

OFFICIAL OPINION NO. 98-01, SDCL 23-7-7.1; Residency Requirements for Concealed Weapons Permit

August 20, 1998

Donald Holloway
Pennington County Sheriff
300 Kansas City Street
Rapid City, SD 57701-2889

OFFICIAL OPINION NO. 98-01

SDCL 23-7-7.1; residency requirements for concealed weapons permit

Dear Mr. Holloway:

You have requested an opinion from this Office regarding the following factual situation:

FACTS:

A person (hereinafter "applicant") has applied for a concealed weapons permit in Pennington County. The applicant has moved from another state to Rapid City to work under a contractual agreement for a 12-month period, with a possible 6-month extension. The applicant readily acknowledges that he is maintaining a residence in his home state. The applicant also is claiming his home state for purposes of voting and taxes.

QUESTION:

Does the applicant meet the requirements of SDCL 23-7-7.1, specifically the residency requirement, to obtain a concealed weapons permit in South Dakota?

IN RE QUESTION:

It appears that the applicant is not a resident under SDCL 23-7-7.1, which provides:

A temporary permit to carry a concealed pistol shall be issued within five days of application to a person if the applicant:

(1) Is eighteen years of age or older;

(2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;

(3) Is not habitually in an intoxicated or drugged condition;

(4) Has no history of violence;

(5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;

(6) Has been a resident of the county or municipality where the application is being made for at least thirty days;

(7) Has had no violations of chapter 23-7, 22-14, or 22-42 in the two years preceding the date of application; and

(8) Is a citizen of the United States or has been in the United States legally for at least two years.

A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

(Emphasis added). Black's Law Dictionary defines "resident" in part as:

Any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature. . . . Word "resident" has many meanings in law, largely determined by statutory context in which it is used.

Black's Law Dictionary 1309 (6th ed. 1990).

South Dakota has not specifically defined the term "resident" for purposes of obtaining a concealed weapons permit. Under SDCL 2-14-4, however, definitions elsewhere in the Code may be utilized. The South Dakota Legislature has delineated several criteria for the determination of one's residency for voting purposes in SDCL 12-1-4, which states:

For the purposes of this title, "residence" shall be the place in which a person has fixed his habitation and to which, whenever he is absent, he has the intention of returning.

A person who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

A person shall be considered to have gained a residence in any county or municipality of this state in which he actually lives, providing such person has no present intention to remove himself therefrom.

If a person moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

The South Dakota Legislature has also defined resident in SDCL 41-1-1(20) as:

a person actually living within and intending to make the person's home in this state. No resident may lose rights under this title by reason of the resident's absence on business of the United States or of this state, or armed services of the United States or the spouse of an active duty military person, or any student regularly attending a school of higher learning as a full-time student[.]

These statutes are instructive here in that they consider one's intent in the determination of one's residence.

Here, the applicant is temporarily located in Pennington County. The applicant is maintaining his residence in his home state and is claiming that state as his residence for voting and tax purposes. The applicant obviously has an intent to return to that state. Thus, under the definitions discussed above, the applicant is not residing in South Dakota; the applicant is merely living in South Dakota. The applicant has not manifested the required intent to be considered a resident of South Dakota. The South Dakota Legislature could have stated that an applicant needed merely to live in a county or municipality in South Dakota for at least thirty days to meet the residency requirement for a concealed weapons permit but chose not to use that language; instead, it has required that applicants be a "resident of the county or municipality where the application is being made for at least thirty days."

In conclusion, this applicant does not meet the residency requirement of SDCL 23-7-7.1 to obtain a concealed weapons permit in South Dakota. The answer to your question is, therefore, "No."

Respectfully submitted,

MARK BARNETT

ATTORNEY GENERAL

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