

PENAL LAW §§ 265.00, 265.01, 265.02, 265.03, 265.20, 400.00; L. 1963, CH. 136; L. 1961, Ch. 296.

Penal Law § 400.00(14) authorizes a fee of \$3.00 for each amendment to a firearms license, even if the proposed amendment will result in more than one change to the license.

February 17, 2005

Bernetta A. Bourcy  
County Attorney  
County of Yates  
415 Liberty Street, Suite 204  
Penn Yan, NY 14527

Informal Opinion  
No. 2005-7

Dear Ms. Bourcy:

Your question concerns an interpretation of subdivision 14 of section 400.00 of the Penal Law, which governs the fee for amendments to firearm licenses. You have asked whether the County may charge the statutory fee of \$3.00 for each proposed change to a firearms license that is contained in one application to amend the license, or whether the County may charge only one \$3.00 fee for each amendment, regardless of the number of proposed changes to be made by the amendment. We conclude that Penal Law § 400.00(14) authorizes a fee of \$3.00 for each amendment to a firearms license, even if the proposed amendment will result in more than one change to the license, such as the addition or cancellation of more than one weapon.

#### **ANALYSIS**

The licensing of firearms is governed by Penal Law § 400. Individuals seeking to carry or possess a pistol or revolver must obtain a license. See Penal Law §§ 265.01(1), 265.02(4), 265.03(2) (weapons possession crimes); id. § 265.20(3) (exemption from weapons possession crimes for persons licensed); id. § 265.00(3) (definition of firearm). Such a license is issued for a specific weapon. See Penal Law § 400.00(7). A person licensed to carry or possess a pistol or revolver may apply for an amendment of his license "to include one or more such weapons or to cancel weapons held under license." Id. § 400.00(9). Outside New York City and the County of Nassau, the licensing fees are set by state statute: the fee for a license to carry or possess a pistol or revolver may be from \$3.00 to \$10.00 as

determined by the county legislature, and "for each amendment thereto," the fee is \$3.00. Id. § 400.00(14).<sup>1</sup>

Because an amendment to a firearms license may amend the license to include one or more weapons, or to cancel weapons held under the license, you have asked whether the \$3.00 amendment fee applies to each amendment, or to each change to the license proposed to be made by an amendment. For example, if an individual applies to amend his firearm license to include two additional weapons and to cancel one of the previously included weapons, your question is whether the appropriate fee would be a single \$3.00 fee for the entire amendment, or \$3.00 for each proposed change, for a total fee of \$9.00.

Reviewing the language of Penal Law § 400.00, we are of the opinion that the statute authorizes a single \$3.00 fee for the entire amendment. Subdivision 9 directs that "a person licensed to carry or possess a pistol or revolver may apply . . . for amendment of his license to include one or more such weapons or to cancel weapons held under license." This language indicates that an amendment may effect more than one change to an existing license: a single amendment may add one or more weapons and cancel one or more weapons. Thus, insofar as subdivision 14 directs that the fee "for each amendment" is \$3.00, we believe the most appropriate reading of that provision is that the \$3.00 fee applies to each amendment, regardless of the number of changes to be made by the amendment.

Legislative history supports this interpretation of the fee provision. Prior to 1963, the authority to seek amendment of a firearms license and the fee applicable thereto were contained in one provision, which read:

Elsewhere than in the city of New York, a person licensed to possess or carry a weapon as prescribed by this section may apply at any time to the judge or justice by whom his license was issued . . . for an amendment to his license, so as to include one or more additional weapons or one or more different weapons, and upon payment of a fee of one dollar . . . such judge or justice may issue an amended license to cover such additional or different weapons, or the

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<sup>1</sup> The fee for an amendment in Suffolk County is \$5.00. Penal Law § 400.00(14).

cancellation of one or more weapons held  
under such license.

Former Penal Law § 1897(10)(b), as amended by Law 1961, ch. 296 (emphasis added). Under this former provision, it was clear that upon the payment of one fee, an individual could obtain an amendment of his firearms license to include more than one additional or different weapons. See 1952 Op. State Compt. No. 5666 (construing former language as authorizing only one fee for an amendment, even where amendment will include more than one additional weapon). In 1963, in connection with a major reorganization of the firearms provisions of the Penal Law, the licensing provision was moved from section 1897 to section 1903 and internally reorganized. See Law 1963, ch. 136. Pursuant to the 1963 amendment, the language governing the amendment fee was removed from the subdivision authorizing amendment of a license and placed in a separate subdivision, which covered the fees for an original license and amendments thereto. The licensing statute was renumbered to section 400.00 by subsequent amendment, but the internal organization of the statute remains much the same today.

According to numerous letters contained in the bill jacket to the 1963 amendment, the amendment primarily was intended to reorganize and rearrange the existing provisions without substantive change. See Memorandum of the Joint Legislative Committee on Firearms and Ammunition, reprinted in Bill Jacket for ch. 136 (1963), at 22; see also Bill Jacket for ch. 136 (1963), at 5, 6, 9, 11. The few substantive changes made by the amendment do not include the changes to the license amendment and fee provisions. See Report of the Division of the Budget (March 22, 1963), reprinted in Bill Jacket for ch. 136 (1963), at 16-17. Inasmuch as no substantive change was intended by the amendment separating the language governing the fee from that governing license amendments, we conclude that the present language continues to authorize only one fee for an amendment, even where the amendment will include more than one change to an existing license.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

LAURA ETLINGER  
Assistant Solicitor General  
In Charge of Opinions