

**OP. NO. 04-065**

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

**No violation of Uniform Machine Gun Act for individual to display historic machine guns at Virginia War Memorial, provided such guns are properly registered and are not used offensively or aggressively.**

The Honorable Frank D. Hargrove Sr.  
Member, House of Delegates  
October 7, 2004

**Issue Presented**

You ask whether it is a violation of § 18.2-291,<sup>1</sup> which pertains to the possession of a machine gun, for an individual to bring historic weapons, including historically significant machine guns, to the Virginia War Memorial for the purpose of displaying them on special occasions for education purposes.

**Response**

It is my opinion that an individual may display historic machine guns at the Virginia War Memorial without violating the Uniform Machine Gun Act, provided that the machine guns are registered pursuant to the Act and federal law and are not used for offensive or aggressive purposes.

**Applicable Law and Discussion**

You express concern that an individual requested to display historic weapons, including historically significant machine guns, at the Virginia War Memorial may be in violation of the Uniform Machine Gun Act. The display of such weapons would be on special occasions and solely for education purposes. Article 5, Chapter 7 of Title 18.2, §§ 18.2-288 through 18.2-298, comprises the Uniform Machine Gun Act. The Act sets out definitions,<sup>2</sup> establishes offenses<sup>3</sup> and presumptions,<sup>4</sup> and creates a mechanism for the registration of a specified class of firearms.<sup>5</sup> No person shall lawfully possess a machine gun unless it is registered pursuant to the Act<sup>6</sup> and federal law.<sup>7</sup> 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."<sup>8</sup> Additionally, § 18.2-290 makes the "[u]nlawful possession or use of a machine gun for an offensive or aggressive purpose ... a Class 4 felony." Finally, § 18.2-291 provides that

Possession or use of a machine gun shall be presumed to be for an offensive or aggressive purpose:

(1) When the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found[.]

Section 18.2-293.1(2), however, provides that the Uniform Machine Gun Act does not apply to "[t]he possession of a machine gun for a purpose manifestly not aggressive or offensive." Section 18.2-293.1 provides that such possession is subject to the registration provisions of the Act.<sup>9</sup>

A primary principle of statutory construction dictates that statutes are to be read in accordance with their plain meaning and intent.<sup>10</sup> 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.<sup>11</sup> When a statute is penal in nature, it "must be strictly construed against the Commonwealth and in favor of an accused."<sup>12</sup>

A 2002 opinion of this Office determined that the Uniform Machine Gun Act did not prevent the transportation of a machine gun away from a person's registered bona fide permanent residence or business address.<sup>13</sup> The 2002 opinion, however, cautioned that the transportation of the machine gun on premises not owned or rented by him for his residence or business could create a presumption that the transportation of the machine gun is for an aggressive purpose.<sup>14</sup> In addition to the 2002 opinion, a 1982 opinion of the Attorney General concludes that § 18.2-291 creates a rebuttable presumption.<sup>15</sup> Consistent with these earlier opinions, it is my opinion that transporting machine guns to the war memorial could create a rebuttable presumption that the transportation is for an aggressive purpose pursuant to § 18.2-291(1).

Although transportation of the machine guns to the war memorial may create a rebuttable presumption pursuant to § 18.2-291(1), the presumption may be rebutted by a showing that the possession of the machine guns is not for an aggressive or offensive purpose as permitted by § 18.2-293.1(2). A 1977 opinion of the Attorney General analyzed the terms "aggressive" and "offensive" with regard to the Uniform Machine Gun Act.<sup>16</sup> In the 1977 opinion, the issue was whether security personal at a nuclear facility armed with machine guns would be found in violation of the Act.<sup>17</sup> The 1977 opinion concluded that the purpose for possessing the machine guns was for a defensive, rather than an aggressive or offensive, purpose.<sup>18</sup> Based on this earlier opinion, I reach a similar conclusion because there appears to be no aggressive or offensive purpose. I believe that transporting machine guns to the war memorial under the scenario outlined above is for an educational, rather than an aggressive or offensive, purpose. Therefore, it is my opinion that the transportation of machine guns to the war memorial for the purpose of an historical display satisfies § 18.2-293.1(2), which rebuts the presumption in § 18.2-291(1).

### **Conclusion**

Accordingly, it is my opinion that an individual may display historic machine guns at the Virginia War Memorial without violating the Uniform Machine Gun Act, provided that the machine guns are registered pursuant to the Act and federal law and are not used for offensive or aggressive purposes.

<sup>1</sup> Section 18.2-291 is part of the Uniform Machine Gun Act. See Va. Code Ann. tit. 18.2, ch. 7, art. 5, §§ 18.2-288 through 18.2-298 (LexisNexis Repl. Vol. 2004).

<sup>2</sup> See § 18.2-288 (defining "machine gun," "crime of violence," and "person").

<sup>3</sup> See §§ 18.2-289, 18.2-290.

<sup>4</sup> See § 18.2-291.

<sup>5</sup> See §§ 18.2-294, 18.2-295.

<sup>6</sup> See § 18.2-295. Failure to produce a certificate of registration or to provide notification of the transfer of a machine gun constitutes a Class 3 misdemeanor. *Id.*

<sup>7</sup> 26 U.S.C.A. § 5861(d) (West 2002).

<sup>8</sup> Section 18.2-289.

<sup>9</sup> See § 18.2-295.

<sup>10</sup> See *Bd. of Supvrs. v. Machnick*, 242 Va. 452, 410 S.E.2d 607 (1991).

<sup>11</sup> See *McClung v. County of Henrico*, 200 Va. 870, 874, 108 S.E.2d 513, 516 (1959).

<sup>12</sup> *Yarborough v. Commonwealth*, 247 Va. 215, 218, 441 S.E.2d 342, 344 (1994).

<sup>13</sup> 2002 Op. Va. Att'y Gen. 142.

<sup>14</sup> *Id.* at 143.

<sup>15</sup> 1981-1982 Op. Va. Att'y Gen. 120, 121 (concluding that § 18.2-291(2) is constitutionally valid rebuttable presumption); 2002 Op. Va. Att'y Gen. *supra* note 13, at 143 (concluding that person electing to discharge or fire machine gun must rebut presumption contained in § 18.2-291(4)).

<sup>16</sup> 1977-1978 Op. Va. Att'y Gen. 505, 506 (concluding that meaning of "aggressive" tends toward forceful unprovoked act towards others, and meaning of "offensive" tends toward attack as opposed to defensive).

<sup>17</sup> *Id.* at 505.

<sup>18</sup> *Id.* at 506.