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POLICE OFFICER'S HANDBOOK

PISTOLS

AND

OTHER UNLAWFUL WEAPONS

PART I

FLEMING'S NOTEBOOK...Chapter 82:

Pistol Law (Statute)

Security Guards

Private Detectives

Exemptions

Arrest Warrant Form

Prepared under the direction of E. Fleming Mason,
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South Carolina LAW ENFORCEMENT - ^{Educational Television} ~~TRAINING~~ PROGRAM -

POLICE OFFICER'S HANDBOOK -

PISTOLS

AND

OTHER UNLAWFUL WEAPONS,

PART I

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Sponsored by

South Carolina Law Enforcement Division
in cooperation with
South Carolina Educational Television Network

Endorsed by

South Carolina Governor, John C. West
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates



Hon. Dan Foster Laney, Jr.
Resident Judge
Third Judicial Circuit
State of South Carolina

F O R E W O R D

The protection of human life...and the protection of property of the citizens of the State ...is the primary object of the activities of police officers in the United States.

It goes, almost without saying, that control of firearms and other deadly weapons is at the very heart of our law enforcement problem. Pistols are the primary weapons used to inflict personal injury and violent death upon others. For this reason, most of the laws of the states of the United States are directed toward the reasonable control of these weapons.

On the one hand, pistols are valuable weapons to be used in the defense of homes and business establishments; and South Carolina's law recognizes and makes lawful such legitimate uses of this deadly weapon. On the other hand, pistols can be

and are used in carrying out many facets of criminal activity...from deliberate, planned crimes, such as robbery, to 'spur-of-the-moment' killings arising out of sudden heat and passion.

Because this mechanical death-dealer walks such a thin line between legitimacy and illegitimacy, our laws controlling its possession and use are complicated...and successful enforcement of those laws are correspondingly difficult.

Dan Frost Laney, Jr.
Resident Judge
Third Judicial Circuit
State of South Carolina

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PISTOLS

A pistol is defined by South Carolina law as: 'any firearm...(with) a barrel less than twelve inches in length....' By definition, any firearm with a barrel twelve inches or more in length is not a pistol under South Carolina's law...even though it might be considered such for other purposes.

Certain types of pistols are not controlled by our pistol law, even though the barrel might be less than twelve inches in length. Such exceptions are:

Antiques

Curios

Collector's Items

Old duelling pistols, period Derringers, bona fide six-shooters from the old west, would no doubt come within the class of pistols exempted from our pistol law as collector's items. Many are workable and deadly, of course, but this is not the test of whether or not they are prohibited. Their exemption comes from the fact that they are antiques, curios, or collector's items...not because they are not loaded or not in firing condition. This makes no difference. As contradictory as it might seem to be, such pistols are lawful, even though they are loaded and ready for action.

WHEN PISTOLS UNLAWFUL

Pistols are unlawful in South Carolina only when they are carried about the person. The pistol does not have to be on the person...such as in the hand or in the pocket. If it is near the person and readily accessible, it is being carried unlawfully.

Examples of unlawful possession would be:

On a car seat.

Under the front seat of a vehicle.

In an open glove compartment or console.

In the hand or in the clothing.

In an open satchel, handbag, or shopping bag.

It does not matter that the pistol might be unloaded...or even not in working condition...or that it is not concealed. The pistol law does not excuse the carrying of a pistol about the person even in those circumstances. Our law reads:

"It shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol..."

PERSONS EXEMPT

Certain persons are not affected by the State's pistol law:

- (1) Law enforcement officers of this State, whether on duty or not. (This includes regular State, city, and county police officers and Governor's Constables without pay, but does not include so-called honorary city police officers or honorary deputies sheriff.)
- (2) Law enforcement officers of other states and of the Federal Government while on duty.
- (3) Official military personnel when on duty.
- (4) Members of organized gun clubs while at shows or shoots, or when going to and from shows or target shooting sites. (The club does not have

to be registered with the Secretary of State or anyone else, but there must be some convincing evidence that it is an organized club.)

- (5) Licensed hunters or fishermen, while hunting or fishing or going to and from such activities.
- (6) Persons in the business of manufacturing or selling pistols, while engaged in such business.
- (7) Guards of common carriers (railroads, truck lines, etc.), banks, and of property of the Federal Government...while on duty.
- (8) Persons involved in parades, and while going to and from their homes.
- (9) Prison or jail guards when on duty.
- (10) Night watchmen while on duty.

Pistols carried in certain places or under certain circumstances are lawful under our pistol statute:

- (1) In the home, fixed place of business, or on the land, by the owner. (This exemption would include the renter or leasee of such a place, but would not include the owner's or renter's agents or employees).
- (2) Securely wrapped pistols while being carried from gun store to home, or while moving to another home or place of business.
- (3) In a closed glove compartment, auto console, auto trunk, satchel, or other piece of luggage. In order to be closed, the compartment or other container does not have to be locked or latched ...only closed.

SECURITY GUARDS

One question frequently asked is whether or not roving security guards, such as those who check stores and other places of business while they are closed, qualify as night watchmen under our pistol law. The traditional concept of a 'night watchman' is one who comes to one place of business and remains there to guard the premises during the times when the business is closed.

Modern times have seen the evolvement of so-called 'security guards', who check many places of business during the night or on days on which the businesses are closed. These persons do the same things that the traditional 'night watchmen' did, but they do not remain at one location.

It is a basic rule of law that criminal statutes must be construed strictly in favor of the accused

in any criminal action. In other words, if the meaning of a criminal law is not entirely clear, any doubt must be decided in favor of the alleged violator. With this rule in mind, the Office of the State's Attorney General is of the opinion that such 'security guards' are 'night watchmen' within the meaning of our State's pistol law, and are exempt from the provisions of that law while on duty...when the businesses being guarded are closed.

There is no lawful authority for store guards or other security personnel to be armed with pistols when the businesses are open...unless such guards are regular law enforcement personnel doing off-duty work, or unless they hold commissions as Governor's constables without pay.

PRIVATE DETECTIVES

There is no provision in South Carolina's law for the issuance of 'gun permits' by anyone...and private detectives are not authorized by our pistol law to carry pistols. Although this State does license 'private detectives', they are instructed by SLED when the licenses are issued that they may not carry pistols. Private detectives may carry pistols if they are also Governor's constables without pay, however.

PENALTIES

Violation of the pistol law is strictly a general sessions or county court offense. Neither magistrates nor municipal courts may do anything with regard to pistol violations except issue arrest warrants and set bond or bail.

The penalty for violation of the pistol law is a fine of not more than \$1000, or not more than one year in jail, or both. There is no increased penalty for second or subsequent offense.

DISPOSITION OF FINES

Although the pistol law is strictly a State law, when a violation occurs within a municipality, any fine imposed must be forwarded by the clerk of court to the municipal treasurer. When the offense took place in the county, the fine goes into the county treasury.

DISPOSITION OF PISTOLS

Any pistol carried in violation of the pistol law is forfeited to the county or municipality. Upon conviction of plea of guilty by the defendant, the clerk of court should take possession of the

pistol involved, issue a receipt therefor, dispose of it according to law (Sec.16-146, 1962 Code of Laws), and forward the money received for it to the county or municipal treasurer.

FLEMING'S NOTEBOOK...Chapter 82:

SOUTH CAROLINA'S PISTOL LAW

(Section 16-129, et seq.,
1962 Code of Laws of South Carolina,
as amended.)

DEFINITIONS (Sec.16-129)

(a) "PISTOL" means any firearm designed to expel a projectile from a barrell less than twelve inches in length; but shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or any that does not fire fixed cartridges or fixed shotgun shells.

(b) The term "DEALER" means any person regularly engaged in the business of selling firearms at retail.

(c) 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.

(d) The term "FUGITIVE FROM JUSTICE" means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

(e) The term "SUBVERSIVE ORGANIZATION" means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or

political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

(f) The term "CONVICTION" as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

EXCEPTIONS (Sec.16-129.1)

It shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol, except as follows:

(1) Marshals, sheriffs, policemen or other law enforcement officers, or peace officers of the Federal Government or other states when they are carrying out official duties while in this State.

(2) Members of the Armed Forces of the United States or of the National Guard, organized reserves or the State Militia when on duty.

(3) Members of organizations authorized by law to purchase or receive firearms from the United States or this State, or regularly enrolled members of clubs organized for the purpose of target shooting or collecting modern and antique firearms while such members are at or going to or from their places of target practice or their shows and exhibits.

(4) Licensed hunters or fishermen while engaged in hunting or fishing and going to and from their places of hunting and fishing.

(5) Any person regularly engaged in the business of manufacturing, repairing, repossession or dealing in firearms, or the agent or representative of such person while possessing, using or carrying a pistol in the usual or ordinary course of such business.

(6) Guards of common carriers, banks and other financial institutions while engaged in that capacity and guards engaged in protection of property of the United States or any agency thereof.

(7) Any authorized military or civil organizations while parading or the members thereof when going to and from the places of meeting their respective organizations.

(8) Any person in his home, or upon his real property, or fixed place of business.

(9) Any person in any vehicle where the pistol is secured in a closed glove compartment or closed trunk.

(10) Any person carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of the changing or moving of one's residence

or the changing or moving of one's fixed place of business.

(11) Any prison guard while engaged in his official duties.

(12) Any night watchman while engaged in his duties as a night watchman.

SALE TO CERTAIN PERSONS UNLAWFUL (Sec.16-129.2)

It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this State any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a

drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Militia or R.O.T.C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but any person who shall be the

subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c) or (d) of this section to possess or acquire pistols within this State.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

RETAIL DEALERS (Sec.16-129.3)

No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

DEALER'S LICENSE (Sec.16-129.4)

The clerk of court of the county shall grant a license to any person doing business in the county not ineligible under the provisions of this article in a standard form prescribed by the Attorney General, effective for two years from date of issuance, permitting the licensee to sell pistols at retail within this State subject to the following conditions, for breach of any of which the license shall be forfeited:

(a) The license or a copy thereof, authenticated by the issuing authority, shall at all times and places of sale be available for inspection or displayed where it can easily be read.

(b) No pistol shall knowingly be sold in violation of any provision of this article nor shall a pistol be sold without clear evidence to the seller of the identity of the purchaser.

(c) A true record shall be made of every pistol sold, in a book kept for the purpose, the form of which shall be prescribed by the Attorney General and shall be signed personally by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, color and place of birth of the purchaser and a statement signed by the purchaser that he has never been convicted of a crime of violence, is not a fugitive from justice nor a member of any subversive organization. The dealer shall retain the records for a period of three years from the date of sale or transfer to which the records relate.

(d) A fee for issuance of such license shall be twenty-five dollars.

A breach of any of the above conditions shall result in the forfeiture of the license for one year from the date of the violation.

FALSE INFORMATION (Sec.16-129.5)

No person in applying for any license under this article shall give false information or offer false evidence of his identity, or give false information concerning the matters referred to in this article.

PAWNING OF PISTOL (Sec.16-129.6)

Only a licensed dealer shall make a loan secured by a mortgage, deposit or pledge of a pistol and the dealer shall keep such records as are required herein. A licensed dealer may mortgage any pistol or stock of pistols but shall not deposit the same with any other person.

PENALTIES, DISPOSITION OF FINES AND PISTOLS
(Sec.16-129.7)

Any person violating any of the provisions of this article shall, upon conviction, be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

When a violation occurs within a municipality the moneys from the fine shall be delivered to the municipality by the clerk of court. If the violation takes place outside a municipality, the moneys from the fine shall be delivered to the county treasurer.

Any person convicted of violating the provisions of this article, in addition to the penalty provided herein, shall have such pistol as is involved in any such violation confiscated and delivered to the municipality or county where the violation is

State of South Carolina)
) AFFIDAVIT
County of _____)

Personally appeared before me one

_____ ,

who, being duly sworn, says that he is informed and

does believe that one _____

did on the ____ day of _____, 19__ , in this

County, carry about his person a pistol, i.e., a

firearm designed to propel a projectile from a

barrell less than twelve inches in length; and that

such belief is based on the following facts:

Sworn to and subscribed before me

this ____ day _____, 1972.

Magistrate (LS) Affiant

STATEWIDE LAW ENFORCEMENT EDUCATION

THROUGH TELEVISION

This training program is made available through the cooperation of the South Carolina Law Enforcement Division and the South Carolina Educational Television Network, with funds provided under the CRIMINAL JUSTICE ACT OF 1968

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