

# FIREARMS INDUSTRY CONSULTING GROUP

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September 17, 2014

Kevin P. Schmidt, Esquire  
Office of Chief Counsel  
North Office Building  
Harrisburg, PA 17120

RE: Section 61.3 Validity

Dear Attorney Schmidt,

I am writing in relation to 49 PA Code § 61.3 and its current validity, given 18 Pa.C.S. § 6109(m.3) and Attorney General Kathleen Kane's Legal Opinion of August 5, 2014.

It appears that Section 61.3 was adopted on January 23, 1998 with an effective date of January 24, 1998. Section 61.3 provides:

The possession of firearms or other prohibited offensive weapons as defined in 18 Pa.C.S. § 908(c) (relating to prohibited offense weapons), while on the leased premises of the Department with the exception of State or Federal officers, in connection with the performance of an official duty, is prohibited. This prohibition does not apply to attorneys listed as counsel of record in connection with the offering of an exhibit in any administrative proceeding, if the counsel of record who intends to offer the item as an exhibit, has obtained written authorization from a hearing examiner to do so.

After the enactment of Section 61.3, on June 28, 2011, the Pennsylvania Legislature passed P.L. 48, commonly referred to as HB 40 or our Stand Your Ground Doctrine. In passing HB 40, the Legislature added Section 6109(m.3) to the Crimes Code. 18 Pa.C.S. § 6109(m.3) provides:

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Nothing in this section shall be construed to...(2) Authorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.

As I am sure you are aware, pursuant to Pennsylvania's Uniform Firearms Act (UFA), 18 Pa.C.S. § 6101, et seq., there is nothing that prohibits the concealed carrying of a firearm in the "leased premises of the Department," provided the individual has a valid license to carry firearms, issued pursuant to 18 Pa.C.S. § 6109 and the area does not constitute a "court facility." While portions that constitute "court facilities" under 18 Pa.C.S. § 913 may be regulated consistent with Section 913, lockers must be made available for the checking and storage of firearms at any court facility, pursuant to 18 Pa.C.S. § 913(e). Furthermore, except with regards to the City of Philadelphia (see 18 Pa.C.S. § 6108), there is nothing in the UFA that prohibits the open carrying of firearms in the "leased premises of the Department," even absent a valid license to carry firearms, provided that the area is not a court facility. See, Commonwealth v. Hawkins, 547 Pa. 652, 657 fn 4 (1997)(holding that "In all parts of Pennsylvania, persons who are licensed may carry concealed firearms. 18 Pa.C.S. § 6108. Except in Philadelphia, firearms may be carried openly without a license. See Ortiz v. Commonwealth, 545 Pa. 279, 283, 681 A.2d 152, 155 (1996) (only in Philadelphia must a person obtain a license for carrying a firearm whether it is unconcealed or concealed; in other parts of the Commonwealth, unconcealed firearms do not require a license)).

On August 5, 2014, after my request to the PA Gaming Control Board to invalidate Section 465a.13, which unlawfully restricted the possession of firearms in casinos, Attorney General Kane issued a Legal Opinion Letter agreeing that "Section 6109(m.1)...prohibits a Commonwealth agency from regulating the possession of firearms in any manner inconsistent with Title 18." Please find enclosed a copy of Attorney General Kane's Opinion.

Accordingly, Section 46.3 is in direct violation with 18 Pa.C.S. § 6109(m.3), as it is undisputed that the Pennsylvania Department of State is an agency of the Commonwealth, which is regulating the possession of firearms inconsistently with the provisions of the Uniform Firearms Act. Therefore, I am respectfully requesting that Section 46.3 be rescinded and/or revised in compliance with Title 18.

Thanking you for your time and assistance in this request, I am

Yours truly,  
Prince Law Offices, P.C.

jp/web  
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Enclosure  
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