

1983 WL 181966 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 3, 1983

*1 Chief J. P. Strom
S. C. Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221

Dear Sir:

Attorney General Medlock has referred your letter dated June 29, 1983, to me for reply

The question presented was as follows: Would a charge of driving under the influence or any other misdemeanor found during the investigation of an applicant's background for a concealed weapon permit, preclude SLED from issuing such permit under the provisions of [Section 23-31-120, Code of Laws of South Carolina \(1976\)](#), as amended?

A review of the appropriate statutes and regulations indicates that, in the opinion of this Office, a conviction for magistrate-level driving under the influence or other minor misdemeanors, would not preclude SLED from granting a concealed weapon permit; however, conviction of crimes of violence, or crimes that carry a punishment of in excess of one year, would preclude the issuance of such a permit.

[Section 23-31-120\(b\)](#), found in the supplement to the 1976 [Code of Laws](#), provides that, prior to the issuance of a concealed weapon permit, SLED 'shall conduct such investigation of the applicant as it deems necessary to determine his qualifications to obtain a permit.' (Emphasis added). It is left to the discretion of SLED to promulgate regulations as guidelines for the investigation. No such specific regulations appear to exist.

It should also be noted that [Section 23-31-140](#), in the same article on Regulation of Pistols, states that a purchaser of a pistol is required to sign a particular form, setting forth certain information, including a sworn statement that he does not fall within classifications set forth in [Section 16-23-30\(a\), \(b\), and \(c\), of the Code of Laws](#).

The reasonable implication, therefore, from that article dealing with pistols is that a carrier of a concealed weapon must not fall within the classifications set forth as described in [Section 16-23-30](#), which provides for criminal penalties regarding the sale, delivery, and possession of pistols. That section provides that it would be unlawful for any person to 'knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this state any pistol' to a person who has been convicted of a crime of violence, or who is a fugitive from justice, or habitual drunkard or drug addict, or who has been adjudicated mentally incompetent. [Section 16-23-30\(a\)](#). [Subsection \(b\)](#) prohibits delivery of a pistol to any person who is a member of a subversive organization, and [subsection \(c\)](#) prohibits delivery to any person under the age of twenty-one, with certain military exceptions.

It should be also noted that [Section 16-23-30\(d\)](#) prohibits delivery of a pistol to any person who has been declared unfit to carry or possess a pistol by a circuit judge and [subsection \(e\)](#) states that it would be unlawful for any person covered in any of the preceding subsections to possess or acquire pistols within the state.

*2 It is therefore reasonable to conclude that since possession of a pistol is prohibited by any person falling within subsections (a) through (d) of [Section 16-23-30](#), and subsections (a), (b), and (c) of [Section 16-23-30](#) are directly referenced in [Section 23-31-140](#), dealing with the purchase of handguns, these prohibitions regarding possession must be read into the investigation required in [Section 23-31-120\(b\)](#). Accordingly, if a SLED investigation determines that an individual had been convicted of

a crime of violence, for example, or was a member of a subversive organization, he would be precluded from receiving a concealed weapon permit.

An examination of regulations promulgated by SLED failed to show any that would directly apply to investigations for a concealed weapon permit. However, [Regulation 73-60\(7\)\(c\)](#) states the grounds for revocation of such a permit, including abuse of the privilege, or arrest and conviction for any crime which carries a sentence in excess of one year.

In conclusion, in the absence of specific regulations regarding the conduct of investigations, the statutes cited above, together with the regulation, may be read together to conclude that a person convicted of driving under the influence, at the level where it would not carry a sentence of in excess of one year, would not for that reason be precluded from receiving a concealed weapon permit. A case by case analysis would have to be made regarding a conviction for any other misdemeanor, since in South Carolina there exist many misdemeanors which are not crimes of violence, and do not carry punishment in excess of one year's imprisonment. However, if the misdemeanor conviction falls within these categories, a concealed weapon permit should be denied.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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