

FIREARMS INDUSTRY CONSULTING GROUP

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September 18, 2014

Secretary Ellen Ferretti
Department Of Conservation And Natural Resources
Rachel Carson State Office Building
400 Market Street
P.O. Box 8767
Harrisburg, PA 17105

RE: Section 11.215 Validity

Dear Secretary Ferretti,

I am writing in relation to 17 PA Code § 11.215 and its current validity, given 18 Pa.C.S. § 6109(m.3) and Attorney General Kathleen Kane's Legal Opinion of August 5, 2014.

Section 11.215 provides:

The following activities are prohibited without written permission of the Department:

(4) Possessing an uncased device, or uncasing a device, including a firearm, archery equipment or slingshot, that is capable of discharging or propelling a projectile, except as provided in paragraph (2) or (7), or except in the owner's building on a leased campsite, in the owner's residence, or in the owner's vehicle or trailer.

(5) Failing to keep a device, including a firearm, archery equipment or slingshot, that is capable of discharging or propelling a projectile, in the owner's building on a leased campsite, in the owner's residence or in the owner's vehicle or trailer..."

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After the enactment of Section 11.215, 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:

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 on DCNR property, provided the individual has a valid license to carry firearms, issued pursuant to 18 Pa.C.S. § 6109. 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 on DCNR property, even absent a valid license to carry firearms. 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 11.215 is in direct violation with 18 Pa.C.S. § 6109(m.3), as it is undisputed that the Pennsylvania Department of Conservation and Natural Resources 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 11.215 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
Matter No. 19325
Enclosure
cc: By fax: Secretary Ellen Ferretti


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