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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 28, 2002

Mr. David C. Lieberman
Department of the Treasury
Bureau of Alcohol, Tobacco & Firearms
6701 Carmel Road, Suite #200
Charlotte, NC 29226

Re: Possession of Machine Guns in South Carolina

Dear Mr. Lieberman:

First, I must apologize for the delay in responding to your request for clarification regarding S.C. Code Ann. § 16-23-250 and its amendment of September 21, 2001. As you may be aware, the State of South Carolina has experienced significant budget reductions due to declining revenue for the State. As a result of these reductions this Office has been forced to reallocate resources and personnel leaving certain divisions at less than full-operating capacity. We appreciate your patience in this regard.

Your first question posed asked if the language added in the 2001 amendment to S.C. Code Ann. § 16-23-250 applies only to machine guns and military firearms or whether it also applies to sawed-off shotguns and rifles. The portion of this statute that was amended reads as follows:

The provisions of this article do not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U.S.C. Section 921 et seq., any person authorized to possess these weapons by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization, any common or contract carrier transporting or shipping any machine gun or military firearm to or from the manufacturer if the transportation or shipment is not prohibited by federal law, or persons licensed pursuant to Section 23-31-370.

South Carolina Senate Bill Number 488, effective September 21, 2001 made an addition to the list of exceptions by including "any person authorized to possess **these weapons** by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization" The "weapons" referred to in this amendment appear to be the machine guns and military firearms mentioned in the first sentence of this paragraph

Request Letter

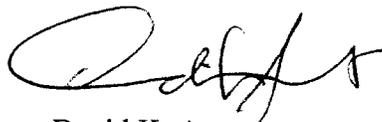
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and that portion referring to contract or common carriers. As this paragraph specifically mentions "any manufacturer of machine guns or military firearms" and common or contract carriers transporting any "machine gun or military firearm," the maxim of statutory interpretation called *expressio unius est exclusio alterius*, meaning the specific expression of one thing is the express exclusion of another, seems applicable. Statutes' words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. As this portion of the statute expressly refers only to machine guns and military firearms, sawed-off shotguns and rifles do not appear to be contemplated by this amendment to S.C. Code Ann. § 16-23-250. This conclusion, however, is not free from doubt and perhaps legislative clarification is necessary.

Your second question asked which official in South Carolina may provide the certification required for the transfer of machine guns as required by 27 C.F.R. § 179.85. Under S.C. Code Ann. § 23-31-330, any person entitled to possess a machine gun must file an application with the State Law Enforcement Division approved by the sheriff of the county in which the applicant resides or has a principal place of business. The State Law Enforcement Division then registers the applicant upon approval, and the applicant is given a card which allows possession of a machine gun in the State. Our statutes do not expressly state which official must provide the certification required by 27 C.F.R. § 179.85 for the transfer of machine guns and it seems our intention is to adhere to the federal regulation in this respect. Therefore, any official listed in 27 C.F.R. § 179.85 could provide the proper certification for the transfer of machine guns as required by that regulation for a South Carolina applicant.

I hope the information provided herein proves helpful. Please contact me if you have any further questions. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor published in a manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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