C)(1)(a); *see also* R.C. 2923.12(C)(1) (identifying other persons to which R.C. 2923.12 does not apply).

No. 2004-028, at 2-249. R.C. 2923.125 sets forth the procedure by which a person may apply for a concealed handgun license. An Ohio resident who wishes to apply for a concealed handgun license is required to submit to the appropriate county sheriff³ all of the following information or materials: a completed application; a color photograph; a license fee;⁴ at least one competency certification that shows the applicant completed training or otherwise possesses the experience necessary to competently handle a handgun;⁵ a certification that the applicant has read the pamphlet prepared by the Ohio Peace Officer Training Commission pursuant to R.C. 109.731; a set of fingerprints; and, if the applicant is not a United States citizen, the name of the applicant's country of citizenship and alien registration number. R.C. 2923.125(B)(1)-(6). An applicant who resides in a state other than Ohio shall submit the foregoing materials along with proof that the applicant's place of employment is located in the state of Ohio. R.C. 2923.125(B)(1)-(7).

Your first question pertains to the meaning of "national gun advocacy organization" as that term is used in R.C. 2923.125(B)(3). R.C. 2923.125(B)(3) requires an applicant to submit with an application for a concealed handgun license, "[o]ne or more ... competency certifications" that reflect that the applicant has completed certain firearms courses "within the three years immediately preceding the application." Training courses for which a certification of completion satisfies the requirement in R.C. 2923.125(B)(3) include, among others, "a firearms safety, training, or requalification ... course, class, or program that was offered by or under the auspices of a *national gun advocacy organization*," R.C. 2923.125(B)(3)(a) (emphasis added), "a

³ An Ohio resident applying for a concealed handgun license shall submit a completed application form and the required supporting materials to "the sheriff of the county in which the applicant resides or to the sheriff of any county adjacent to the county in which the applicant resides." R.C. 2923.125(B). A non-Ohio resident shall submit a completed application form and the required supporting materials "to the sheriff of the county in which the applicant is employed or to the sheriff of any county adjacent to the county in which the applicant is employed." *Id.*

⁴ "A sheriff shall waive ... the license fee ... in connection with an initial or renewal application for a license that is submitted by an applicant who is a retired peace officer, a retired person described in [R.C. 109.77(B)(1)(b)], or a retired federal law enforcement officer who ... was authorized under federal law to carry a firearm in the course of duty" prior to the federal law enforcement's retirement. R.C. 2923.125(B)(1)(c). A sheriff shall not waive the license fee if the foregoing retired officers "retired as the result of a mental disability." *Id.*

⁵ An applicant may complete a training course described in R.C. 2923.125(B)(3)(a), (b), (c), or (e), or may submit a document that shows the applicant is a current or former member of the United States military, retired trooper of the State Highway Patrol, retired peace officer, or retired federal law enforcement officer and that the applicant, through his current or former military experience or employment, "acquired experience with handling handguns or other firearms, and the experience so acquired was equivalent to training that the applicant could have acquired in a course, class, or program" described in R.C. 2923.125(B)(3)(a), (b), or (c). R.C. 2923.125(B)(3)(d)(i)-(ii).

firearms safety, training, or requalification ... course, class, or program that ... utilized qualified instructors who were certified by a *national gun advocacy organization*,” R.C. 2923.125(B)(3)(b)(ii) (emphasis added), and “a firearms ... course, class, or program that is not otherwise described in division (B)(3)(a), (b), (c), or (d) ... that was conducted by an instructor who was certified by ... a *national gun advocacy organization*.” R.C. 2923.125(B)(3)(e) (emphasis added); *see also* R.C. 2923.125(B)(3)(c)-(d), (f).

Neither the term “national gun advocacy organization,” nor any of its four component terms are defined for the purpose of R.C. 2923.125 or more generally for purposes of the statutes that govern concealed handgun licenses. When not defined by statute, it is appropriate to assign a term its common meaning. *See* R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). *Black’s Law Dictionary* 1045 (7th ed. 1999) defines “national” to mean “[n]ationwide in scope.” *Webster’s New World College Dictionary* 21 (5th ed. 2014) defines the term “advocacy” to mean “the act of advocating, or speaking or writing in support (of something).” *Webster’s New World College Dictionary* 21 defines “advocating” to mean “to speak or write in support of; be in favor of.” *Black’s Law Dictionary* 1126 defines the term “organization” to mean “[a] body of persons ... formed for a common purpose.” Therefore, a national advocacy organization means a body of persons, nationwide in scope, formed for the purpose of being in favor of, or speaking or writing in support of, something.⁶

A national *gun* advocacy organization is an organization that is formed for the purpose of being in favor of, or speaking or writing in support of, gun use, ownership, or education.⁷ The National Rifle Association (“NRA”), for example, a well-known national gun advocacy organization, focuses both on political and educational advocacy. The NRA exists, among other things, for the purpose of making changes to laws that pertain to gun use and ownership and for the purpose of providing training and education to those who use or may use guns. *See* National Rifle Association Website, *About Us*, available at <https://home.nra.org/about-the-nra/> (last visited Sep. 8, 2016) (detailing the NRA’s long history of efforts to educate and train gun users, both civilian and non-civilian, and to lobby for changes in legislation that affect gun use and ownership). Accordingly, we conclude that “national gun advocacy organization,” as that term is used in R.C. 2923.125, means a body of persons, nationwide in scope, formed for the purpose of being in favor of, or speaking or writing in support of, gun use, ownership, or education.

⁶ *Webster’s New World College Dictionary* 646 (5th ed. 2014) defines “gun” to mean “a weapon consisting of a metal tube from which a projectile is discharged by the force of an explosive.”

⁷ A national gun advocacy organization is not synonymous with a gun *control* advocacy organization. A gun control advocacy organization is formed for the purpose of voicing support for legislation that imposes restrictions upon gun use or gun ownership. *See generally* Richard M. Aborn, Essay, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 *Fordham Urb. L.J.* 417 (1995).

Your second question asks how a county sheriff, in reviewing an application for a concealed handgun license, shall determine whether a particular organization is a “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3). R.C. 2923.125(C) and R.C. 311.41 require a county sheriff to “conduct or cause to be conducted” a criminal background check and incompetency records check upon receipt of an application for a concealed handgun license, the necessary supporting documentation, and, if not waived, a license fee. R.C. 2923.125(C); *see also* R.C. 311.41(A)(1) (“[u]pon receipt of an application for a concealed handgun license ... the sheriff shall conduct a criminal records check and an incompetency check of the applicant to determine whether the applicant fails to meet the criteria described in [R.C. 2923.125(D)(1)]”). A sheriff shall issue the applicant a concealed handgun license within forty-five days after the receipt of such materials provided the criteria set forth in R.C. 2923.125(D)(1)(a) through (s) are satisfied.⁸ *See* R.C. R.C. 2923.125(D)(1).

The duties of a county sheriff to conduct background checks and issue concealed handgun licenses are invoked when the sheriff receives a completed application form, the required license fee, and the documentation required by R.C. 2923.125(B)(1)-(7). To determine whether those duties have been triggered, it is necessary for a county sheriff to evaluate the submitted materials and determine whether the materials satisfy the requirements in R.C. 2923.125(B). *See generally* 2010 Op. Att’y Gen. No. 2010-013, at 2-91 (as a creature of statute, a county sheriff has only those powers expressly provided by statute or necessarily implied therefrom). In the course of evaluating whether an applicant has submitted a qualified competency certification pursuant to R.C. 2923.125(B)(3), a county sheriff may need to ascertain whether an organization is a “national gun advocacy organization” as that term is used in R.C. 2923.125(B)(3)(a), R.C. 2923.125(B)(3)(b)(ii), and R.C. 2923.125(B)(3)(e).

R.C. 2923.125 does not specify the way in which a county sheriff shall verify the documentation submitted with an application for a concealed handgun license, or more specifically, how a county sheriff shall verify that an organization offering firearms courses or certifying instructors utilized in such courses is a national gun advocacy organization within the meaning of R.C. 2923.125(B)(3). “Absent a provision of law specifying how a particular duty is to be carried out, it is assumed that it may be performed in any reasonable manner.” 1983 Op. Att’y Gen. No. 83-057, at 2-235; *see also* 1928 Op. Att’y Gen. No. 2955, vol. IV, p. 2736, at 2740 (“[t]he delegation of a power to accomplish a certain end, necessarily carries with it the power to do all things necessary to consummate that purpose”). Thus, a county sheriff may use any reasonable means necessary to determine whether an organization is a “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3).

⁸ R.C. 2923.125(D)(1)(a) through (s) set forth conditions that shall be satisfied before a county sheriff may issue to an applicant a concealed handgun license. Such requirements include that “[t]he applicant is at least twenty-one years of age,” R.C. 2923.125(D)(1)(b), “[t]he applicant is not a fugitive from justice,” R.C. 2923.125(D)(1)(c), and “[t]he applicant is not ... subject to a ... protection order.” R.C. 2923.125(D)(1)(j).

A county sheriff may consider all appropriate and available evidence in determining whether an organization is a national gun advocacy organization. Such evidence may include, but is not limited to, statements of instructors and students, the founding documents of the organization, the organization's legal and operational structure, training materials, and the scope and nature of the organization's activities. A county sheriff may obtain this evidence from a variety of sources, including, but not limited to, the organization's website, media reports, and state agencies that maintain public records of the organization's legal filings.

A county sheriff need not expend an inordinate amount of time or resources in gathering sufficient evidence to determine whether an organization is a "national gun advocacy organization," as that term is used in R.C. 2923.125(B)(3). Suppose, for example, that an applicant submits a certification for the completion of firearms training offered by the NRA. In this circumstance, even if the NRA were not a well-known national gun advocacy organization, a county sheriff would be able, without undue effort or expense, to gather adequate information to support a determination that the NRA is a national gun advocacy organization within the meaning of R.C. 2923.125(B)(3). The NRA's website states that the NRA was founded in the state of New York. See National Rifle Association Website, *About Us*, available at <https://home.nra.org/about-the-nra/> (last visited Sep. 8, 2016). A search of the New York Department of State's website confirms that the NRA is a not-for-profit corporation organized under the laws of that state. See NYS Department of State, Division of Corporations, *Entity Information*, available at https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=11997&p_corpid=11142&p_entity_name=%6E%61%74%69%6F%6E%61%6C%20%72%69%66%6C%65%20%61%73%73%6F%63%69%61%74%69%6F%6E&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0 (last visited, Sep. 8, 2016). A not-for-profit corporation is an "organization" as that word is used in the broader term, "national gun advocacy organization."

The NRA describes itself as "*America's* foremost defender of Second Amendment rights," and uses the word "national" to describe its organization. See National Rifle Association Website, *About Us*, available at <https://home.nra.org/about-the-nra/> (last visited Sep. 8, 2016) (emphasis added). The words "America" and "national" indicate that the NRA's operations are "nationwide in scope." On its website, the NRA asserts that it supports the rights of gun ownership, possession, or use at a federal level by communicating to members of the United States Congress. See *id.* This information also is verifiable through other independent sources. See, e.g., Eric Lichtblau, *N.R.A. Victories in Congress Grow with Chief Lobbyist's Role*, *The New York Times*, available at http://www.nytimes.com/2016/01/29/us/politics/nra-victories-in-congress-grow-with-chief-lobbyists-role.html?_r=0 (last visited Sep. 8, 2016). The NRA's lobbying efforts further support the notion that the NRA's operations are nationwide in scope, as those efforts are aimed at influencing, among other things, the enactment of federal legislation. This information also demonstrates that the NRA is an "advocacy" organization, that is, an organization that speaks and writes to members of United States Congress in support of gun use or ownership. Based upon the foregoing information, a county sheriff reasonably may conclude that the NRA is a "national gun advocacy organization," as that term is used in R.C. 2923.125(B)(3).

A county sheriff should use the foregoing information gathering techniques in determining whether an organization is a “national gun advocacy organization.” An organization’s website and self-description may not, in every case, be conclusive or dispositive of whether an organization is a national gun advocacy organization. A county sheriff may consult all available sources of information about an organization in gathering evidence to make such a determination.

Accordingly, we conclude that a county sheriff may use the means he reasonably believes are necessary to determine whether an organization is a “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3). *See generally* 1983 Op. Att’y Gen. No. 83-057, at 2-235 (“[a]bsent a provision of law specifying how a particular duty is to be carried out, it is assumed that it may be performed in any reasonable manner”).

Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. A “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3), means a body of persons, nationwide in scope, formed for the purpose of being in favor of, or speaking or writing in support of, gun use, ownership, or education.
2. A county sheriff may use the means he reasonably believes are necessary to determine whether an organization is a “national gun advocacy organization,” as that term is used in R.C. 2923.125(B)(3).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General