

November __, 2009

Martin Mayer
Insert Address Here

Re: CCW "Good Cause" Requirements

Dear Mr. Mayer:

Thank you for forwarding me your memorandum regarding the issuance requirements for CCW permits, it was very informative. However, I have a few lingering legal questions that I would like for you to answer, as the explanations in your memorandum does not address whether many chiefs and sheriffs may be regularly breaking the law by issuing CCWs beyond their legally authorized discretion.

The core question that I am interested in an answer to is whether our department's, as well as other issuing authorities', current CCW policy is legal in light of the positions made by a lawyer for Orange County Sheriff Hutchens, Mr. Mario Mainero. Mr. Mainero is Chief of Staff to Orange County Supervisor Moorlach.

Sheriff Hutchens' lawyer's position appears to be that sheriffs and police chiefs who are authorized to issue concealed weapon permits in the state are limited in their discretion when determining what constitutes "good cause." Mainero's conclusion is that the definition of "good cause" contained in a 1977 Attorney General (AG) letter (attached hereto for your reference and convenience as exhibit A), and that a CCW can only be issued if that specific definition is satisfied. Issuing authorities such as myself need to be advised as to whether that AG letter actually expresses and limits what constitutes "good cause," and whether we are all legally bound to follow that "good cause" definition because it is in an AG letter. So, although your memorandum was informative and much appreciated, it left this fundamental question unanswered.

I believe my concerns will best be addressed by you providing answers to the following specific questions:

(1) Are the circumstances listed in the 1977 AG letter the only circumstances that can constitute "good cause" under the law?

Sheriff Hutchens relies on legal advice from Mr. Mainero. Mr. Mainero cites a 1977 Attorney General letter for the proposition that a sheriff's discretion to determine what constitutes "good cause" is limited to specific circumstances described therein. That is, according to Mr. Mainero, "good cause" can only exist if a "credible, significant, and substantiated cause to fear for their [i.e., the applicant's] safety" exists. Mr. Mainero has also stated that those circumstances, as articulated in the AG letter, are the *only* circumstances that can constitute "good cause," and that the issuing authority's role is merely to determine factually whether those circumstances exist.

Relying on this advice, Sheriff Hutchens has told the Board of Supervisors that her hands are legally tied in issuing CCWs for any reason other than those laid out in the AG letter.

As I am sure you are aware, Sheriff Hutchens quoted the Attorney General letter in her Powerpoint presentation (attached hereto as exhibit B for your reference and convenience) to the Board of Supervisors as follows:

“The issuing authority must determine whether the threat to the applicant (or other causal situation) is as real as the applicant asserts (e.g., is *there clear and present danger* to the applicant, his spouse, his family, or his employees). Finally, if the danger is manifest, the authority should determine *whether that danger cannot be significantly alleviated by alternative means of security* and whether in fact can be lawfully mitigated by the applicant’s obtaining a concealed weapon.” [emphasis added].

Mr. Mainero also quoted the Attorney General letter in his Powerpoint presentation as follows (attached hereto as exhibit C for your reference and convenience):

“The California Attorney General, in a 1977 letter Opinion, stated that a determination of good cause included ‘whether the threat to the applicant is as real as the applicant asserts. In determining this..., the Sheriff should inquire whether there is a clear and present danger to the applicant, spouse, family, or employees. Finally, even if the danger or threat is manifest, the Sheriff should determine whether the danger or threat could be significantly alleviated by alternative means of security...’ The *Gifford* Court also held that the burden of showing good cause is with the applicant. The Sheriff’s policy contains specific criteria that closely follow the letter Opinion, and gives six specific examples of adequate good cause. Similar criteria were upheld on October 28, 2009 by the Federal District Court in *McCloud v. City of Santa Maria*.”

Mr. Mainero further stated in a written legal opinion submitted to the Board of Supervisors (attached hereto as exhibit D for your reference and convenience) :

“‘Good cause’ is rarely defined. However, the courts have held that good cause is not satisfied merely by meeting the minimum statutory requirements, see, *Gifford v. County of Los Angeles*, supra, 88 Cal. App. 4 th at 805, 106 Cal. Rptr. 2d at 167-68 (mere statement that all conditions under which a CCW had been previously issued remained the same was insufficient statement of good cause, and good cause is in addition to the other requirements under Penal Code 12050). The California Attorney General, in published Opinion No. C.R. 77/30 I.L., stated, relying in part on *Salute v. Pitchess*, 61 Cal. App. 3d 557, 132 Cal. Rptr. 345 (1976) that a determination of “good cause” under Penal Code Section 12050 includes: (1) experience and training in the use of firearms, (2) the applicant’s physical and mental stability, (3) that danger to and from third parties would not

be increased by the issuance of the permit, and (4) whether the threat to the applicant is as real as the applicant asserts. *In determining this fourth factor, the Sheriff should inquire whether there is a clear and present danger to the applicant, spouse, family, or employees. Finally, even if the danger or threat is manifest, the Sheriff should determine whether the danger or threat could be significantly alleviated by alternative means of security, and whether the danger or threat could in fact be lawfully mitigated by the applicant obtaining the CCW.*"

Emphasis added. Many sheriffs, particularly in rural areas, issue CCW permits to applicants despite the lack of a "credible, significant, and substantiated cause to fear for their safety."

I respectfully request that you confirm for me whether Professor Mainero's legal opinion is correct as to "good cause" only existing under the law if the specific circumstances laid out in the 1977 AG letter are met.

(2) Do the examples given in Sheriff Hutchens' powerpoint presentation of approved CCW applications satisfy the Attorney General's 1977 supposed standard for "good cause?"

In her powerpoint presentation, Sheriff Hutchens provides three examples of approved applications: 1) a "diamond importer" who transports large amounts of cash/valuables and feels at risk while transporting items to the bank and stores; 2) a "business owner" who runs a supermarket and feels at risk while transporting daily funds to bank; and 3) a "private investigator" who feels that a person he is investigating may harm him.

None of these examples seem to demonstrate the "clear and present danger" to the applicant the Sheriff and Mr. Mainero claim to be a requirement for issuance, but rather are situations where there is a general threat. Further, most, if not all of the threats associated with these examples could likely be alleviated by alternative means. For example, the business owner and the diamond importer could utilize a secure pick-up service for their valuables, and the private investigator could carry a firearm openly instead of carrying it concealed.

Thus, I think it would be helpful if you could confirm for me whether these examples provided by Sheriff Hutchens are indicative of how she applies the standards cited from the Attorney General's 1977 Letter to real life applicants.

(3) In light of the answer to question one, can an issuing authority issue a CCW based on a generalized need for self defense alone? In other words, if an issuing authority believes that even though the applicant does not have a "credible, significant, and substantiated cause to fear for their safety," the applicant nonetheless has "good cause" because of a generalized fear of harm from crime, can a CCW be issued?

Getting an answer to this question is essential, because it will provide myself, as well as every other issuing authority, clarification on whether our current issuing policy is legal or not. For, if departments are issuing CCWs without determining whether applicants have a “credible, significant, and substantiated cause to fear for their safety,” and that turns out to be the appropriate standard, they may be violating the law and need to be made aware of such.

(4) If the answer to question three is in the negative, which provisions of the Attorney General’s 1977 letter does Sheriff Hutchens and her attorneys rely on to support their position and how do they interpret those provisions?

There are primarily two provisions in the Attorney General’s 1977 letter that cause me to question the validity of Sheriff Hutchens’ position regarding limiting what constitutes “good cause” to the standards set forth in that letter: 1) the first sentence of the paragraph Sheriff Hutchens points to in the Attorney General’s letter, which reads: “In evaluating good cause, the issuing authority may first of all consider various factors associated with the individual applicant;” and 2) the fact that the sentence itself that Sheriff Hutchens points to as limiting the discretion of issuing authorities in determining “good cause” reads: “[T]he issuing authority must determine whether the threat to the applicant (or other causal situation) is as real as the applicant asserts (e.g., is there a clear and present danger to the applicant...)”. Emphasis added.

The first provision cited above raises primarily two issues relating to whether the 1977 AG letter set outs requirements rather than guidance. One, it says the issuing authority may consider the standards mentioned therein, which seems to indicate a suggestion rather than a requirement. Second, it uses the word “factors,” which in legal analysis, I am told, is primarily used for non-essential standards rather than requirements, which is usually associated with the word: element.

The second provision, with the language: “or other causal situation,” seems to suggest that there are situations other than a substantiated “threat” that would qualify as “good cause” for CCW issuance.

Therefore, I would like to know how Sheriff Hutchens and her attorney(s) mesh their view on what constitutes “good cause” for issuance of CCWs with this seemingly contradictory language, and I would appreciate if you would inquire into such.

(5) Is the 1977 AG letter binding legal authority on issuing authorities?

Mr. Mainero opines that the 1977 Attorney General opinion is a binding authority on local chiefs and sheriffs, because the Attorney General, under the California constitution, is the “chief law officer of the state.” In other words, Sheriff Hutchens’ attorney takes the position that not only is “good cause” limited to the specific factors laid out in the 1977 letter, her lawyer also takes the position that every issuing chief or sheriff in the state is legally bound to comply with that 1977 letter and to not issue concealed weapon permits unless “good cause,” as defined in Mainero’s view by the letter, is satisfied.

If that is the case, obviously a significant amount of sheriffs are issuing permits illegally, and contrary to their obligations under the law, which needs to be addressed.

In conclusion, because Sheriff Hutchens' position on what constitutes "good cause" raises several fundamental questions regarding the legality of CCW-issuance policies, including my own, I would appreciate if you could address my concerns laid out in the questions posed above.

Sincerely,

Chief Paul Walters
Santa Ana Police Department