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May 13, 2011

The Honorable John L. Bohanan, Jr.
46940 South Shangri-La Drive, Suite 17B
Lexington Park, Maryland 20653

Dear Delegate Bohanan:

You have asked for advice relating to a series of questions from a constituent concerning the carrying of long guns. The questions, and the answers thereto, appear below.

1. Does the definition of "long gun" include otherwise regulated firearms, such as AR-15 rifles?

The term "long gun" is not used in Maryland statutes, and thus, is not defined there. It is ordinarily understood to include rifles and shotguns. For purposes of this letter, it does not necessarily include regulated firearms as defined in Public Safety Article ("PS"), § 5-101(p).¹

2 What restrictions - if any - exist on lawful persons who will carry long guns for personal defense in Maryland under State law?

Long guns are dangerous weapons and are subject to the limitations the law places on carrying and using dangerous weapons. Long guns are also firearms, and as such, subject to certain limitations on where they may be carried. Long guns are also subject to limitations on who may carry them, though most of these limitations are not applicable to law-abiding persons. Finally, Natural Resources Article ("NR"), § 10-410(c)(1) prohibits a person from possessing, in or on a motor vehicle, a loaded handgun or shotgun, or a rifle containing ammunition in the magazine or chamber. This section makes an exception for persons permitted to carry a handgun under Criminal Law Article ("CR"), § 4-203(b) and PS, Title 5, Subtitle 3. These limitations are discussed in greater detail in response to questions below.

3. In which areas is carrying a long gun prohibited?

State law prohibits the carrying of firearms, including long guns, on school property, CR §

¹ Under PS, § 5-101(p), the term "regulated firearm" includes a handgun, or one of a list of specified assault weapons or copies of them.

4-102(b); within 1,000 feet of a demonstration in a public place, CR § 4-208(a)(3) and (b)(2); in legislative buildings, State Government Article § 2-1702; or on an aircraft engaged in air commerce services, Transportation Article § 5-1008. State regulations further bar possession of a firearm in State public buildings and grounds, COMAR 04.05.01.03B; in Chesapeake Forest Lands, COMAR 08.01.07.14B; in State Forests, COMAR 08.07.01.04B; in State Parks, COMAR 08.07.06.04B; in State highway rest areas, COMAR 11.04.07.12; in community adult rehabilitation centers, COMAR 12.02.03.10; and, except for small centers located in residences, child care centers, COMAR 13A.16.10.04. In addition, State law permits an innkeeper to deny a room to a person the innkeeper believes to possess firearms. Business Regulations Article, § 15-203(a)(6). Finally, State law limits the number of shotguns that a person may have on board a dredge boat. NR § 4-1013(g).

4. Are prohibited areas marked or otherwise designated off-limits to lawful carriers?

Nothing in the above-listed laws requires that these areas be marked or otherwise designated as areas in which the carrying of firearms is prohibited. It is my experience that parks and forests sometimes have such signs.

5. Is it the case that State law supersedes county and other local law regarding the lawful carrying of long guns in public?

In general, local governments are preempted from regulating the “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of a handgun, rifle, or shotgun.” CR § 4-209(a)(1). A county, municipal corporation, or special taxing district may, however, regulate with respect to these matters within 100 yards of or in a park, church, school, public building, and other place of public assembly. CR § 4-209(b)(1)(iii). In addition, the preemption provision does not apply to local ordinances that were already in effect as of January 1, 1985. Chapter 724, *Laws of Maryland* 1985, Section 2.

6. While lawfully carrying long guns for personal defense purposes, may the gun be loaded and functional?

As discussed above, NR § 10-410(c)(1) prohibits carrying a loaded rifle or shotgun in a vehicle. Otherwise, I have found no prohibition on carrying a long gun that is loaded and functional in places where a person may carry a long gun. The loaded status of the gun could be considered, however, in determining whether a person is carrying the long gun “openly with the intent or purpose of injuring an individual in an unlawful manner” in violation of CR § 4-101(c)(2).

7. What requirements exist for citizens while transporting long guns to and from various destinations?

While there may be federal laws that control the transportation of firearms on airplanes and trains, the only Maryland law I have found that relates to this matter with respect to long guns is NR

§ 10-410(c)(1).

8. Can the definition of a “dangerous weapon” include a “long gun”?

The Court of Appeals has stated, in *In re Colby H*, 362 Md. 702, 712 (2001), that a “loaded, operable shotgun ... falls under the category as a dangerous and deadly weapon.” *See also Starr v. State*, 405 Md. 293 (2008) (conviction under CR § 4-101 based on possession of a sawed off shotgun).

9. Are any additional regulations imposed on persons lawfully carrying long guns for personal defense during the hunting seasons, who are not licensed to hunt?

Natural Resources Article, § 10-413(a) provides that an attendant of a dog being trained on woodcock, pheasants, or any imported species, ruffed grouse, rabbit, hare, and quail may not carry firearms of any description, except a handgun. It is also unlawful to possess a firearm while using an artificial light to locate deer. NR § 10-416(c).

10. Can a person lawfully carrying a long gun in a non-threatening manner be detained and / or questioned?

In *Swift v. State*, 393 Md. 139 (2006), the Court of Appeals discussed three tiers of interaction between a citizen and the police. The most intrusive encounter, an arrest, requires probable cause to believe that the person has committed or is committing a crime. The second tier, the investigatory stop or detention, known commonly as a *Terry* stop,² is less intrusive than a formal custodial arrest and must be supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual. The least intrusive tier, a consensual encounter, involves no restraint of liberty and elicits an individual’s voluntary cooperation with non-coercive police contact. A consensual encounter need not be supported by any suspicion and because an individual is free to leave at any time during such an encounter, the Fourth Amendment is not implicated; thus, an individual is not considered to have been “seized” within the meaning of the Fourth Amendment.

Criminal Law Article, § 4-101(c)(2) provides that a “person may not wear or carry a dangerous weapon, chemical mace, pepper mace, or a tear gas device openly with the intent or purpose of injuring an individual in an unlawful manner.” Criminal Law Article, § 4-101(b)(4), however, provides that the section does not prohibit the carrying of a weapon by “an individual who carries the weapon as a reasonable precaution against apprehended danger, subject to the right of the court in an action arising under this section to judge the reasonableness of the carrying of the

² The name comes from the case of *Terry v. Ohio*, 392 U.S. 1 (1968), which set out the law applicable to this type of stop.

weapon, and the proper occasion for carrying it, under the evidence in the case.” The difference between the two will often not be obvious from mere observation. As a result, it is clear that an officer may question a person who is openly carrying a long gun in an attempt to determine whether that person’s behavior is within the law. Whether a detention or arrest is appropriate will depend on the circumstances, including the responses to any questions that are asked. An officer may also stop and question a person who is carrying a dangerous weapon, including a long gun, to determine whether the person is qualified to possess a weapon, *see e.g.*, PS § 5-133(b) (possession of regulated firearms); PS § 5-205(a) (possession of rifle or shotgun by person with a mental disorder), and whether the weapon has been transferred in violation of the law, PS § 5-135 and 5-138.

11. Can a citizen legitimately be charged with disorderly conduct or similar offenses for the lawful and peaceful carry of firearms, in the event another citizen simply complains that they “are afraid of people with guns?”

Criminal Law Article § 10-127(c)(2) and (3) provide:

(2) A person may not willfully act in a disorderly manner that disturbs the public peace.

(3) A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.

Speaking generally, a person who is lawfully and peacefully carrying a firearm would not ordinarily be seen as acting in a disorderly manner, even if others are frightened by his action in carrying a firearm. If, however, a police officer makes a reasonable and lawful order to prevent a disturbance to the public peace arising from the unease of others in reaction to a person carrying a firearm, disobedience of that order would most likely be found to violate the law. The results, however, will depend on the virtually unlimited fact situations that could arise.

12. Can a lawfully carried long gun be confiscated by the authorities?

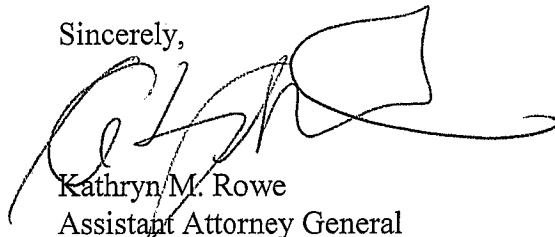
Yes, in some circumstances. In *Mora v. City of Gaithersburg*, 519 F.3d 216, 227-228 (4th Cir. 2008), the Fourth Circuit upheld the action of police officers in seizing 41 guns belonging to Mora after he told a healthcare hotline operator that he was suicidal, had weapons in his apartment, could understand shooting people at work, and said, “I might as well die at work.” No crime was charged, and it was not contended that his possession of the weapons was unlawful. The court held that the protection of the public safety from an imminent threat was sufficient justification for the seizure of the weapons.

13. Can a person carry a loaded AR-15 openly/concealed in a non-threatening manner on a public roadway / sidewalk in any municipality in Maryland?

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It is clear that a person may not carry a loaded AR-15 concealed on their person anywhere in the State. CR § 4-101(c)(1). A person may openly carry a dangerous weapon, including a loaded AR-15, unless the possession of the weapon is itself illegal or it is carried in a place where it is not permitted. Because the State preemption provision grandfathered existing local regulations of firearms, there may be municipalities where open carry of firearms is not permitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', with a large, sweeping flourish extending to the right.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
bohanan01.wpd