

1974 WL 27161 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1974

***1 RE: Firearms—Machine Guns**

Eugene Reagan
Special Agent
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
Ben Franklin Station
Washington, D. C. 20226

Dear Mr. Reagan:

In our recent telephone conversation, you asked for an opinion on the following situation: A retired member of the United States Armed Forces owns a machine gun which is properly registered under Title II of the Gun Control Act of 1968. He now lives in Virginia but has expressed an intention to move to South Carolina. Under federal law he is required to obtain the permission of your department before moving the gun. This permission will be given only if possession of the machine gun is permissible under the law of South Carolina.

Section 16-123, Code of Laws of South Carolina (1962), provides:

It shall be unlawful for any person to store, keep, possess or have in possession or permit another to store, keep, possess or have in possession, except as hereinafter provided, any machine gun or firearm commonly known as a machine gun.

The only exceptions are contained in Section 16-125, which provides, in part:

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 from the United States or from this State and the members of such organizations . . .

It is not clear whether a retired member of the armed forces would come within the above-quoted exception. Does the phrase 'members of such organizations' refer to the 'Army, Navy or Air Force'? I think not; but nevertheless, it might be argued that reference to the 'Army, Navy or Air Force' includes reference to the members thereof.

The general rule is that in the resolution of ambiguities, courts favor a general provision over an exception, and one seeking to be excluded from the operation of a statute must establish that the statute embraces him. Statutes granting exemption from their general operation must be strictly construed, and any doubt must be resolved against the one asserting the exemption. 82 C.J.S., Statutes, Section 382(c), 73 Am.Jur.2d, Statutes, Section 313.

Words used in a statute should be taken in their ordinary and popular significance, unless there is something in the statute requiring a different interpretation. [Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 \(1971\)](#), 82 C.J.S., Statutes, Section 329(b). Nothing appears in Section 16-125 which requires an interpretation of the words 'Army, Navy or Air Force' other than that which would permit members of the armed forces to possess machine guns in their official capacities and within the scope of their official duties. If the Legislature had intended to permit

the possession of a machine gun by a retired serviceman in his private capacity, such intention would have been clearly expressed.

Accordingly, it is the opinion of this office that retired members of the armed forces are not excepted from the provisions of Section 16-123 which prohibits the possession of machine guns.

Very truly yours,

*2 Wade S. Kolb, Jr.
Staff Attorney

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