CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY — UNIFORM MACHINE GUN ACT

Uniform Machine Gun Act does not prevent the discharge or firing of a machine gun by a person not exempt from the Act. A person not exempt from the Act may transport a machine gun away from his registered bona fide permanent residence or business address. The meaning of the phrase “immediate vicinity” as used in the Act, requires a determination of fact rather than one of law, it is not an appropriate issue on which to render an official advisory opinion.

Colonel W. Gerald Massengill
Superintendent, Department of State Police
July 30, 2002

Dear Colonel Massengill:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask three questions regarding the application of the Uniform Machine Gun Act. You inquire in your first two questions whether a person who is not exempt from the Act ("nonexempt person(s)") (1) may discharge or fire a machine gun in the Commonwealth, or (2) may transport a machine gun away from his registered bona fide permanent residence or business address. Third, you ask whether the Act’s definition of "immediate vicinity" includes the storage of ammunition in the same vehicle, room, house or building as the machine gun.

Response

It is my opinion that the Uniform Machine Gun Act does not prevent the discharge or firing of a machine gun by nonexempt persons. It is also my opinion that a nonexempt person may transport a machine gun away from his registered bona fide permanent residence or business address. Finally, because your third question requires a determination of fact rather than one of law, it is not an appropriate issue on which to render an opinion.

Applicable Law & Discussion

The Uniform Machine Gun Act’ sets out definitions as used in the Act, establishes offenses and presumptions, and creates a mechanism for the registration of a specified class of firearms. No person shall lawfully possess a machine gun unless it is registered pursuant to the Act and federal law. The Act makes the "[p]ossession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence … a Class 2 felony." It also makes the "[u]nlawful possession or use of a machine gun for an offensive or aggressive purpose … a Class 4 felony."
A primary principle of statutory construction dictates that statutes are to be read in accordance with their plain meaning and intent. Resort to the rules of statutory construction is necessary only when there is ambiguity; otherwise, the clear and unambiguous words of the statute must be accorded their plain meaning. When a statute is penal in nature, it "must be strictly construed against the Commonwealth and in favor of an accused.

You first ask whether a nonexempt person may discharge or fire a machine gun in the Commonwealth. Although the Uniform Machine Gun Act creates several rebuttable presumptions that possession of a machine gun under certain conditions is aggressive in nature, there are no provisions that criminalize the discharge or firing of a machine gun in the Commonwealth for nonaggressive or nonoffensive purposes. The mere presence of "empty or loaded shells ... in the immediate vicinity" of a machine gun, however, creates the presumption of an offensive or aggressive purpose. A person that elects to discharge or fire a machine gun must rebut the presumption contained in § 18.2-291(4) of the Act, or face conviction should he be charged with a violation of the Act.

Next, you ask whether a nonexempt person may transport a machine gun away from his registered bona fide permanent residence or business address. The Act does not prevent the transportation of a machine gun away from a person's registered bona fide permanent residence or business address. The transportation of the machine gun could, however, create a presumption that the possession of the machine gun in certain circumstances is for an aggressive purpose. For instance, if the person transporting the machine gun is "on premises not owned or rented" by him for his residence or business, has been "convicted of a crime of violence," has not registered the weapon, or has "empty or loaded shells which have been or are susceptible of use in the machine gun ... in the immediate vicinity thereof," then such person creates a presumption that transportation of the machine gun is for an aggressive purpose. Finally, you ask for an interpretation of the phrase "in the immediate vicinity" as used in § 18.2-291(4) of the Act. Section 18.2-291(4) creates a presumption that the possession or use of a machine gun is for an offensive or aggressive purpose "[w]hen empty or loaded shells which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof." Whether empty or loaded shells are "in the immediate vicinity" of a weapon is a determination of fact based on the unique situation raised in a specific case and is not an appropriate issue on which to render an opinion.

For the purposes of law enforcement, guidance as to the meaning of "in the immediate vicinity" may be found by examining cases dealing with concealed weapons. As general guidance to enforcement personnel, when the ammunition and machine gun are "readily accessible for use or surprise if desired," and could pose an immediate danger to the general public, that circumstance could be considered "in the immediate vicinity" of the machine gun.

Conclusion

Accordingly, it is my opinion that the Uniform Machine Gun Act does not prevent the discharge or firing of a machine gun by a nonexempt person. It is also my opinion that a nonexempt person may transport a machine gun away from his registered bona fide permanent residence or business address. Finally, because your third question requires a determination of fact rather than one of law, I must respectfully decline to respond as it is not an appropriate issue on which to render an opinion.

2Section 18.2-288 (defining "machine gun," "crime of violence," "person").

3Sections 18.2-289 to 18.2-291.

4Sections 18.2-294, 18.2-295.

5Section 18.2-295. Failure to produce a certificate of registration or notification of the transfer of a machine gun constitutes a Class 3 misdemeanor. Id.


7Section 18.2-289.

8Section 18.2-290.


12Section 18.2-288(3) provides that the term "person," as used in the Uniform Machine Gun Act, "applies to and includes firm, partnership, association or corporation." Section 18.2-293.1 exempts the possession of a machine gun that is used for scientific purposes or for a manifestly nonaggressive or nonoffensive purpose, and that is not usable as a weapon and is possessed as a curiosity, ornament, or keepsake.

13Section 18.2-291.

14Section 18.2-291(4).

15Section 18.2-291(1).

16Section 18.2-291(2).

17Section 18.2-291(3).

18Section 18.2-291(4).


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