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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 17, 2001

Honorable Robert M. Stewart, Chief
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398

Re: Your letter of January 3, 2001
S.C. Code §16-23-465

Dear Chief Stewart:

In the above letter, you have requested an opinion from this office "regarding whether or not *South Carolina Code of Laws, Section 16-23-465* prohibits the carrying of a concealed weapon upon the premises of a business which sells alcoholic beverages for on premise[s] consumption by an individual possessing a valid Concealed Weapon Permit issued pursuant to *South Carolina Code of Laws, Section 23-31-215.*" In our opinion, current state law clearly prohibits the carrying of firearms onto the premises of establishments which serve alcohol

Law / Analysis

S.C. Code Ann. §16-23-465 provides as follows:

> In addition to the penalties provided for by Sections 16-11-330 and 16-23-460 and by Article 1 of Chapter 23 of Title 16, a person convicted of carrying a pistol or firearm onto the premises of a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.
>
> In addition to the penalties described above, a person who violates this section while carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23 must have his concealed weapon permit revoked.

In interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent 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 statute's

Request Letter

operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. State v. Blackmon, supra. In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). All rules of statutory construction, however, are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute. Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994).

It is obvious that our General Assembly in enacting this statute has recognized the long-standing and logical principle that guns and alcohol do not mix. It seems obvious that the general intent of the statute is to protect our innocent citizens from the potential for harm from the volatile combination of firearms and alcohol. Accordingly, an interpretation of §16-23-465 which interferes with or limits this intent would be inappropriate.

Immediately following the passage of the S.C. Code Ann. §23-31-215 ("The Law Abiding Citizens Self Defense Act of 1996"), this Office performed an extensive analysis of the Act and opined to SLED Captain Mark Keel as follows:

> The new statute also goes to great lengths to preserve much of existing law. Pursuant to Section 23-31-215(M), the Act makes clear that the existing statutory prohibitions whereby firearms may not be possessed are preserved. These include statutes prohibiting the possession of firearms on the capitol grounds, public buildings, school property, the premises of establishment for selling of alcohol for consumption on the premises etc. (emphasis added)

ATTY. GEN. OP. (Dated August 23, 1996). As expressed in this prior opinion, it is clear that the prohibitions of Section 16-23-465 are intended by our General Assembly to apply to individuals possessing concealed weapons permits [hereinafter CWP] issued pursuant to §23-31-215. This intention is evident in the second paragraph of §16-23-465 wherein it is provided that such a person must have his CWP revoked upon violation of the statute. This intention is further evidenced in the following provision contained in §23-31-215(M): "[n]othing contained herein may be construed to alter or affect the provisions of [among other statutory provisions]... 16-23-465..."

Further, it is our opinion that the General Assembly clearly intended §16-23-465 to be a "stand alone" provision, not merely a sentence enhancing provision for concurrent violations of §16-11-330 (armed robbery), §16-23-460 (possession of concealed deadly weapon) and/or Article 1 of Chapter 23 of Title 16 (unlawful carrying of pistol; sale or delivery of pistol to and possession by certain persons unlawful, stolen pistols).

A review of the language reveals an intent that §16-23-465 create a separate and distinct offense and that it not be limited to merely an additional punishment upon the commission of some other predicate offense. The General Assembly's use of the phrase "a person convicted of carrying

a pistol or firearm onto the premises of a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor..." is unambiguous in this regard. Further, the provision that a CWP holder is to have his license revoked upon a violation of the statute would be entirely frivolous if §16-23-465 were merely enhancement for the stated offenses. Each offense (armed robbery, concealed deadly weapon, unlawful carry of a pistol, etc.) would, in and of itself, either require the revocation of a CWP pursuant to §23-31-215 or indicate that the offender was without a valid CWP in the first place. It is presumed that the Legislature intended by its action to accomplish something and not to do a futile thing. See State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Also, if a predicate offense is required to trigger the prohibitions of §16-23-465, a person could then lawfully carry a loaded shotgun or long rifle into a bar and order his drinks. This is a situation that clearly the General Assembly intended to prohibit.

Another clear indication of the General Assembly's intent that §16-23-465 be a stand alone provision is its inclusion in the "Adult criminal offender management system" pursuant to S.C. Code Ann. §§24-22-10 *et seq.* This system was created in 1992 as a means to safely reduce the population of our overcrowded prisons. Certain "qualified prisoners" who have been "carefully screened" can be released to community supervision under the guidance of the State Department of Probation, Parole and Pardon Services. Only those prisoners convicted and serving time for certain offenses are considered "qualified prisoners." One of those qualifying offenses is a conviction for "unlawful possession of a firearm on premises of alcoholic beverage establishment" pursuant to §16-23-465. Convictions for violations of §16-11-330 (armed robbery), §16-23-460 (concealed deadly weapon) and Article 1 of Chapter 23 of Title 16, however, are not included in the system and would exclude a person from the definition of "qualified prisoner." Obviously, if §16-23-465 were intended merely to be an enhancement provision to one of these crimes, its inclusion in the "adult offender management system" would be wholly inoperative and futile. See State ex rel. McLeod v. Montgomery, supra.

Accordingly, rather than limiting the application of §16-23-465, a more reasonable interpretation of the "[i]n addition to the penalties..." phrase is that the General Assembly intended to expand its application to those situations where a person may also be in violation of some other criminal law involving the possession of a pistol or firearm. To ensure that such a person could be appropriately punished without violating the Constitutional prohibition of twice punishing an individual (Double Jeopardy), it was necessary that the General Assembly clearly express this intent. See Garrett v. United States, 471 U.S. 773, 778, 105 S.Ct. 2407, 2411, 85 L.Ed.2d 764 (1985) (where the same conduct violates two statutory provisions, whether each violation is a separate offense is a question of legislative intent). See also In Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932) (it is well settled that the legislature may impose multiple punishments for the same conduct without violating the Double Jeopardy Clause, so long as it expresses its intent to do so clearly). This interpretation is much more in line with the intent of the General Assembly than one which would unnecessarily limit §16-23-465 to an enhancement only provision.

As the New Mexico courts have stated in interpreting similar statutes in that state, "[t]he legislative purpose... is 'to protect innocent patrons...'... one way in which the statute serves that purpose is to limit the opportunity for the bearer of a firearm to succumb to the influence of intoxicating liquor....[h]owever, the potential for harm from the volatile combination of firearms and liquor...also exists when an inebriated patron enters the premises of a retail liquor establishment and that individual or another person within is carrying a firearm..'[t]he danger does not necessarily arise from any evil intent on the part of the person possessing the firearm'." State v. Lake, 121 N.M. 794, 918 P.2d 380 (1996). See also State v. Powell, 115 N.M. 188, 848 P.2d 1115 (1993)(the state's interest in keeping firearms out of establishments dispensing liquor is independent of any designs by the possessor of the weapon).

Therefore, based upon the language used in the statutes, the applicable tenets of statutory construction and the authority on the subject, it is our opinion that S.C. Code Ann. §16-23-465 "...prohibits the carrying of a concealed weapon upon the premises of a business which sells alcoholic beverages for on premise[s] consumption by an individual possessing a valid Concealed Weapon Permit issued pursuant to *South Carolina Code of Laws, Section 23-31-215.*" It is further our opinion that the provisions of this section are meant to stand alone and are not meant to serve merely as an enhancement to the punishment for other criminal acts.

Conclusion

This Office strongly supports the Second Amendment and the citizen's right to bear arms. We also wholeheartedly endorse the Law Abiding Citizens Self Defense Act.

However, it is the General Assembly which determines the places where concealed weapons can and cannot be carried. For example, the Legislature has long deemed it a crime to carry firearms in public buildings or on school property. See §§ 16-23-420; 16-23-430. Even if a person possesses a valid concealed weapons permit, it has been for many years a criminal offense to carry a gun in such prohibited areas.

Likewise, for 23 years, the General Assembly, elected by the people, has clearly forbidden firearms to be carried onto the premises of establishments which serve alcoholic beverages. This law was on the books long before the Law Abiding Citizens Self Defense Act was enacted in 1996. Moreover, at the time that the General Assembly enacted the Law Abiding Citizens Self Defense Act, the same General Assembly, in the same legislation, reinforced and reaffirmed its ban on carrying a concealed weapon into an establishment which sells alcohol for consumption on premises. The law is clear and there is no room for doubt or interpretation.

It has been presented to this Office that SLED interpreted the permitting laws that existed prior to the Law Abiding Citizens Self Defense Act as allowing permit holders to carry their weapons onto the premises of establishments serving alcohol despite the prohibitions of §16-23-465. It has been urged that this alleged interpretation, in essence, "grandfathered" that right of the permit holder into the provisions of Law Abiding Citizens Self Defense Act. Any such argument is entirely

without merit. First, no such interpretation by SLED of the prior permitting laws has been confirmed. Second, any such interpretation by SLED would be ineffective. Prior law provided that SLED "may issue permits to qualified persons when the nature of their business or employment requires that they are regularly exposed to...dangerous circumstances [and SLED] shall specify the conditions under which possession of the weapon is authorized." S.C. Code Ann. §23-31-120 (repealed 1996). While the statute allowed SLED great latitude in establishing conditions for permit holders to possess pistols, the statute contained absolutely no provision which would have exempted permit holders from the well reasoned, clear prohibitions of §16-23-465. SLED would have been authorized only to establish conditions consistent with state law, including §16-23-465. SLED could, by interpretation, no more allow concealed weapons to be carried by a permit holder into bars than it could acquiesce in the carrying of concealed weapons by a permittee into public buildings or schools. See Banks v. Batesburg Hauling Co. et al, 202 S.C. 273, 24 S.E.2d 496 (1943); See also ATTY. GEN. OP. (Dated October 20, 1997); and ATTY. GEN. OP. (Dated June 17, 1987).

When the Legislature debated the Concealed Weapons bill in 1996, it was absolutely clear that establishments which serve alcohol were to remain off limits to the carrying of concealed weapons – even if the individual is licensed to carry a concealed weapon generally. For example, it was reported on March 21, 1996 that the Concealed Weapons Bill "already prohibits guns inside law enforcement agencies, courts, churches, polling places, wherever legislative bodies meet, primary and secondary schools, school athletic events, places that legally serve alcohol and wherever federal law bans them." The State, March 21, 1996 (B1) (emphasis added). On May 21, 1996 (B5), The State reported "current laws" [prior to enactment of new Concealed Weapons bill] as making it "illegal to take a gun in "any place that sells alcohol." Persons having the old SLED concealed weapons permit could take their concealed weapons "anywhere except where all firearms are banned." Id. After the 1996 law was enacted, The State reported on September 5, 1996 (B4) that firearms were "barred from any establishment that sells alcohol."

In other words, it is clear that the Legislature had no doubt, both before and after passage of the Concealed Weapons law, that firearms were prohibited in establishments which serve alcohol, even by concealed weapons permit holders. There is absolutely no "gray area" in this statute. The statute is crystal clear and must be enforced just as the Legislature wrote the law until the Legislature chooses to change the law.

There have indeed been recent efforts in the Legislature to amend the statute. See, The State, March 2, 2000 (A10). [Bill would allow people to carry concealed weapons permittees to carry "guns into restaurants and bars."] The State, April 26, 2000 (A10). [Bill would "maintain the state ban on concealed weapons in bars, but it would allow them in "bar parking lots."]. These Bills have not been enacted into law, however.

If the longstanding state law declaring that guns and alcohol do not mix is to be changed, it must be changed by the Legislature. See, Johnson v. Collins, 333 S.C. 96, 508 S.E.2d 575 (1998) [solution of video gambling "rightfully must be resolved by the General Assembly."] To say that

the current statute does not prohibit guns in establishments which serve alcohol is to ignore the evident and deny the obvious.

As the law of this State is currently written, a concealed weapons permit holder may not carry a firearm onto the premises of an establishment which serves alcohol. Any establishment which serves alcohol on the premises is included in the prohibition – bar and restaurant alike.

Sincerely,

David K. Avant
Assistant Attorney General