

1984 WL 249692 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 27, 1984

***1 Re: Taser Inquiry: Opinion #1207**

Special Agent David Caldwell
S. C. State Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear David:

Attorney General Medlock has forwarded Chief Strom's letter of August 29, 1984, to me for inquiry and reply. The letter requested that I direct my opinion to you. The question presented was whether or not the Taser, a plastic encased, hand-held electrically operated 'weapon', which is generally non-lethal, is in violation of the South Carolina Code of Laws. More specifically, the inquiry addressed the applicability of [Section 23-31-180 of the Code](#) of Laws (1976), as amended.

In reviewing this matter, I met with Taser Industries, Inc., manufacturer's representative Scotty Wylie, of Hamilton and Associates, Columbia. Mr. Wylie demonstrated a Taser and exhibited a video tape which dealt with the usefulness of such a non-lethal weapon for law enforcement. In response to my questions, I received from the manufacturer information concerning the propulsion of darts fired by the Taser, lawsuits brought against Taser users, a description of the plastic of which the Taser is made, and memos reflecting tests conducted upon the Taser by the U.S. Consumer Products Safety Commission, Washington, D. C.

Initially, the scope of Chief Strom's inquiry must be defined. [Section 23-31-180 of the Code](#) of Laws makes it unlawful to sell or possess a pistol or other handgun which has a dye-cast frame or receiver that will melt at 800° F. or less. This is also known generally as the 'Saturday Night Special' law. The question presented, therefore, is whether the Taser fits the definition of 'pistol', found elsewhere in the statute, and, if so, falls under the prohibition of [Section 23-31-180](#). The question presented does not address the safety of the Taser, nor its usefulness to law enforcement, correctional, or mental health agencies.

In addition, it should be noted that a prior opinion of this office has addressed the Taser, or, as it was then known, the 'Stun-gun'. On November 10, 1977, in a letter to the Director of Human Resources in the office of the governor, this office stated that, based upon the information available, a 'stun-gun' was not illegal per se. However, that determination was based upon descriptions furnished as to the effect of the weapon. The only information furnished at that time was a photocopy of a page entitled 'A Non-Lethal Arsenal', containing illustrations of five non-lethal weapons that could be used against demonstrators, riotors, or assailants. One of the weapons was a Taser, which had a pistol shape, with a trigger, and fired two darts which would strike an assailant and incapacitate him through electric current. Since that time, more detailed information has been supplied by the manufacturer, and I have handled and viewed a Taser, and seen it demonstrated. In addition, it is my information from authorities at the Bureau of Alcohol, Tobacco and Firearms, that the Federal Government has classified the Taser as a handgun.

***2** It is the opinion of this office that the Taser falls within the definition of pistol as defined by the South Carolina Code of Laws, and is in violation of [Section 23-31-180](#), since it has a frame which melts at less than 800°F. Therefore, the conclusion is that a Taser is an unlawful weapon under South Carolina law.

Article 3 of Chapter 31 of the South Carolina Code of Laws deals with the regulation of pistols. Section 23-31-110 contains the definitions. At sub-section (a), 'pistol' is defined as:

... any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearms generally recognized or classified as an antique, curiosity, or collectors item, or any that does not fire cartridges.

The clear meaning of the above definition would include the Taser, since it is a firearm designed to expel a projectile and designed to be fired from the hand. It also operates using a fixed cartridge, that fires two darts powered by high-powered rifle primers, according to information supplied by the manufacturer in a letter dated August 31, 1984.

At this point some explanation is in order. The Taser is a battery operated device the size of a large flashlight, approximately 9 by 3 by 2 inches, and weighing 1 ¼ pounds. It contains two cartridge-like inserts that, when actuated by the charge of the rifle primer, each propel two small darts. Each dart is connected by a wire eighteen (18) feet in length to a transformer power source within the Taser. When the darts are propelled, they strike either skin or clothing and embed themselves in it. If both darts embed themselves in either skin or clothing on a person, that person can be subjected to an electrical shock. The darts do not have to make physical contact with the person's skin, but merely attach themselves to clothing in order for the shock to be delivered. Maximum power is approximately 50,000 volts, but the amperage is low and the Taser for that reason has been determined to be non-lethal. The electrical shock lasts as long as the switch on the Taser is depressed by the operator. The electric shock is sufficient to incapacitate an assailant, rendering him or her unconscious for a short period of time. The Taser, therefore, does fire its darts from a fixed cartridge, propelled by a rifle primer. It is designed to expel a projectile and designed to be fired from the hand. It is not an antique, curiosity, or collector's item as described in Section 23-31-110(a).

[Section 23-31-180 of the Code](#) of Laws provides as follows:

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 800°F.

Any pistol or other handgun possessed or sold in violation of this article is declared to be contraband and still be forfeited to the State. Such weapons shall be destroyed by the State Law Enforcement Division . . .

***3** The above section, commonly spoken of as the 'Saturday Night Special' provision of our law, is based upon tests conducted in the early 1970's at the H. P. White Laboratories in Belair, Maryland. These tests were conducted on a number of firearms, and a determination was made that, generally speaking, the difference between a cheap handgun and a 'quality' one was the 800°F. mark. It is my information from the Bureau of Alcohol, Tobacco and Firearms that there is perhaps one other state besides South Carolina that has written the temperature range into its statute. Most states appear to have provisions prohibiting the defacing of a handgun, or the possession of a defaced handgun.

However, given the description in the South Carolina law, it should be noted that a Taser, since it is an electrically operated weapon capable of delivering a severe electrical shock, is made of high-impact plastic. As the manufacturer indicated, while the Taser is not made of cheap plastic, and is of some of the strongest available, it could not be made of metal because it fires and utilizes high voltage electricity. Since it appears from examination of the weapon and discussion with the manufacturer's representative, that that plastic is made from a mold, or die, into which molten plastic is poured, in the opinion of this Office, the Taser fits the description in [Section 23-31-180](#). It has a die-cast frame which, since it is of high-impact plastic, will melt at less than 800°F. For that reason the Taser falls within the prohibition contained in the Code.

As stated earlier, the scope of this opinion has been limited to the question presented: specifically, whether or not the Taser violated [Section 23-31-180](#). No opinion is addressed herein as to the usefulness of the Taser, its non-lethal capability, and whether or not it is presently being used by a number of law enforcement agencies throughout the Nation.

I am retaining a file on this weapon, containing the letter from the manufacturer, and the report from the U. S. Consumer Products Safety Commission. These materials are available for your inspection, should you desire.

Finally, to the extent that this opinion provides more detailed information based upon a more accurate description of a Taser, it supersedes the previous opinion of this Office dated November 10, 1977. And while the Taser was probably not contemplated by the General Assembly in 1973 when [Section 23-31-180](#) was enacted, it would appear to fit the letter of the law and be in violation of that statute. Any efforts to remedy this situation would have to be made by the General Assembly. My research has indicated that electrically operated, non-lethal weapons have been specifically exempted from the pistol laws of some states.

Sincerely yours,

James G. Bogle, Jr.
Assistant Attorney General

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