

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

NO. 4 WAP 2002

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

vs.

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

BRIEF OF APPELLEES

Appeal from the January 9, 2002 Order of the Commonwealth Court of Pennsylvania, entered at No. 565 M.D. 2000, sustaining appellees' preliminary objection in the nature of a demurer and dismissing Appellants' Complaint in Equity (Petition for Review) with prejudice.

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I. COUNTER-STATEMENT OF QUESTIONS INVOLVED

- A. Was the Commonwealth Court correct in its conclusions that the petitioners would be unable to state a claim that the Commonwealth's maintenance of a database of handgun sales was a violation of either Section 6111(b)(1.1)(v) or 6111.4 of the Pennsylvania Uniform Firearms Act?

Answered in the affirmative by the court below.

- B. Did the Commonwealth Court improperly consider any information in sustaining the Commonwealth's preliminary objections in the nature of a demurrer?

Not answered by the court below.

Suggested Answer: "NO"

II. COUNTER-STATEMENT OF THE CASE

Factual and Procedural History

Appellants, who are four individuals and two organizations, filed a Complaint in Equity in the Commonwealth Court of Pennsylvania on December 13, 2000. (R. R., 1b) The complaint named as respondents Tom Ridge, the former Governor of Pennsylvania, Paul Evanko, the Commissioner of the Pennsylvania State Police and the State Police (R.R. 6b). This complaint sought declaratory and injunctive relief, specifically a declaration that the respondents had violated 18 Pa.C.S. §6111.4, by maintaining a database of Pennsylvania handgun sales, and an order directing the destruction of the database. (R.R. 15b-16b).

On January 8, 2001, the petitioners filed a Motion for Issuance of Preliminary Injunction, requesting that the Commonwealth Court order the respondents to destroy their records of handgun sales. (R.R. 22b).

On January 18, 2001, a hearing was held on the Petitioners' Motion for Issuance of a Preliminary Injunction. (R.R. 1 b-2b). At this hearing the respondents introduced the following significant evidence:

The database of handgun sales has been maintained by the Pennsylvania State Police since 1943. (Supp.R.R. 28b). However, records of those sales were kept by the Commonwealth since 1901. (Supp.R.R. 28b). The database contains information on all handgun sales in the Commonwealth, with the

exception of sales of handguns between certain family members. (Supp.R.R. 39b-40B). The records contain the name of the handgun purchaser, his date of birth, the date of the sale, the serial number, make, and caliber of the handgun, the social security number of the purchaser, and the dealer number.

(Supp.R.R. 55b). The database is also updated whenever the handgun is sold in the state again.

(Supp.R.R. 55b).

The handgun sales database has been utilized by the State Police, the Federal Bureau of Alcohol, Tobacco and Firearms, and other law enforcement agencies, to return firearms to their lawful owners. (Supp.R.R. 43b, 159b), to assist in criminal investigations, including homicides, (Supp.R.R. 45b, 154-157b), and to assure officer safety in situations where handguns are involved. (Supp.R.R. 45b, 157b). The Bureau of Alcohol, Tobacco, and Firearms does not maintain as comprehensive a record on handguns as does the State Police - the Bureau's system only records the manufacturer and perhaps the first sale of the handgun; it does not record subsequent sales, as Pennsylvania's system does. (Supp.R.R. 51 b).

In a memorandum opinion dated January 23, 2001, the Honorable James R. Kelley, Judge of the Commonwealth Court of Pennsylvania, denied the petition for preliminary injunction filed by the petitioners. (Appendix to Petitioners' Brief, 36a). In ruling for the Commonwealth, the court held that the petitioners did not establish a clear right to relief, because the term "registry" in Section 6111.4 of the Pa. Uniform Firearms Act was not defined, the legislative history of Act 66 of 1995, which added §6111.4 to the Pennsylvania Uniform Firearms Act, provided support for the Commonwealth's position that a record of handgun sales was not prohibited, and the interpretation of the Act offered by the petitioners raised potential conflicts with other provisions of the Act. (e.g., the State Police could not fulfill its duty to make all reasonable efforts to determine the lawful owners of firearms, as required by 18 Pa.C.S. §6111.1(b)(4), without the database). (Appendix, 32a-33a).

The court also found that even if the petitioners' right to relief was clear, they could not prove any of the remaining prerequisites for the issuance of a preliminary injunction. The petitioners could not prove immediate and irreparable harm, because they had not been threatened with the loss or ownership of their handguns. Judge Kelley also found that the petitioners did not demonstrate that greater injury would result from refusing the relief they requested. In fact, the court specifically found that greater injury would occur if the requested relief was granted since it would result in the destruction of the handgun sales database, a database that could not be replicated once destroyed. Finally, the court found that the requested injunction would not restore the parties to the status quo, since the status quo was the maintenance of the database,

a database which, the court noted in its opinion, has legitimate law enforcement purposes. (Appendix. 35a).

On February 7, 2001, the Commonwealth respondents filed preliminary objections to the Petitioners' Complaint in Equity. The Commonwealth raised the following bases for dismissal of the complaint: the Governor was not a proper party to the suit, the petitioners failed to state a claim upon which relief could be granted, and declaratory judgment was inappropriate in this case.

After briefing, the Commonwealth Court considered the case en banc. On May 9, 2001, the court issued its opinion, with two judges dissenting, holding that Governor Ridge was not a proper party to the action and that the petitioners failed to state a claim upon which relief could be granted. In finding that the petitioners failed to state a claim, the court considered whether the State Police had violated either Section 6111(b) or 6111.4 of the Firearms Act, and concluded it violated neither section in its maintenance of a handgun sales database.

This appeal by the petitioners followed.¹

¹ It should be noted that the appellants are not appealing the removal of Governor Ridge from this lawsuit or the denial of the request for the preliminary injunction. This appeal is limited to the issue of whether the grant of the Commonwealth's preliminary objections in the nature of a demurrer was appropriate.

III. SUMMARY OF ARGUMENT

The plain language of 18 Pa.C.S. §6111(b)(1.1)(v) requires the State Police to destroy records of sale for "long arms" only. This section only applies when there is an electronic breakdown in the Pennsylvania Instant Check System and does not apply to handgun sales at all. Therefore, petitioners' arguments as to the effect of this section on the handgun database are without merit.

Section 6111.4 of the Pa. Uniform Firearms Act only prohibits a registry of firearm ownership. It does not prohibit a database of handgun sales, since such a database does not track ownership of handguns, is unlike true firearm registries in other states, and does not contain information on all firearms sales.

The legislative history of the two sections supports the State Police's view that the database can and should be maintained. Moreover, the State Police's interpretation of the relevant statutes is entitled to great weight since it is the agency that administers the statutes.

The Commonwealth Court did not improperly consider any information in sustaining the demurrer of the respondents in this matter. The Commonwealth Court was free to draw conclusions as to the intent of the legislature by drawing on the legislative history of the applicable legislation. Moreover, the court could also take judicial notice of facts at issue in denying the plaintiffs request for injunctive relief, when that matter was fully litigated.

IV. ARGUMENT

- A. THE COMMONWEALTH COURT WAS CORRECT IN HOLDING THAT THE STATE POLICE'S MAINTENANCE OF A DATABASE OF HANDGUN SALES WAS NOT IN VIOLATION OF THE PROVISIONS OF 18 Pa.C.S. §6111(b)(1.1)(v) OR 6111.4 OF THE PENNSYLVANIA UNIFORM FIREARMS ACT.

The petitioners argue that the maintenance of a handgun sales database by the Pennsylvania State Police violates the provision of two sections of the Pennsylvania Uniforms Firearms Act, P.L. 1482, No. 334, as amended, 18 Pa.C.S. §6101, et seq., specifically §§6111(b)(1.1)(v) and 6111.4. These arguments will be addressed seriatim.

First, section 6111(b)(1.1)(v) is part of Section 6111, which deals generally with the sale and transfer of firearms. Section 6111 provides, in relevant part, as follows:

§ 6111. Sale or transfer of firearms

(a) Time and manner of delivery.-

(1) Except as provided in paragraph (2), no seller shall deliver a firearm to the purchaser or transferee thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(2) Thirty days after publication in the Pennsylvania Bulletin that the Instantaneous Criminal History Records Check System has been established in accordance with the Brady Handgun Violence Prevention Act (Public Law 103- 159, 18 U.S.C. § 921 et seq.), no seller shall deliver a firearm to the purchaser thereof until the provisions of this section have been satisfied, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(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 into 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 sub-section 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. Section 6111(b)(1.1) 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 of §6111(b)(1.1)(v), relating to destruction of records of sales, 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. Ann. 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. Similarly, the State of Hawaii requires every person arriving in the state who brings a firearm with him to register the firearm within 3 days of his arrival. Haw. Rev. Stat. §134-3 (1988), as amended. Pennsylvania's handgun sales database does not approach, in type or amount of information, the firearm ownership registry in place in Massachusetts, or Hawaii.

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:

". . . 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 the 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).

In addition to Rep. Godshall's comments, Senator Heckler, the floor manager for

Act 66 in the Senate, responded in the following manner to a question regarding:

whether the new law would permit a registry of long guns:

"The only thing that will be kept, which is presently being kept, is the record of the initial purchase of a handgun. That the State Police have had for years. We do not change that." Legislative Journal -Senate, p. 1156 (emphasis added).

The State Police's interpretation of the firearm statutes it administers is also entitled to strong deference. The State Police executes many of the statutory duties imposed by Sections 6111 and 6111.1-6111.5 of the Pa. Uniform Firearms Act. Under the law of the Commonwealth of Pennsylvania, its construction of those statutes is entitled to great weight and should be disregarded only when such construction is clearly erroneous. See Scanlon v. Dept. of Public Welfare, 739 A.2d 635, 638 (Pa. Commonwealth 1999) (under the "strong deference" standard, adopted by the Pa. Supreme Court, if the intent of the legislature is clear, its intent must be given effect. If the precise question has not been addressed by the legislature, courts are not to impose their own construction, but must review the agency's construction and give deference to it where that construction is permissible).

B. THE COMMONWEALTH COURT DID NOT IMPROPERLY CONSIDER ANY INFORMATION IN SUSTAINING THE RESPONDENTS' PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER.

Petitioner argues that the Commonwealth Court exceeded its scope of review by making prejudicial findings as to the purpose of the handgun sales database and drawing the conclusion that the destruction of the database would impede the ability of the State Police to return confiscated firearms to their rightful owners. (See Petitioners' Brief, p. 26). However, rather than making factual findings, the Commonwealth Court was merely drawing valid conclusions from the relevant legislation.

In deciding the preliminary objections, the Commonwealth Court had to determine the intent of the legislature in enacting §6111 and 6111.4. By reading the legislators' comments in the Legislative Journal, the court could have easily reached the conclusions it did. Moreover, courts are permitted to take into account the potential consequences of an Act in interpreting its meaning. Commonwealth v. Chalfont, 42 A.2d 587, 589 (Pa. 1945).

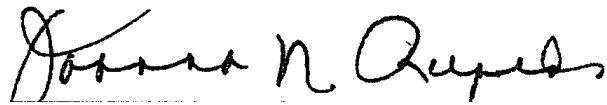
Even if the Court relied on the transcript of the preliminary injunction hearing in this case to reach the conclusions it did, there is nothing impermissible in that. See Public Opinion v. Chambersburg Area School District, 654 A.2d 284, at 286-287 (Comm. Ct. 1995) (trial court took judicial notice of fact at issue in ruling on a demurrer, since it was a factual matter disclosed in the record on the plaintiffs request for injunctive relief, which was denied and not appealed). Since the petitioners here were represented by counsel at the hearing on the request

for a preliminary injunction, and their counsel had a full and fair opportunity to cross-examine the Commonwealth witnesses and offer contrary evidence, the court could properly take notice of the facts developed at that hearing.

V. CONCLUSION

The Commonwealth Court's order of January 9, 2002, sustaining the respondents' preliminary objection in the nature of a demurrer should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joanna N. Reynolds". The signature is written in a cursive style with a large initial "J".

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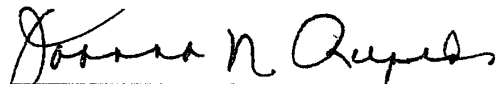
Date: June 17, 2002

PROOF OF SERVICE

I hereby certify that on this date, I served two copies of the Brief of Appellees and Supplement Reproduced Record on the person and in the manner listed below:

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