

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY SPORTSMEN'S
LEAGUE, KIM STOLFER, RICHARD
HAID, LEHIGH VALLEY FIREARMS
COALITION, JOHN F. BRINSON, and
JOHN 3. IANNANTUONO,

Plaintiffs (Petitioners)

vs.

No. 565 MD 2000

TOM RIDGE, in his official capacity as
Governor of the Commonwealth of
Pennsylvania, PAUL EVANKO, in his
official capacity as the Commonwealth of
Pennsylvania State Police Commissioner
and the STATE POLICE OF THE
COMMONWEALTH OF PENNSYLVANIA
(Pennsylvania State Police)

Defendants (Respondents)

**RESPONDENTS' BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS TO THE COMPLAINT IN EQUITY**

I. Procedural History and Statement of the Case

On December 6, 2000, the petitioner, Allegheny County Sportsmens' League, Kim Stolfer, Richard Haid, Lehigh Valley Firearms Coalition, John F. Brinson, and John J. Iannantuono, filed suit against Governor Tom Ridge, Pennsylvania State Police Commissioner Paul 3. Evanko, and the Pennsylvania State Police. Petitioners are individual firearms owners, and organizations representing Pennsylvania firearm owners, and seek to prohibit the Commonwealth from maintaining and operating a handgun sales database, and request the destruction of the existing database. Specifically, the petitioners have requested

relief, including declarations, issued under the Declaratory Judgments Act, that respondents have violated the record maintenance provisions of 18 Pa.C.S. §6111(b) and that respondents have violated the prohibition *against* a state firearms' ownership registry contained in 18 Pa.C.S. §6111.4.

The petitioners also sought a preliminary injunction, seeking to prohibit the Pennsylvania State Police from maintaining and operating a handgun sales database, and requesting the destruction of the existing database. A bearing on the preliminary injunction was held on January 18, 2001, before the Honorable James R. Kelley. On January 23, 2001, in an unreported opinion. Judge Keiley found that the petitioners did not establish a clear right to relief for purposes of a preliminary injunction. (Unpublished Memorandum Opinion filed January 23, 2001, No. 565 M.D. 2000). Moreover, Judge Kelley also found that the petitioners/handgun owners were not able to show that the injunction was necessary to prevent immediate and irreparable harm. in that the petitioners had not been threatened with the loss of ownership or of use of their handguns if the Commonwealth did not destroy the database. (Id., p.⁷). The court also determined that greater injury would result if the preliminary injunction was granted rather than refused, in that once the database was destroyed, it could not be recreated. (Id., p.8). Finally, the court found that an injunction would not restore the parties to the status quo, in that the status quo was the maintenance of the database, a database that has legitimate law enforcement purposes. (Id., p.8).

On February 7, the respondents filed preliminary objections to the Complaint in Equity.

ARGUMENT

I. The Governor is not a proper party to this action and should be removed as a party.

According to the petitioners' complaint, the Governor was named as a respondent in the action because he:

“serves as the chief executive officer of the Commonwealth. He has ultimate responsibility for the conduct of those Commonwealth executive or administrative agencies and departments whose activities are at issue in this case. Defendant Ridge is charged by statute with ensuring that the laws of the Commonwealth are faithfully executed.”

(Compl., para. 12)

However, the Pa. Uniform Firearms Act, P U 1482, No. 334, as amended, 18 Pa.C.S. §6101, et seq., does not give the Governor any specific enforcement powers under the Act nor does the law give him any interest that would be affected by the declaration sought. Any interest in enforcing and defending the statutes in question clearly belongs to the Commissioner of the State Police, since the State Police maintains the handgun sales database and administers the Pennsylvania Instant Check System (PICS).

Since the Governor is not an indispensable party, and since the executive interest is adequately represented by its duly-appointed agency head, Pennsylvania State Police Commissioner Paul Evanko, the Governor should be removed as a party to this action. Leonard v. Thornburgh, 467 A.2d 104, 105 (Pa. Cmwlth, 1983). (In an action challenging the constitutionality of a taxing statute, executive interest is properly represented by Secretary of Revenue and Governor should he removed as a party.) Also see Pennsylvania School Boards Assoc., Inc. v. Commonwealth Assoc. of School Administrators, Teamsters

Local 502, 696 A.2d 859, 867 (Pa. Cmwlth. 1997). (Since the Governor was not given any powers or duties with respect to collective bargaining act, he should be removed from certain counts in the suit.)

II. The petitioners have failed to state a claim upon which relief can be granted.

A. **A declaratory judgment should not issue in this case because the right of the petitioners to relief is not clear.**

The petitioners seek a declaration that the respondents “have violated the record maintenance provisions of 18 Pa.C.S. §6111 (b),’ and that they “have violated the prohibition against a state firearms registry contained in 18 Pa.C.S. §611 1,4.” However, a declaratory judgment may not issue unless the petitioners’ right to relief is clear. Jannetta v. Knoll, 566 A.2d 330 (Pa. Cmwlth. 1989); affirmed 591 A.2d 1052, 527 Pa. 358.

It is not at all clear that petitioners have any clear right to relief in this matter. As Judge Kelly noted in his opinion denying the petitioners’ petition for preliminary injunction, the petitioners have not been threatened with the loss of ownership or of use of their handguns. (Unpublished Memorandum Opinion, filed January 23, 2001, No. 565 M.D. 2000, p.7). In fact, it is difficult to judge from a reading of the complaint exactly what, if any, harm has come to the plaintiffs because of the respondents’ maintenance of the handgun sales database.

Moreover, the interpretation given to 18 Pa.C.S. §6111(b) and §6111.4 by the petitioners is illogical, when one reads those sections in the context of the Uniform Firearms Act and considers the legislative history.

Section 611 1(b) of the Pa. Uniform Firearms Act provides, in relevant part:

“(b) **Duty of seller.** —No licensed importer, licensed

manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee. The form of this application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred.

(1.1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

(i) In the event of an electronic failure under section 6111.1 (b)(2) (relating to Pennsylvania State Police) for purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee.

(ii) The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer.

(iii) For purposes of conducting the

criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee and the date of application.

(iv) No information regarding the type of firearm need be included other than an indication that the firearm exceeds the barrel lengths set forth in section 6102.

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) or violates section 6111.4 shall be subject to a civil penalty of \$250 per violation, entry or failure to destroy.

(1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania

State Police; postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police.”

The petitioners argue that §6111(b)(1.1)(v) prohibits the State Police from retaining any of the information on application/record of sale forms for handguns or from entering any of the information regarding handguns onto a computer. However, the plain wording of §6111 belies such a reading of the statutory language.

Section 6111(b)(1) applies to handgun sales and mandates that completed application/record of sale from buyers of handguns be sent to the Pennsylvania State Police within 14 days of sale. (It is clear that §6111(b)(1) only applies to handguns because the subsection begins “For purposes of a firearm as defined in section 6102...”) This section also specifies the length of the form and what information it should contain. It would be senseless for the legislature to force gun dealers to send in these forms to the State Police if the form served no purpose. Obviously, the purpose is to enter the forms into a handgun sales database, which is then used primarily for criminal justice purposes if handguns are utilized in the commission of crimes. The purpose of requiring gun dealers to send in these handgun sales forms is not for the purpose of conducting a criminal history check of the purchaser, since this is done through a phone call by the dealer at the time of transaction, See 18 Pa.C.S. §6111.1.

The purpose of §6111(b)(1.1), including subsection (v), is quite different and distinct from the purpose of §6111(b)(1). Section 6111(b)(1.1) applies only to “long guns,” that is,

guns whose barrel and other lengths exceed those set forth in §6102. The section, while admittedly inartfully written, also only applies when the electronic computerized system of the Pennsylvania State Police that conducts criminal history checks (under §6111.1) has failed and dealers have to submit applications/records of sale on long arms to the Pennsylvania State Police to conduct the background checks. It is only in this limited circumstance that the provisions of §6111 (b)(1.1) go into operation.

Therefore, the provisions of §6111(b)(1.1)(v), which require the destruction of applications/records of sale within 72 hours of the background check, only apply in those rare situations when long arm records of sale must be submitted to the Pennsylvania State Police because of an electronic breakdown in the Pennsylvania Instant Check System; they do not apply to handgun sales at all. It would be inconsistent with the language of §6111(b)(1) to read them otherwise.

Section 6111(b)(1) sets out a detailed procedure for handgun sales applications/records to be sent to the Pennsylvania State Police. There is no information in that subsection about destruction of this information once it reaches the State Police. Obviously, if the provisions of §6111(b)(1.1)(v) were to apply to handgun sales, the place to put that language would have been in §6111(b)(1), or alternately, to clearly indicate in §6111(b)(1.1)(v) that the provisions of that subsection applied also to handguns. Since the legislature did neither, it is clear their intent was to apply the provisions, relating to destruction of records of sales, of §6111(b)(1.1)(v) only to long guns.

In addition, the provisions of §6111 (b)(1. 1), of which subsection (v) is a part, do not reference handguns at all, but reference long guns several times. For example, subsection (1.1)(i) refers to a “firearm which exceeds the barrel and related lengths set forth in section

6102.” Likewise, subsection (iv) indicates that “no information regarding the type of firearm need be included [on the long arm application/record of sale] other than an indication that the firearm exceeds the barrel lengths set forth in section 6102.” The legislature, by eliminating any reference to handguns in §6111(b)(1.1) and repeatedly referencing long arms in that section, intended the subsections contained therein to apply only to long arms.

The petitioners also misinterpret the meaning of 18 Pa.C.S. §6111.4, which they maintain prohibits the Pennsylvania State Police from maintaining a handgun sales database. Section 6111.4 provides:

“Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth. For the purposes of this section only, the term “firearm” shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.”

The State Police do not maintain a registry of firearm ownership. The State Police database does not contain records of ownership of any guns in the Commonwealth; it merely contains records of sales of handguns in the state. For example, if a person owns a gun and moves to Pennsylvania from another state, he does not have to register it with the State Police nor submit any paperwork to the State Police. Moreover, the transfer of handguns between spouses, or between a parent and child, or between grandparent and grandchild do not have to be reported to the State Police. 18 Pa.C.S. §6111(c). Finally, there are no records of sale or ownership of long guns that are retained by the Pennsylvania State Police in their database.

Other states that maintain registries of gun ownership have a much more comprehensive database than the Pennsylvania State Police. For example, Massachusetts

requires that all persons who own or possess a firearm in the state be issued a firearm identification card or a license to carry firearms. The Massachusetts Secretary of Public Safety keeps all information with regard to these documents on file. See Mass. Arm. Law Ch. 140, § 129c (2000). Massachusetts has a true gun registry, in that the state maintains records on ownership of all guns in the state, whether those guns are long arms or handguns. Pennsylvania's handgun sales database does not approach, in breadth of information, the firearm ownership registry in place in Massachusetts.

The legislative history of Pennsylvania statutory sections §6111(b)(1.1) and 6111.4 is also instructive as to the meaning of these sections. This history supports the reading given to both sections by the Pennsylvania State Police. Representative Robert Godshall, in speaking of the effect of Act 66 of 1995 (which added paragraph (1.1) to §6111(b)) and Act 17 of 1995 (Spec. Sess. No. 1) (which added §6111.4) said the following:

“...The question *is* what will Acts 17 and 66 do to the legitimate Jaw-abiding sportsman and gun owner.

There is no added inconvenience to sportsmen and gun owners in Act 66. Under the 1968 Uniform Firearms Act, two separate forms — the application and the record of sale — had to be filled out in quadruplicate by consumers to purchase a handgun. Under Act 66 we only require one form, the record of sale, in triplicate, making the system more convenient. For the purchase of a long arm, the only thing required is the signature of the seller and the purchaser. No paperwork for the purchase of a long arm has to be submitted to the State Police until 1997. Overall, gun purchases require less paperwork under Act 66 than under J 7 and the 1968 act.

There will be little inconvenience following the implementation of the background check on long arms in 1997. The same single form that is used for a handgun purchase will be used for a long arm. There is no wait to buy the rifle or shotgun...the purchaser takes it home that day. The record must be destroyed by the State Police following completion of the background check.

Lawful gun owners have given up very little in

exchange for added protection for the public. In fact, they have gained specific protections against long arm ownership registries and records maintenance.

Act 66 specifically prohibits the creation of a firearm ownership registry. The intent of this section has created some concern among law enforcement. The Pennsylvania State Police have maintained the information on the record of sale for a handgun since the 1930's. The information has been successfully used to solve crimes involving the use of handguns. It was not the intent of Act 66 conference committee to change the State Police's ability to use this data to solve crimes as this information does not constitute an ownership registry.

According to case law, an ownership registry would require the registration of all firearms, including those owned by Pennsylvanians not purchased in the Commonwealth. Presently, if you move to Pennsylvania from another state, you are not required to register any handguns you bring with you. Information on transfers of handguns to spouses, children, and grandchildren is not reported or required. According to case law, the exclusion of these handguns means that there is no "ownership registry."

Act 66 allows the historic record of sale data bank to be retained by the State Police for the purpose of enabling law enforcement to solve crimes and to put the criminals who commit gun violence behind bars.

Act 66 also prevents any records from being maintained on rifles and shotguns. A true ownership registry would require all Pennsylvanians to register all firearms in the same manner as you register a motor vehicle," Legislative Journal, No. 79, p.2306 (Dec. 11, 1995) (emphasis added).

For the reasons stated above, a declaratory judgment should not issue in this case because the petitioners have not shown that their right to relief is clear.

B. A declaratory judgment should not issue in this case because there are other appropriate and available statutory remedies.

Declaratory judgment proceedings should not be entertained by the court if there are other available and appropriate statutory remedies. Mains v. Fulton, 423 Pa. 520,224 A.2d 195 (1966). Pursuant to 18 Pa.C.S. §6111 (b)(1.3), a person is criminally and civilly liable if

they knowingly and intentionally maintain, or fail to destroy, any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to §6111(b)(1.1) or(1.4) or violate §6111.4.

Since the petitioners could bring a civil action and file a private criminal complaint against anyone they believed intentionally maintained or failed to destroy information prohibited pursuant to the provisions of §6111 (b)(1.1) or §6111.4, and since that remedy would dispose of this controversy, the court should not entertain declaratory judgment proceedings in this case.

III. This action is barred by Article 1, Section 11 of the Pennsylvania Constitution and 18 Pa.C.S. §2310.

To the extent that the petitioners' declaratory judgment action seeks to compel affirmative action on the part of state officials, it is barred by the concept of sovereign immunity, established by Article 1, Section 11 of the Pennsylvania Constitution, and reaffirmed by 1 Pa.C.S. §2310. Philadelphia Life Insurance Co. v. Commonwealth, 410 Pa. 571, 190 A.2d 111, 114 (1963).

The relief requested by petitioners include the destruction of the Pennsylvania State Police handgun sales database. As Pennsylvania State Police Major Ronald Hackenberg testified at the preliminary injunction hearing in this case, the handgun sales database has helped to solve numerous crimes committed with handguns and it would be difficult, if not impossible, to solve those crimes as expeditiously if the database did not exist.

Because the relief requested in the complaint consists primarily of an affirmative action, which the petitioners seek to compel, their claim falls within the rule of immunity and should be dismissed.

CONCLUSION

Respondents respectfully request this Court to grant their preliminary objections in his matter, and dismiss the complaint with prejudice.

Respectfully submitted,

JOANNA N. REYNOLDS
Assistant Counsel
Attorney I.D. #37436
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
(717) 783-5568

Dated: March 28, 2001

PROOF OF SERVICE

I hereby certify that on this date a copy of the Respondents' Brief in Support of Preliminary Objections to the Complaint in Equity has been served on the person and in the manner indicated below.

Service by first class mail, addressed as follows:

Jon Pushinsky, Esquire
1808 Law & Finance Building
Pittsburgh, PA 15219

JOANNA N. REYNOLDS
Assistant Counsel
Pennsylvania State Police

Dated: March 28, 2001.