



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 15, 2003

Norwood Church, Fiscal Analyst
SC Senate Finance Committee
111 Gressette Senate Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Mr. Church:

You have requested an opinion of this Office concerning the exceptions to the general illegality of machine gun possession in South Carolina, and the corresponding special licensing requirements that are administered by the South Carolina Law Enforcement Division. By way of background, you indicate that Mr. Neil Seaman of Conway has contacted you concerning South Carolina Senate Bill S.488 and its relevance to his ability to sell machine guns that are presently in his possession. You further indicate that the changes that were made to the Code of Laws by S.488 are not being implemented by the state authorities, because of alleged discrepancies in other parts of the Code that were not amended by S.488. You further indicate that you have contacted SLED and that officials at that agency have also expressed concern about the apparent conflict in the Code of Laws on this particular issue.

Law/Analysis

In responding to your question, principles of statutory construction must be considered. The primary goal of statutory interpretation is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). 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). The plain meaning of a statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002). Moreover, the construction of a statute "... by the agency charged with executing it is entitled to the most respectful consideration [by the court] and should not be overruled without cogent reasons." Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976). As a matter of policy this Office typically defers to the administrative agency charged with its enforcement of the statute in question. See Op. S.C. Atty. Gen., Dated February 5, 2001.

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The possession and transportation of machine guns is generally illegal in the state of South Carolina. S.C. Code Ann. §16-23-220 and §16-23-230. A machine gun is defined as "...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." S.C. Code Ann. §16-23-210, §23-31-310.

The Code provides specific exceptions to this general prohibition for several classes of people. These exceptions are set forth in S.C. Code Ann. §16-23-250 (2002), which provides that:

The provisions of this article do not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of these organizations. Any peace officer of the State or of a county or other political subdivision, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of a state prison, correction facility, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or persons on duty in the postal service of the United States or a common carrier while transporting direct to a police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun, or sawed-off rifle, may possess machine guns, or sawed-off shotguns, or sawed-off rifles, when required in the performance of their duties. The provisions of this section must not be construed to apply to machine guns, or sawed-off shotguns, or sawed-off rifles kept for display as relics and which are rendered harmless and not usable.

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. [italics added]

The South Carolina Law Enforcement Division is charged with the administration of a gun registry for the specific classes of people in South Carolina who are allowed to possess machine guns. S.C. Code Ann. §23-31-330 (2002). Section 23-31-330 makes reference to the exceptions listed in section 23-31-320 as to the groups of people that are eligible for the registry. S.C. Code Ann. §23-31-320 (2002) reads as follows:

The provisions of this article shall not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of such organizations. Any peace officer of the State or of any county or other political subdivision thereof, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of any state prison, penitentiary, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or person on duty in the postal service of the United States or any common carrier while transporting direct to any police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun or sawed-off rifle, may possess machine guns, or sawed-off shotguns or sawed-off rifles, when required in the performance of their duties. Nor shall the provisions hereof be construed to apply to machine guns, or sawed-off shotguns or sawed-off rifles, kept for display as relics and which are rendered harmless and not usable.

The provisions of this article shall 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., nor to any common or contract carrier transporting or shipping any machine guns or military firearms to or from such manufacturer if the transportation or shipment is not prohibited by federal law. Any such manufacturer shall furnish to the South Carolina Law Enforcement Division the serial numbers of all machine guns or military firearms manufactured by it within thirty days of such manufacture and shall be subject to the penalties provided in Section 23-31-340 for noncompliance.

The reader should note that this section is nearly identical to section 16-23-250. The only material difference between the two sections, as to the class of people who may legally possess machine guns, is the portion that is italicized above in section 16-23-250. This amendment was added to section 16-23-250 by way of South Carolina Senate Bill number 488, which was passed on September 21, 2001. See Op. S.C. Atty. Gen., Dated February 28, 2002. This amendment

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effectively decriminalized the possession of machine guns for people who are authorized to do so "... 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 ..." S.C. Code Ann. §16-23-250 (2002).

The Legislature did not affirmatively amend section 23-31-320, as it amended section 16-23-250, to include this category of individuals among those who may register for a permit with SLED pursuant to section 23-31-330. The rules of statutory construction therefore mandate that the plain and ordinary meaning of the statute is the best evidence of legislative intent. State v. Blackmon. S.C. Code Ann. §23-31-330(A) says that "[E]very person permitted by Section 23-31-320" is eligible for SLED's machine gun registry, but makes no reference to section 16-23-250. Accordingly, until the Legislature affirmatively amends section 23-31-320 to the same extent that 16-23-250 was amended in 2001, SLED would be unauthorized to include the "amended" class of people with those who are eligible for the machine gun registry.¹

You indicate in your letter that SLED is reluctant to implement S.488 with regard to the machine gun registry. This Office concludes that SLED's unwillingness to read words into the law which are not there is well-founded and defers to SLED's construction of this section of the Code. See Op. S.C. Atty. Gen., Dated February 5, 2001. Moreover, this Office advises that the courts would likely reach the same conclusion pursuant to the general rules of statutory construction as applied to the current law in South Carolina. Faile v. South Carolina Employment Security Commission.

This Office further advises that even if an amendment is enacted to include the "amended" class of people to section 23-31-320, the gun registry directly relates only to the legal *possession* of machine guns in South Carolina. You have indicated in your letter that your constituent wishes to sell these weapons but is not able to pursuant to SLED's authority over the matter. Pursuant to S.C. Code §16-23-240 (1976), it is generally illegal for a person to sell a machine gun or dispose of it in any way. The Code specifically allows only federally licensed machine gun dealers to sell machine guns in the state of South Carolina. S.C. Code §16-23-280 (1976). Accordingly, this Office advises that the sale of a machine gun in South Carolina is legal if and only if the seller is licensed to do so by the appropriate federal agency. SLED has informed this office that a "Class 3" Federal Firearm License is required in order to sell machine guns.

¹South Carolina Senate Bill 518 is pending before the Legislature as of the date of this opinion. The purpose of this bill appears to be a synthesis of Title 16 and Title 23 with respect to the law concerning machine guns, sawed-off rifles, and sawed off rifles. If enacted, this legislation would clarify the exceptions to the general prohibition against machine gun possession and transportation, both as to the criminal statutes and the gun registration statutes. This Office advises that the apparent discrepancy in the Code would be resolved by this bill.

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Conclusion

Based on the foregoing authorities, this Office advises that the SLED interpretation of the current state law on machine gun possession is proper with regards to the gun registry. Pursuant to a plain meaning reading of the Code of Laws, the class of people who are generally authorized by a federal agency to possess a machine gun are exempted from criminal prosecution under Title 16, but are not included in the list of people who may lawfully obtain a permit from SLED under Title 23. Until the Legislature affirmatively amends the Code to synthesize these two sections of the Code, SLED's reluctance to issue machine gun permits to this class of people is reasonable, and this Office will defer to its interpretation. Furthermore, this Office advises that a person may not legally sell a machine gun in South Carolina, unless that person has been issued a license to do so by the proper federal authorities.

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General