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The Honorable Mark N. Fisher
202 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Fisher:

You have asked whether the Governor could order the Secretary of State Police ("the Secretary") to interpret the "good and substantial reason" requirement of the law governing handgun permits to include self-defense. It is my view that the Governor could not order the Secretary to interpret the law in this way because the law does not support that interpretation.

Article II, § 1 of the Maryland Constitution vests the executive power of the State in the Governor. *McCulloch v. Glendening*, 347 Md. 272, 282-283 (1997). State Government Article, § 3-302 spells out that power, providing that:

> The Governor is the head of the Executive Branch of the State government and, except as otherwise provided by law, shall supervise and direct the officers and units in that Branch.

It is my view that this authority of the Governor to supervise and direct the officers and units in the Executive Branch is sufficiently broad to permit the Governor to direct that an agency interpret the law in a specific way, and to adopt regulations reflecting that interpretation, if the agency has the necessary regulatory authority and the interpretation is not contrary to the statutory language. For example, in *MCEA v. Schaefer*, 325 Md. 19 (1991), the Court of Appeals held that it was within the power of the Governor to increase the work week for State employees from 35.5 to 40 hours a week and to order the Secretary of Personnel to take all actions necessary for that change, presumably including amendments to the regulations that had set the work week at 35.5 hours. Thus, the Governor may require an agency to adopt certain regulations, so long as the regulations in question are within the authority of that agency and not contrary to law. *MCEA v. Schaefer*, 325 Md. at 29 ("the Governor cannot by Executive Order 'undo what the legislature has done by statute.'"). Of course, regulations promulgated at the instance of the Governor, like all other regulations, must go through the procedures provided by law, including notice and time for public comment.

Thus, the answer to your question depends on the authority of the Secretary to adopt interpretive regulations with respect to handgun permits, and whether providing that "good and

substantial reason" includes self-defense would be contrary to the statute. It is my view that the Secretary has the authority to adopt interpretive regulations, but I am of the view that the statute does not support the inclusion of self-defense in general as a good and substantial reason.

Public Safety Article ("PS"), § 5-306(a) provides that "the Secretary shall issue a permit within a reasonable time to an individual who the Secretary finds" meets certain criteria, among them that, "based on investigation," the applicant "has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger." PS § 5-306(a)(6)(ii). Obviously, the term "good and substantial reason" leaves significant room for interpretation in its application. The Secretary has applied the term to allow a person to obtain a handgun permit:

> (1) for business activities, either at the business owner's request or on behalf of an employee; (2) for regulated professions (security guard, private detective, armored car driver, and special police officer); (3) for "assumed risk" professions (e.g., judge, police officer, public defender, prosecutor, or correctional officer); and (4) for personal protection.

Woollard v. Gallagher, 712 F.3d 865, 869-870 (4th Cir. 2013). With respect to the fourth category, the Secretary has required a showing that the applicant needs a handgun permit as a safeguard against "apprehended danger" as required by statute. *Id.* at 870. This showing cannot be established by a vague threat or a general fear of living in a dangerous society. *Id.* It is my view that this position is supported by the legislative history of the statute and by the cases that have interpreted the language.

The handgun permit requirement was initially enacted by Chapter 13, Laws of Maryland 1972, as Article 27, § 36E(a)(6). As introduced, on January 17, 1972, Senate Bill 205 required that an applicant for a handgun permit have "in the judgment of the Superintendent,[1] good and substantial reason to wear, carry, or transport a handgun." In a letter from Samuel Dash, Professor at Law at Georgetown University dated January 21, 1972, the Task Force on the Administrative Justice expressed concern that the bill provided no real criteria to the Superintendent, and were vague enough to permit him to withhold or grant permits in a discriminatory manner. The Task Force expressly suggested that the Superintendent "be given more specific guidelines concerning who should be permitted to carry a handgun than is provided by the broad language of 'has good and substantial reason to wear, carry or transport a handgun.'"[2]

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[1] At that point the head of the State Police was referred to as the Superintendent rather than as the Secretary.

[2] On February 14, 1972, Attorney General Francis B. Burch and Assistant Attorney General Thomas J. Kenney, Jr., advised John C. Eldridge, Esq., then Chief Legislative Officer, that §

The Maryland and District of Columbia Rifle and Pistol Association also addressed the language of the provision, suggesting, in a letter dated February 2, 1972, that if the broad discretion was to be retained, permits should be issued by the clerks of court based on an investigation by the State Police rather than by the Superintendent. They also recommended that the determination of a good and substantial reason be based on the "results of investigation," rather than the judgment of the Superintendent, and that the provision require, rather than permit, the issuance of the permit if the statutory requirements were met. The bill was reported out by the Judicial Proceedings Committee two days later with 17 amendments, one of which changed may to shall as requested. Amendment 14, Senate Journal at 274. Amendment 15 added a requirement that the permit be issued "within a reasonable time." *Id.* The final relevant Senate amendment was a floor amendment from Senator Bauman, which added the phrase "provided, however, that the phrase 'good and substantial reason' as used herein shall be deemed to include the statement by any applicant under this section that such permit is necessary as a reasonable precaution against apprehended danger." Senate Journal at 439-440. Thus, in the third reader version of the bill as it was sent to the House, § 36E(a)(6) provided:

> 36E(a) *A permit to carry a handgun* ~~*may*~~ SHALL *be issued* WITHIN A REASONABLE TIME *by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:*
>
> *(6) has in the judgment of the Superintendent good and substantial reason to wear, carry, or transport a handgun*, PROVIDED, HOWEVER, THAT THE PHRASE "GOOD AND SUBSTANTIAL REASON" AS USED HEREIN SHALL BE DEEMED TO INCLUDE THE STATEMENT BY ANY APPLICANT UNDER THIS SECTION THAT SUCH A PERMIT IS NECESSARY AS A REASONABLE PRECAUTION AGAINST APPREHENDED DANGER.

Had that language been retained, the provision would have defined "good and substantial reason" to include any person who asserted a need for self-defense. The House, however, added two amendments to the paragraph, both of which were concurred in by the Senate. The first of these deleted the phrase "the statement by any applicant under this section," and replaced it with "a finding," Senate Journal at 1004, which would indicate that the intent was that an actual necessity must be shown, rather than a generalized desire to carry a handgun for self-defense. The second struck the phrase "in the judgment of the Superintendent," and substituted "based on the results of investigation," as earlier requested by the Maryland and District of Columbia Rifle and Pistol Association. Senate Journal 1007. This provision also reflects the intent that the necessity of the

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36E(a)(6), which contained the "good and substantial reason" requirement was not an overly broad delegation of authority to an administrative agency, and that "the remedies afforded an applicant under the bill in the event his request for a permit is denied, would appear to dissipate any constitutional objections on this point."

permit be examined as a factual matter.

Thus, as enacted, Article 27, § 36E(a)(6) provided:

> (a) *A permit to carry a handgun ~~may~~* SHALL *be issued* WITHIN A REASONABLE TIME *by the Superintendent of the Maryland State Police, upon application under oath therefor, to any person whom he finds:*
>
> *(6) has ~~in the judgment of the Superintendent~~* , BASED ON THE RESULTS OF INVESTIGATION, *good and substantial reason to wear, carry, or transport a handgun:* , PROVIDED, HOWEVER, THAT THE PHRASE "GOOD AND SUBSTANTIAL REASON" AS USED HEREIN SHALL BE DEEMED TO INCLUDE ~~THE STATEMENT BY ANY APPLICANT UNDER THIS SECTION~~ A FINDING THAT SUCH PERMIT IS NECESSARY AS A REASONABLE PRECAUTION AGAINST APPREHENDED DANGER.

The current form of the provision is "new language derived without substantive change from former Article 27, § 36E(a)(1) through (6) and the first and third clauses of (a)." Revisor's Note to § 5-306, Public Safety Article (2003 Volume). As a result, it is my view that the current language requires a showing of an actual need for a permit as opposed to a generalized desire for self-defense. This is the precise meaning that has been given to the provision by courts that have considered the issue.

In *Snowden v. Handgun Permit Review Board*, 45 Md. App. 464 (1980), the court rejected the argument that "apprehended danger" was to be viewed from the subjective standpoint of the applicant, saying:

> If the Act were read as Mr. Snowden would have the court read it, there would be no necessity for a review by the Board. Each person could decide for himself or herself that he or she was in danger. The State Police would become a "rubber stamp" agency for the purpose of handing out handgun permits. The carefully considered legislation would be rendered absolutely meaningless insofar as the control of handguns is concerned.

Id. at 469; *see also Scherr v. Handgun Permit Review Bd.*, 163 Md. App. 417 (2005) (whether there is apprehended danger to the applicant is an objective inquiry, and cannot be established by a vague threat or general fear of "living in a dangerous society.").

For these reasons it is my view that the Governor may not order the Secretary to interpret "good and substantial reason" to include self-defense.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

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