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The State of South Carolina



Office of the Attorney General

Opinion No 88-38
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May 2, 1988

The Honorable Robert M. Stewart
Chief
South Carolina Law Enforcement Division
4400 Broad River Road
P. O. Box 21398
Columbia, South Carolina 29221

Re: Handgun Law Inquiries

Dear Chief Stewart:

Attorney General Medlock has referred your letter of February 8, 1988, to me for inquiry and reply.

In your letter, you presented the following questions. First, you inquired whether the convictions of attempted murder, attempted rape, or attempted housebreaking would prohibit an individual from purchasing or possessing a handgun in this state. Second, you inquired if a person legally purchased a "Saturday night special" in another state, could he or she legally possess it in this state.

With regard to your first inquiry, it would appear that the crimes of attempted murder and attempted rape would exclude a person from legally purchasing or possessing a handgun in South Carolina. The regulation of handguns, including those responsibilities specifically assigned to SLED, is found at §§ 23-31-110, et seq., Code of Laws of South Carolina (1976), as amended. Offenses involving weapons, containing many sections that parallel those in Title 23, are found at §§ 16-23-10, et seq., of the Code of Laws. Section 16-23-30 specifically prohibits the sale, possession or acquisition of pistols by persons convicted of a crime of violence. Similarly, § 23-31-140 prohibits a person from purchasing a pistol, and filling out the necessary firearm purchase transaction form when he or she has been convicted of a crime of violence as referenced in § 16-23-30 (e).

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A crime of violence is defined in an identical manner in Titles 16 and 23 as follows:

The term 'crime of violence' means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

See §§ 16-23-10 (c) and 23-31-110 (c).

There appear to be two theories in support of the conclusion that attempted murder and attempted rape would disqualify a person from purchasing or possessing a handgun in South Carolina. First, attempted murder may be aligned with assault with intent to kill, a crime specifically listed in the definition of crime of violence. Further, assault with intent to commit rape is also specifically listed in that definition. On the other hand, crime of violence includes assault with intent to commit any offense punishable by more than one year in prison. Since murder carries a minimum life sentence, and rape (now criminal sexual conduct) carries a sentence of imprisonment for at least ten years, depending upon the degree, both would fall within the broad definition of crimes punishable by imprisonment in excess of one year.

It should be stressed that the statutes relating to pistols do not specifically list criminal sexual conduct, nor burglary nor their varying degrees, but use the old terms of rape and housebreaking. Noting such an omission in § 14-7-1110 relating to preemptory strikes in jury selections, our Supreme Court has held that it was the apparent intent of the Legislature to omit criminal sexual conduct from that statute where it referred to rape. State v. Lambert, 276 S.C. 398, 279 S.E.2d 364 (1981). While it is very possible that the Court could similarly rule if the issue was presented concerning the definition of crime of violence in Titles 16 and 23, it is impossible, as well as improper, for this office to predict such a ruling. Further, the public interest in the regulation of pistols and the prevention of various offenses committed with them, coupled with the presumption of the constitutionality of an existing statute, would lead me to conclude that, at least for the time being, the references to rape and housebreaking in Titles 16 and 23 would include the various degrees of criminal sexual conduct and burglary, respectively. For a more recent enactment by the General Assembly that includes criminal sexual conduct under the definition of "violent crime," see § 16-1-60 where it is provided, in pertinent part, as follows:

For purposes of definition under South Carolina law, a violent crime includes the offenses of... criminal sexual conduct in the first and second degree....

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Remaining is, therefore, the question of whether or not attempted housebreaking would constitute a crime of violence within the definitions in Titles 16 and 23 of the Code of Laws. Since attempted housebreaking or attempted burglary in any degree is not specifically listed, and neither crime would involve an assault on a person under either of the theories advanced above, it would appear that attempted housebreaking does not fall within the definitions that will prohibit a person from possessing or acquiring a pistol under §§ 23-31-140 and 16-23-30 of the Code of Laws. It may be in your Division's interest to seek legislative clarification or amendment concerning the issue of attempted housebreaking, as well as a change in the definitions of rape and housebreaking to include criminal sexual conduct and burglary of the appropriate degrees.

Your second question concerned the purchasing of a "Saturday night special" in another state, and whether or not a person could legally possess it in this state. Section 23-31-180 declares certain pistols to be contraband, and the reference to a "Saturday night special" is determined by metallic composition of the handgun 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 eight hundred degrees Fahrenheit.

Any pistol or other handgun possessed or sold in violation of this article is declared to be contraband and must be forfeited to the municipality where seized or to the county where seized if outside a municipality. The weapon must be disposed of as provided by § 16-23-500. (Emphasis added.)

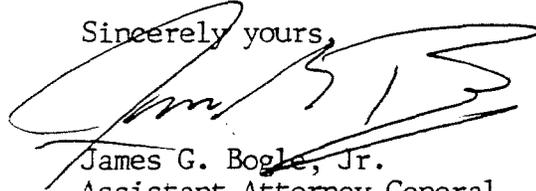
Weapons thus described must be destroyed in accordance with the provisions of § 16-23-500, most recently amended in 1986.

Contraband is generally defined as an object which is against the law or prohibited and includes articles, the importation or exportation of which is prohibited by law. Black's Law Dictionary, rev. 4th ed. at 393. Under such a definition, and consistent with the strong public policy advanced in Titles 16 and 23, I can see no reason why a pistol fitting the description found in the Code would be any more legal to possess in this state than illegal narcotics, which may be legally possessed in other jurisdictions or countries. Accordingly, while a person might legally purchase such a pistol in another state, he or she could not legally possess it in South Carolina. The weapon would be subject to confiscation, and destruction in accordance with § 16-23-500 of the Code of Laws.

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I trust this information has answered your inquiries. If further details are needed, please do not hesitate to contact me.

Sincerely yours,



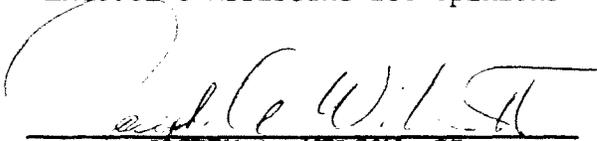
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