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**STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

June 7, 2000

Honorable Jim Woodward, Sheriff
Jefferson County Sheriff's Office
Melvin Bailey Justice Center
801 North 21st Street
Birmingham, AL 35203-0122

Sheriffs - Pistol Permits - Local Laws

Section 13A-11-75 of the Code of Alabama is a general law.

Act No. 99-594 is presumed to be valid until declared unconstitutional by a court of competent jurisdiction. Local laws may be enacted on matters covered by general law if the local laws are substantially different to meet local needs.

The Sheriff of Jefferson County is to issue pistol permits in appropriate cases.

Dear Sheriff Woodward:

This opinion of the Attorney General is issued in response to your request on behalf of the Jefferson County Sheriff's Office.

QUESTION 1

Is section 13A-11-75 of the Code of Alabama general law or local law?

FACTS AND ANALYSIS

Section 13A-11-75 of the Code of Alabama states:

The sheriff of a county may, upon the application of any person residing in that county, issue a qualified

or unlimited license to such person to carry a pistol in a vehicle or concealed on or about his person within this state for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol, and that he is a suitable person to be so licensed. . . . The fee for issuing such license shall be \$1.00 which shall be paid into the county treasury. The sheriff may revoke a license upon proof that the licensee is not a proper person to be licensed.

ALA. CODE § 13A-11-75 (1994).

Section 110 of the Constitution of Alabama has most recently been amended by amendment no. 397 to the Constitution of Alabama. Amendment No. 397 states, "A general law is a law which in its terms and effect applies either to the whole state, or to one or more municipalities of the state less than the whole in a class." ALA. CONST. amend. 397. A general law affects all the people of the state or all of the people of a particular class. *Smith v. State*, 36 Ala. App. 624, 631, 61 So. 2d 698, 705 (1952) [*reversed on other grounds by Smith v. State*, 258 Ala. 86, 61 So. 2d 707 (1952)]. Section 13A-11-75 is a general law governing the issuance of pistol permits by sheriffs in the various counties in the state.

CONCLUSION

Section 13A-11-75 of the Code of Alabama is a general law.

QUESTIONS 2 AND 3

Does section 2 of Act No. 99-594 violate section 105 of the Constitution of Alabama of 1901?

Does section 2 of Act No. 99-594 violate section 110 of the Constitution of Alabama of 1901?

FACTS AND ANALYSIS

Act No. 99-594 of the 1999 Regular Legislative Session provides the fee for the issuance of a pistol permit in Jefferson County and the distribution of this fee. Section 2 of Act No. 99-594 provides:

Section 2. In Jefferson County, the total fee for issuance of a permit to carry a pistol as provided by Section 13A-11-75, Code of Alabama 1975, shall be seven dollars and fifty cents (\$7.50) per year. The fee shall be paid by the sheriff to the county treasurer and the county treasurer shall distribute the seven dollars and fifty cents (\$7.50) as follows:

(1) Four dollars and fifty cents (\$4.50) shall be distributed to the retirement system established by Act 551 of the 1953 Regular Session.

(2) Fifty cents (\$.50) shall be distributed to the Jefferson County Sheriff's Fund.

(3) Two dollars and fifty cents (\$2.50) shall be distributed to the Jefferson County Legislative Delegation Office. Of this amount two dollars (\$2) or a portion needed thereof shall be spent for the operation of the legislative office located in Birmingham, and fifty cents (\$.50) shall be used for the operation of the legislative office located in Bessemer.

1999 Ala. Acts No. 99-594, section 2.

Section 105 of the Constitution of Alabama states that “[n]o special, private, or local law . . . shall be enacted in any case which is provided for by general law.” ALA. CONST. art IV, § 105. It prohibits the enactment of a local act when the subject is already subsumed by a general statute. *Opinion of the Justices* No. 352, 630 So. 2d 444, 446 (Ala. 1994), quoting *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 813 (Ala. 1978).

As previously stated, section 110 of the Constitution of Alabama, as amended by amendment no. 397, defines a general law as one which applies to the whole state or to all people of a particular class. A local law is defined in amendment no. 397 as “a law which is not a general law or a special law or a private law.” ALA. CONST. amend. 397. Section 2 of Act No. 99-594, a local law regarding the fee for pistol permits in Jefferson County, differs from section 13A-11-75 of the Code of Alabama, a general law, concerning the fee for issuance of pistol permits in that Act No. 99-594 sets the fee in Jefferson County at \$7.50, and additionally provides for the specific distribution of that fee by the county treasurer. Section 13A-11-75 sets the fee for the issuance of a pistol permit at \$1.00 and prescribes that it is to be paid into the county treasury.

The Attorney General generally does not render opinions regarding the constitutionality of a particular statute as that is the function of the courts. Statutes are presumed to be valid and constitutional until declared unconstitutional by a court of competent jurisdiction. *State Board of Health v. Greater Birmingham Association of Homebuilders*, 584 So. 2d 1058, 1060 (Ala. 1980); *Delavan v. Board of Dental Examiners*, 620 So. 2d 13, 16 (Ala. Civ. App. 1992).

Local legislation is not prohibited where the object of the local law is to accomplish an end not substantially provided for and effected by general law, notwithstanding that there is a general law dealing with the subject affected by the local law. *Opinion of the Justices*, 266 Ala. 363, 368, 96 So. 2d 634, 638 (1957). Additional or supplemental local laws are not prohibited by section 105 of the Constitution if the local laws are substantially different to meet local needs. *Mathis v. State*, 280 Ala. 16, 19, 189 So. 2d 564, 569 (1966). The Supreme Court of Alabama ruled that a local law authorizing the Marshall County Commission to levy a gross receipts tax in a portion of the county for the support of schools not served by city school systems was not subsumed by a general statute specifically authorizing a county commission to levy gross receipts taxes to provide for public education. *Miller v. Marshall County Board of Education*, 652 So. 2d 759 (Ala. 1995). The Court stated that the county board of education demonstrated a special need not adequately addressed by general law as the result of the withdrawal of city schools and tax bases from the county school system presenting the need to fund rural schools. *Id.* at 761-62. Whether Act No. 99-594 subsumed a matter covered by general law or whether its purpose is to meet local needs and accomplish an end not provided for by general law is a determination to be made by a court of law.

CONCLUSION

Act No. 99-594 is presumed to be valid until declared unconstitutional by a court of competent jurisdiction. Local laws may be enacted on matters covered by general law if the local laws are substantially different to meet local needs.

QUESTION 4

Is the Sheriff of Jefferson County, under law, required to issue any pistol permits if he so desires not to?

FACTS AND ANALYSIS

Section 13A-11-75 of the Code states that “[t]he sheriff of the county may upon the application of any person residing in the county issue a qualified or unlimited license to such person to carry a pistol”

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993). The word “may” is generally used to imply permissive, optional, or discretionary, and not mandatory action or conduct. *American Bankers Life Assurance Co. v. Rice Acceptance Co.*, 739 So. 2d 1082, 1084 (Ala. 1999), quoting *Black’s Law Dictionary* 979 (6th ed. 1990). In enacting section 13A-11-75, the Legislature intended that the sheriffs of the counties issue pistol permits in appropriate cases. The use of “may” in the statute allows a sheriff not to issue a pistol permit to a person not qualified to carry a pistol, or to use his sound judgment to refuse to issue a permit to a person if there are circumstances causing the sheriff to believe reasonably that the person should not possess or own a pistol. The sheriff may not arbitrarily refuse to issue a permit without a sound reason. *Crawford v. State*, 356 So. 2d 690 (Ala. Cr. App. 1978); opinion of the Attorney General to Honorable John R. Phillips, Attorney-at-Law, Anniston, dated September 25, 1989, A.G. No. 89-00436.

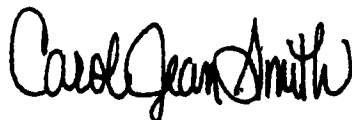
CONCLUSION

The Sheriff of Jefferson County is to issue pistol permits in appropriate cases.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division