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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 15, 2005

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. O. Box 21428
Columbia, South Carolina 29221-1428

Dear Jeff:

In a letter to this office you requested clarification of an over twenty year old opinion of this office dated September 27, 1984 which dealt with the applicability of former S.C. Code Ann. § 23-31-180. Such former statute provided in part that:

No licensed retail dealer shall possess in his place of business or sell any pistol or other handgun which has a die-cast frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit.

The 1984 opinion determined that a taser was within the prohibition of Section 23-31-180 "...since it has a frame which melts at less than 800 F." It is my understanding that the original purpose of Section 23-31-180 was to ban the sale of pistols described as "Saturday night specials". The 1984 opinion simply addressed the applicability of such provision to a taser.

Since the 1984 opinion was issued Section 23-31-180 has been amended several times. Presently, such provision states:

No licensed retail dealer may hold, store, handle, sell, offer for sale, or otherwise possess in his place of business a pistol or other handgun which has a die-cast, metal alloy frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit. (emphasis added).

An amendment, effective almost fifteen years ago, added "metal alloy" following "die-cast" in the first sentence. See: Act No. 556 of 1990.

The 1984 prior opinion of this office dealt with a taser which was described as a "plastic encased" weapon. Therefore, such weapon was within the definition of a weapon "which has a die-

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cast frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit.” However, as noted, pursuant to the amendment enacted in 1990, in order to presently be prohibited by Section 23-31-180, the weapon must have a “die-cast, metal alloy frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit.” Inasmuch as it is my understanding that a taser does not have a “die-cast, metal alloy frame or receiver”, it would no longer be within the prohibition of Section 23-31-180. Therefore, the 1984 opinion was made inapplicable many years ago by a change in the applicable statute.

While with the passage of the referenced amendment to Section 23-31-180, the 1984 opinion is no longer effective, it must be noted that the referenced opinion never prohibited the possession or use of a taser by law enforcement officers in this State. The statute referenced in the opinion only prohibited the possession in a place of business or sale of the weapons prohibited by such provision and had nothing to do with the legality of law enforcement’s use of any weapon.

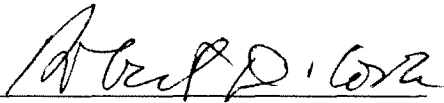
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General