

1977 S.C. Op. Atty. Gen. 287 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-360, 1977 WL 24698

Office of the Attorney General

State of South Carolina

Opinion No. 77-360

November 10, 1977

*1 Otis J. Robinson

Director of Human Resources

Office of the Governor

Post Office Box 11450

Columbia, South Carolina 29211

Dear Mr. Robinson:

In reference to your letter of October 24, 1977, in which you enclosed pictures and descriptions of two guns, more particularly described as a 'stun gun' and a 'bean bag gun', please be advised that it is the opinion of this Office that these particular guns are not illegal per se. However, certain code sections pertaining to weapons should be examined for their relevancy.

Sections 16-23-10 and 23-31-110, Code of Laws of South Carolina, 1976, define pistol as follows:

'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 cartridges.'

Section 16-23-20 through 16-23-60 and 23-31-120 through 23-31-200, code of laws of South Carolina, 1976, which regulate basically the sale, possession, and legality of carrying a pistol, and Sections 16-23-410, 16-23-420, 16-23-440, and 16-23-490, Code of Laws of South Carolina, 1976, which details various offenses involving firearms and pistols, however, may or may not be pertinent to the above-described 'stun gun' and 'bean bag gun' depending upon whether or not these particular weapons are considered to be firearms within these particular code sections. This is a factual determination that cannot clearly be made based upon the descriptions furnished as to the workings of these weapons. Per definition, a firearm is generally defined as a weapon which acts by force of an explosion or gunpowder. See Words and Phrases, Firearms, Vol. 17, p. 66.

Sections 16-23-430 and 16-23-460, Code of Laws of South Carolina, 1976, detailing certain offenses involving carrying weapons on school property and carrying concealed weapons, however, may be considered relevant inasmuch as the described 'stun gun' and 'bean bag gun' may be within the definition of a '. . . weapon, device or object which may be used to inflict bodily injury or death' (Section 16-23-430, supra) or a '. . . deadly weapon usually used for the infliction of personal injury . . . ' (Section 16-23-460, supra). The term 'deadly weapon' includes instruments that can be used to inflict great bodily injury. Words and Phrases, Deadly Weapon, Vol 11, p. 213. Whether or not these above-described weapons are deadly weapons so as to come within the above-statute again is a factual question. However based on the descriptions provided these weapons, quite possibly they could be determined to be such.

Therefore although the 'stun gun' and 'bean bag gun' are not illegal per se possibly they may be considered weapons within the phraseology of certain statutes detailing the sale and possession of these weapons in certain situations.

If there are any further questions, do not hesitate to contact me.

Sincerely,

*2 Charles H. Richardson

Staff Attorney

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