**Note from the Attorney General's Office:**

2004 Op. Att'y Gen. No. 2004-038 was overruled due to legislative amendment by 2017 Op. Att'y Gen. No. 2017-045.

**OPINION NO. 2004-038**

**Syllabus:**

A county sheriff may not issue a license to carry a concealed handgun under R.C. 2923.125 to a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) even though a court has entered an order under R.C. 2953.32 sealing the official records pertaining to the conviction or guilty plea.

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**To: Victor V. Vigluicci, Portage County Prosecuting Attorney, Ravenna, Ohio**
**By: Jim Petro, Attorney General, October 25, 2004**

You have requested an opinion whether a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) may be issued a license to carry a concealed handgun under R.C. 2923.125 when a court has entered an order under R.C. 2953.32 sealing the official records pertaining to the conviction or guilty plea.[1] Our review of the statutory scheme governing the issuance of licenses to carry a concealed handgun discloses that a county sheriff may not issue the person a license to carry a concealed handgun.

Before addressing your specific question, we must first briefly examine R.C. 2923.125, which sets forth the procedure whereby a person may apply for and obtain a license to carry a concealed handgun. A person who wishes to obtain such a license is required to submit an application for the license to the sheriff of the county in which the person resides or to the sheriff of any county adjacent to the county in which the person resides.[2] R.C. 2923.125(B). In addition, the person is required to submit to the sheriff the

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[1]Pursuant to R.C. 2953.32, if certain specified conditions are met, a court may order a person's records in a case sealed. R.C. 2953.32(A)(1) authorizes, under certain prescribed circumstances, the sealing of the records of a person who has been convicted of an offense in this state or any other jurisdiction. R.C. 2953.32(A)(2) authorizes the sealing of the records of a person "who has been arrested for any misdemeanor offense and who has effected a bail forfeiture."

Records in a case that are ordered sealed pursuant to R.C. 2953.32 must be separated from a public office's other records and secured in a manner that limits access to the records only to persons authorized by statute. *See* R.C. 2953.32(D); 2003 Op. Att'y Gen. No. 2003-025 at 2-199 n.1; 1993 Op. Att'y Gen. No. 93-038; 1983 Op. Att'y Gen. No. 83-100. *See generally Black's Law Dictionary* 1351 (7th ed. 1999) ("**sealing records.** The act or practice of officially preventing access to particular ... records").

[2]A person who wishes to obtain a license to carry a concealed handgun may obtain an application form for the license from a county sheriff. R.C. 2923.125(A). The application form, which must conform substantially to the form prescribed in R.C. 2923.1210, is made available to county sheriffs by the Ohio Peace Officer Training Commission. R.C. 109.731(A)(1).

supporting documentation described in R.C. 2923.125(B)(2)-(5)[3] and, if not waived under R.C. 2923.125(B)(1), a nonrefundable license fee. R.C. 2923.125(B).

Upon receipt of a completed application form, supporting documentation, and license fee, if not waived, a county sheriff is required to "conduct or cause to be conducted the criminal records check and the incompetency records check described in [R.C. 311.41]."[4] R.C. 2923.125(C); *accord* R.C. 311.41(A)(1). As stated in R.C. 311.41(A)(1), the

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[3]R.C. 2923.125(B)(2)-(5) require a person applying for a license to carry a concealed handgun to submit to the county sheriff a color photograph of himself; a competency certification; a set of fingerprints; and a certification by the person that he has read the pamphlet prepared by the Ohio Peace Officer Training Commission pursuant to R.C. 109.731 that reviews the firearms laws of this state, instructs persons as to dispute resolution and the laws of this state related thereto, and provides information to persons regarding all aspects of the use of deadly force with a firearm.

[4]R.C. 311.41(A)(1) describes the criminal records check and the incompetency records check as follows:

> The sheriff shall conduct the criminal records check and the incompetency records check required by this division through use of an electronic fingerprint reading device or, if the sheriff does not possess and does not have ready access to the use of an electronic fingerprint reading device, by requesting the bureau of criminal identification and investigation to conduct the checks as described in this division. In order to conduct the criminal records check and the incompetency records check, the sheriff shall obtain the fingerprints of not more than four fingers of the applicant by using an electronic fingerprint reading device for the purpose of conducting the criminal records check and the incompetency records check or, if the sheriff does not possess and does not have ready access to the use of an electronic fingerprint reading device, shall obtain from the applicant a completed standard fingerprint impression sheet prescribed pursuant to [R.C. 109.572(C)(2)]. The fingerprints so obtained, along with the applicant's social security number, shall be used to conduct the criminal records check and the incompetency records check. If the sheriff does not use an electronic fingerprint reading device to obtain the fingerprints and conduct the records checks, the sheriff shall submit the completed standard fingerprint impression sheet of the applicant, along with the applicant's social security number, to the superintendent of the bureau of criminal identification and investigation and shall request the bureau to conduct the criminal records check and the incompetency records check of the applicant and, if necessary, shall request the superintendent of the bureau to obtain information from the federal bureau of investigation as part of the criminal records check for the applicant. If it is not possible to use an electronic fingerprint reading device to conduct an incompetency records check, the sheriff shall submit the completed standard fingerprint impression sheet of the applicant, along with the applicant's social security number, to the superintendent of the bureau of crimi-

purpose of these checks is "to determine whether [an] applicant fails to meet the criteria described in [R.C. 2923.125(D)(1)]."

R.C. 2923.125(D)(1) sets forth specific criteria a person must meet before a county sheriff may issue the person a license to carry a concealed handgun. Pursuant to this provision, a person may not be issued a license unless the county sheriff determines, among other things, the following:

> (e) The applicant has not been convicted of or pleaded guilty to a felony or an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; ... and has not been convicted of, [or] pleaded guilty to, ... a violation of [R.C. 2903.13] when the victim of the violation is a peace officer, regardless of whether the applicant was sentenced under division (C)(3) of that section.
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> (f) The applicant, within three years of the date of the application, has not been convicted of or pleaded guilty to a misdemeanor offense of violence other than a misdemeanor violation of [R.C. 2921.33] or a violation of [R.C. 2903.13] when the victim of the violation is a peace officer, or a misdemeanor violation of [R.C. 2923.1211]....

R.C. 2923.125(D)(1) thus explicitly prohibits a county sheriff from issuing a license to carry a concealed handgun to a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f).

It is a well-settled precept of statutory interpretation that exceptions to the application or operation of a statute shall be recognized only when such exceptions are set forth clearly and unambiguously by the General Assembly. *Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one); 2004 Op. Att'y Gen. No. 2004-009 at 2-79; 2003 Op. Att'y Gen. No. 2003-007 at 2-46. *See generally Columbus-Suburban Coach Lines, Inc. v. P.U.C.O.*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"). Moreover, "[i]n those instances in which the General Assembly has not enacted an exception to the terms of a particular statute, there is a presumption that it has intended that there shall be no exceptions thereto." 2003 Op. Att'y Gen. No. 2003-007 at 2-46; *see Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five); *Scheu v. State*, 83 Ohio St. at 157-58, 93 N.E. 969.

No language in R.C. 2923.125 or elsewhere in the Revised Code expressly states that a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) is eligible, if otherwise qualified, to receive a license to carry a concealed handgun when a court has sealed the official records pertaining to his conviction or guilty plea. Thus, the presumption is that the General Assembly did not intend for a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) to be eligible to receive a license to carry a concealed handgun when a court has entered an order under R.C. 2953.32 sealing the official records pertaining to the conviction or guilty plea.

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> nal identification and investigation and shall request the bureau to conduct the incompetency records check.

We are aware, however, that language in R.C. 2953.32(C)(2) and R.C. 2953.33(A) may indicate a contrary legislative intent. Pursuant to R.C. 2953.32(C)(2), when a court orders the sealing of records in a case pursuant to R.C. 2953.32, "[t]he proceedings in the case shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed." R.C. 2953.33(A) provides, in part, that, except as provided in R.C. 2953.32(G),[5] "an order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control." For the following reasons, the language of these two statutes does not create an exception to R.C. 2923.125's prohibition.

The sealing of official records pertaining to a conviction or guilty plea does not literally obliterate the fact that the person has been convicted of or pleaded guilty to a criminal offense. *See City of Pepper Pike v. Doe*, 66 Ohio St. 2d 374, 378, 421 N.E.2d 1303 (1981); *In re Niehaus*, 62 Ohio App. 3d 89, 574 N.E.2d 1104 (Franklin County 1989); *Jackson v. Bd. of Nursing Educ. and Nurse Registration*, No. 86 C.A. 136, 1987 Ohio App. LEXIS 9606 (Mahoning County Oct. 30, 1987). *See generally Shifflet v. Thomson Newspapers (Ohio), Inc.*, 69 Ohio St. 2d 179, 431 N.E.2d 1014 (1982) (R.C. 2953.32 was not intended to impair the right of a reporter who observed and heard the court proceeding from reporting on the matter). In various instances, courts have concluded that state boards that are responsible for issuing and revoking licenses to persons may base their decision to issue or revoke a license upon the existence of official records pertaining to a conviction or guilty plea that have been ordered sealed by a court. *See, e.g., In re Application of Davis*, 61 Ohio St. 2d 371, 403 N.E.2d 189 (1980); *Szep v. Ohio State Bd. of Pharmacy*, 106 Ohio App. 3d 621, 666 N.E.2d 662 (Lake County 1995), *appeal not allowed*, 75 Ohio St. 3d 1484, 664 N.E.2d 537 (1996); *In re Niehaus*; *Jackson v. Bd. of Nursing Educ. and Nurse Registration*; *Ohio State Bd. of Pharmacy v. Friendly Drugs*, 27 Ohio App. 3d 32, 499 N.E.2d 361 (Cuyahoga County 1985).

In addition, in *State v. Bissantz*, 40 Ohio St. 3d 112, 532 N.E.2d 126 (1988), the Ohio Supreme Court determined that, pursuant to R.C. 2921.02(F), a person convicted of bribery in office[6] is forever barred from holding public office in this state, even though the convic-

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[5]R.C. 2953.32(G) provides, in part, as follows:

> Notwithstanding any provision of this section or [R.C. 2953.33] that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under [R.C. 3301.121] and [R.C. 3313.662] is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order.

[6]The offense of bribery in office is set forth in R.C. 2921.02(B):

> No person, either before or after he is elected, appointed, qualified, employed, summoned, or sworn as a public servant or party official, shall knowingly solicit or accept for himself or another person any valuable thing or valuable benefit to corrupt or improperly influence him or another public

tion was expunged or sealed pursuant to R.C. 2953.32. R.C. 2921.02(F) provides that a public servant or party official convicted of bribery in office is forever ineligible to hold a public office in this state. In reaching its conclusion, the court explained as follows:

> In our view, the expungement of this particular offense would not prevent his conviction from being considered in determining his eligibility for public office, notwithstanding the general language of R.C. 2953.33(A). Thus, we uphold the clear mandate of R.C. 2921.02(F) to the effect that Bissantz is forever barred from holding office in this state.
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> As stated by the court of appeals, historically, a convicted felon is incompetent to be an elector or juror or to hold an office of honor, trust or profit. The right to vote is restored when such a person is granted probation, parole, or a conditional pardon. In depriving a convicted felon of his right to hold public office, the primary aim of this statute is to impose an additional penalty for the commission of a felony. The power to disqualify a convicted felon from holding public office is specifically granted to the General Assembly. Thus, it is apparent that the General Assembly may impose certain qualifications upon those who seek public office. In this particular instance, the legislative classification is clear, rests on reasonable grounds, and affects all persons in the class equally. *The prohibition here reflects an obvious, legitimate public policy which states in effect that felons convicted of crimes directly related to and arising out of their position of public trust should not ever again be entitled to enjoy such a position.*
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> Finally, we would point out that it is a well-established rule of construction that specific statutory provisions prevail over general provisions. R.C. 2921.02(F), being a specific provision, therefore prevails over the more general provisions of R.C. 2953.33. While R.C. 2953.33 provides the general effect of expungement, it cannot prevail over the compelling public policy specifically declared in R.C. 2921.02(F). (Citations omitted and emphasis added.)

*State v. Bissantz*, 40 Ohio St. 3d at 115-16, 532 N.E.2d 126.

It is thus apparent from the foregoing that, when a statute indicates an obvious legislative intent to prohibit the holding of a license or public office by a person who has been convicted of or pleaded guilty to a criminal offense, government officials and boards are not prohibited from using official records pertaining to the person's conviction or guilty plea that have been ordered sealed by a court so as to prohibit the person's holding of the license or public office. *See State v. Bissantz; In re Application of Davis*; *Szep v. Ohio State Bd. of Pharmacy*; *In re Niehaus*; *Jackson v. Bd. of Nursing Educ. and Nurse Registration*; *Ohio State Bd. of Pharmacy v. Friendly Drugs.*

With respect to your specific inquiry, the General Assembly has clearly stated in R.C. 2923.125(D) that a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) may not receive a license to carry a concealed handgun under R.C. 2923.125. Further, R.C. 2953.32(D), which sets forth who may inspect records sealed by a court under R.C. 2953.32, provides that such records may be inspected "[b]y the bureau of criminal identification and investigation, an

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> servant or party official with respect to the discharge of his or the other public servant's or party official's duty.

authorized employee of the bureau, a sheriff, or an authorized employee of the sheriff in connection with a criminal records check described in [R.C. 311.41]." R.C. 2953.32(D)(10). As explained above, R.C. 311.41 requires a county sheriff to conduct or cause to be conducted a criminal records check for the express purpose of determining whether a person fails to meet the criteria described in R.C. 2923.125(D)(1).

Reading R.C. 2953.32(D)(10) and R.C. 311.41 together, it readily follows that the General Assembly has authorized the inspection of sealed records by personnel in the Bureau of Criminal Identification and Investigation and county sheriffs' offices for the purpose of determining whether a person fails to meet the criteria described in R.C. 2923.125(D)(1). It is not logical to conclude that the General Assembly would permit, as part of a criminal records check, the inspection of official records ordered sealed by a court and then require the sheriff to disregard any information discovered in such an investigation when determining whether to issue a person a license to carry a concealed handgun. If the General Assembly had not intended for county sheriffs to use the information set forth in sealed records, it would not have been necessary to permit the inspection of these records under R.C. 2953.32(D)(10) since the sheriff would not need to know what information is contained in the records. *See generally State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) ("it is a basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose"), *appeal dismissed*, 362 U.S. 457 (1959).

That the General Assembly intended to permit sheriffs to use the information set forth in sealed records when determining whether to issue a person a license to carry a concealed handgun is further evidenced by the fact that R.C. 2923.1210 requires the application form for such a license to ask whether a person has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f).[7] It is a fourth degree felony to falsely answer any of the questions on an application form for a license to carry a concealed handgun:

> (A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:
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> ....
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> (14) The statement is made in an application filed with a county sheriff pursuant to [R.C. 2923.125] in order to obtain or renew a license to

[7]Pursuant to R.C. 109.731(A)(1), the application form for a license to carry a concealed handgun must conform substantially to the form prescribed in R.C. 2923.1210. *See* note two, *supra*. The application form set forth in R.C. 2923.1210 requires a person to answer yes or no to the following four questions: (1) have you ever been convicted of or pleaded guilty to a felony; (2) have you ever been convicted of or pleaded guilty to an offense under R.C. Chapter 2925, 3719, or 4729 that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; (3) have you been convicted of or pleaded guilty to within three years of the date of this application a misdemeanor that is an offense of violence or the offense of possessing a revoked or suspended concealed handgun license; and (4) have you ever been convicted of or pleaded guilty to assaulting a peace officer. These questions, in essence, ask whether a person has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f).

> carry a concealed handgun or is made in an affidavit submitted to a county sheriff to obtain a temporary emergency license to carry a concealed handgun under [R.C. 2923.1213].
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> ....
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> [F](4) Whoever violates division (A)(14) ... of this section is guilty of falsification to obtain a concealed handgun license, a felony of the fourth degree.

R.C. 2921.13.

Pursuant to R.C. 2953.33(B), in any application for a license, a person may be questioned with respect to convictions that are ordered sealed when "the question bears a direct and substantial relationship to the position for which the person is being considered." *See generally Szep v. Ohio State Bd. of Pharmacy*, 106 Ohio App. 3d at 625, 666 N.E.2d 662 ("R.C. 2953.33(B) simply provides that when a person files an application for a license, a state board may question that person concerning a sealed conviction if the questions are relevant to the issue of whether the license should be granted"); *Jackson v. Bd. of Nursing Educ. and Nurse Registration* (R.C. 2953.33 does not prohibit inquiry concerning records sealed before a person applies for a state license); *Ohio State Bd. of Pharmacy v. Friendly Drugs*, 27 Ohio App. 3d 32, 499 N.E.2d 361 (the Ohio State Board of Pharmacy may question an applicant for licensure as a terminal distributor of dangerous drugs with respect to expunged drug convictions). R.C. 2923.1210's requirement that the application form for a license to carry a concealed handgun set forth questions pertaining to a person's criminal record plainly indicates that the General Assembly has determined that the answers to these questions are directly relevant when determining whether a person should be issued a license to carry a concealed handgun. *See generally Charles v. Fawley*, 71 Ohio St. 50, 53, 72 N.E. 294 (1904) (the General Assembly is presumed to have acted with knowledge of existing statutes); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900) (same). Thus, R.C. 2923.1210 and R.C. 2953.33(B) authorize a county sheriff to ask questions about convictions that have been ordered sealed by a court and to receive truthful and accurate answers to those questions. *See* R.C. 2921.13(F)(14). *See generally Ohio State Bd. of Pharmacy v. Friendly Drugs*, 27 Ohio App. 3d at 34, 499 N.E.2d 361 ("[i]t stands to reason that if the board is entitled to inquire about expunged drug convictions, it is also entitled to receive a truthful and accurate response").

In light of the plain language of R.C. 311.41, R.C. 2923.125(D), R.C. 2923.1210, R.C. 2953.32(D)(10), and R.C. 2953.33(B), it is obvious that the General Assembly intended to prohibit the issuance of a license to carry a concealed handgun to a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) even though a court has entered an order under R.C. 2953.32 sealing the official records pertaining to the conviction or guilty plea. A county sheriff, therefore, is permitted to use and rely on official records pertaining to a person's conviction or guilty plea that have been ordered sealed by a court under R.C. 2953.32 when determining whether to issue the person a license to carry a concealed handgun, notwithstanding the language in R.C. 2953.32(C)(2) and R.C. 2953.33(A).

As a final matter, we note that this conclusion is in accord with a decision rendered by the Auglaize County Court of Common Pleas in *Weng v. Auglaize County Sheriff*, Case No. 2004 CV 138 (C.P. Auglaize County Aug. 5, 2004). In this case the court of common pleas held that a person who has been convicted of drug trafficking and has the record of his

conviction sealed under R.C. 2953.32 is not eligible for a license to carry a concealed handgun. In reaching this conclusion, the court stated:

> The legislative history and circumstances under which [R.C. 2923.125] was enacted make it clear that the legislature did not inadvertently include provisions for checking the sealed records, as it included the requirements that the sheriff and BC&I check sealed records when it enacted [R.C. 2953.32(D)(10)] in conjunction with R.C. § 311.41 which set forth in detail the use of the electronic fingerprint reading device by requesting BC&I to conduct the investigation. Thus, it clearly showed that it intended that BC&I would check sealed records as well as unsealed records, and that the sheriff would receive such reports in his determination whether to issue the license.
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> While the legislature failed to amend R.C. 2953.32(G) to include an exclusion from the effects of R.C. 2953.33, and thus the conflict, the provisions appear to be specific to require BC&I to include the sealed records in its criminal background check, and since it was more recently enacted, the court finds that the legislation must be construed to give effect to the intent of the legislature to exclude from carry concealed license holders those who have been convicted or pleaded guilty to drug trafficking and felonies, both of which apply to this applicant. (R.C. 1.51 applied.) To do otherwise would mean that the general assembly requires BC&I and the sheriff to unseal the record for the purpose of issuing a report that would make no difference as it would not matter. If that was the intent, there would be no reason to unseal the record in the first place. Considering the consequences of such an interpretation, and considering that the unsealing of records is a significant event not to be done for no reason, this court rejects that the legislation intended such a futile act to be done by BC&I and the sheriff.
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> Thus, the specific exception found in R.C. 2953.32(D)(10), as applied to R.C. 311.41 and R.C. 2923.125(D)(1)(e), is the more specific language more recently enacted, and will prevail over the general provisions of R.C. 2953.33(A).

*Weng v. Auglaize County Sheriff,* Case No. 2004 CV 138, slip op. at 4-5.

Therefore, it is my opinion, and you are hereby advised that a county sheriff may not issue a license to carry a concealed handgun under R.C. 2923.125 to a person who has been convicted of or pleaded guilty to an offense described in either R.C. 2923.125(D)(1)(e) or R.C. 2923.125(D)(1)(f) even though a court has entered an order under R.C. 2953.32 sealing the official records pertaining to the conviction or guilty plea.