March 17, 2008

The Honorable John M. Knotts, Jr.
Senator, District No. 23
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Knotts:

We understand from your letter that you wish to obtain an opinion of this Office as to whether a felon or an individual with a CDV conviction may hunt with a muzzleloader in South Carolina. This question implicates both state and federal law. This opinion will address the applicable state law, and will direct your attention to several pertinent provisions of federal law. However, a more detailed inquiry regarding the applicability of federal law should be directed to the Office of the United States Attorney or the Bureau of Alcohol, Tobacco and Firearms.

Law/Analysis

A "muzzleloader" is defined as "a firearm loaded at the muzzle." The American Heritage College Dictionary, 3rd Ed., 1993. The term "muzzleloading" describes a wide range of weapons, from antique muskets to muzzleloading pistols. However, for purposes of our discussion, a narrower definition of the term "muzzleloader" is necessary. We understand from your letter that the muzzleloader in question is used for hunting. Therefore, we assume that you are inquiring about a muzzleloading shotgun or a muzzleloading rifle.

State law prohibits certain persons from possessing handguns. S.C. Code Ann. Section 16-23-30 prohibits a person who has been convicted of a "crime of violence" from possessing or acquiring a handgun. A "crime of violence," for purposes of that article, is defined in Section 16-23-10 (3) as follows:

> [M]urder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

If a person is convicted of one of the above offenses, that person is prohibited from possessing or acquiring a handgun. In a prior opinion, we addressed the issue of whether criminal domestic

violence falls within the definition of "crimes of violence" for purposes of the South Carolina gun law. We stated as follows:

> It appears clear that any conviction, or convictions, for simple criminal domestic violence (CDV), as defined by Section 16-25-20 of the Code, would not fit the statutory definition of a crime of violence. When interpreting criminal statutes, our courts have generally applied the rules of strict construction, in favor of the defendant. State v. Lewis, 141 S.C. 207 (1927). The statute's 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 operation of the statute. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Furthermore, the plain meaning of a statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002). The statute requires an assault, accompanied by either the presence of a deadly weapon, or an intent to commit a separate and distinct criminal act. A conviction for a simple CDV would satisfy only the "assault" element of Section 16-23-10(c). Therefore, based on the rules of strict construction of the criminal statutes, this Office advises that the law does not appear to prohibit an individual who has been convicted of simple criminal domestic violence from possessing a handgun. Op. S.C. Atty. Gen., June 18, 2003.

In the 2003 opinion, however, we noted that the felony offense of Criminal Domestic Violence of a High and Aggravated Nature (CDV-HAN) could conceivably fall into the statutory definition for a "crime of violence." At the time the 2003 opinion was written, the statutory definition of CDV-HAN, found in Section 16-25-65 (A), incorporated the elements of the common law crime of assault and battery of a high and aggravated nature. CDV-HAN required an aggravating circumstance to be present. An "aggravating circumstance," as defined by our Supreme Court, included, *inter alia*, the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, or a difference in the gender. Therefore, in the 2003 opinion, we opined that "[d]epending on the nature of the aggravating circumstances, a CDVHAN conviction could statutorily prohibit an individual from possessing a handgun in South Carolina." Op. S.C. Atty. Gen., June 18, 2003. Subsequent to our 2003 opinion, the General Assembly enacted a change in the definition of CDV-HAN, and classified it as a felony, rather than a misdemeanor. The offense now carries a mandatory minimum sentence of one year, and a maximum sentence of ten years. The offense of CDV-HAN is now defined as committing "(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death." S.C. Code Ann. Section 16-25-65 (Supp. 2007).

Since the offense of CDV-HAN involves an assault, and the offense of CDV-HAN is punishable by imprisonment for more than one year, a person convicted of CDV-HAN would be prohibited under state law from possessing a handgun.

S.C. Code Ann. Section 16-23-10, Subsection (1) defines the term "handgun," for purposes of that article, as "any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges." This definition appears to exclude muzzleloaders- including muzzleloading pistols- since a muzzleloader does not fire fixed cartridges.

State law prohibits a person convicted of a "crime of violence" from possessing a handgun; however, state law does not include a similar prohibition on other types of firearms, such as rifles or shotguns. Federal law includes broader prohibitions on the possession of firearms.

Federal law prohibits a person who has been convicted of a felony from possessing a firearm. 18 U.S.C.A. Section 922(g) provides in pertinent part as follows:

> It shall be unlawful for any person--
>
> > (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
> > ...or
> > (9) who has been convicted in any court of a misdemeanor crime of domestic violence,
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

As we noted in a previous opinion, the above section prohibits any person convicted of a felony or a misdemeanor crime of domestic violence from possessing a firearm. Op. S.C. Atty. Gen. June 18, 2003.

18 U.S.C.A. Section 921(a)(3) defines the term "firearm" as follows:

> The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C.A. Section 921(a)(16) appears to include certain types of muzzleloaders within the definition of the term "antique firearm." It states in pertinent part as follows:

> (16) The term "antique firearm" means–
>
> > ...
> > (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For

> purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

Since this Office generally opines on questions of state law, we recommend that you inquire further concerning the interpretation of the above federal statutory provisions to the Office of the United States Attorney or the Bureau of Alcohol, Tobacco and Firearms. These agencies have the requisite expertise in matters of federal law to determine whether a muzzleloader is considered a "firearm" for purposes of the federal firearms prohibition.

Conclusion

The question of whether a person with a felony conviction or a CDV conviction may hunt with a muzzleloader in South Carolina implicates both state and federal law. State law prohibits a person convicted of a "crime of violence" from possessing a handgun; however, we are unaware of any similar state law prohibiting the possession of other types of firearms, such as rifles or shotguns, whether muzzleloading or not. Federal law prohibits a person who has been convicted of a felony, or a misdemeanor crime of domestic violence, from possessing a firearm. The definition of "firearm" appears to exclude certain muzzleloading rifles, muzzleloading shotguns, and muzzleloading pistols, under the exception for "antique firearms." However, since this Office does not opine on the interpretation of federal law, we recommend that you inquire further of the Office of the United States Attorney or the Bureau of Alcohol, Tobacco and Firearms, regarding the definition of the term "firearm" for purposes of federal firearms prohibitions.

Sincerely,

Henry McMaster
Attorney General

By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Deputy Attorney General