

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 38

CRIMINAL LAW AND PROCEDURE - Sale of rifles and shotguns
to residents of noncontiguous states;
FIREARMS - Sale to residents of noncontiguous states;

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MONTANA CODE ANNOTATED - Sections 45-8-341, 45-8-342;
MONTANA LAWS OF 1969 - Chapter 87;
UNITED STATES CODE - 18 U.S.C. §§ 922, 923;
UNITED STATES STATUTES AT LARGE - 82 Stat. 1213 (1968),
100 Stat. 449 (1986).

HELD: Section 45-8-342, MCA, is not violated when a Montana firearms dealer sells a rifle or shotgun to a resident of a noncontiguous state.

13 November 1987

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have requested my opinion concerning the following question:

Does section 45-8-342, MCA, prohibit a Montana gun dealer from selling rifles and shotguns to residents of noncontiguous states?

Montana statutes neither provide for licensure of gun dealers nor expressly condition sale of rifles or shotguns upon compliance with specified requirements. However, federal law does mandate the licensing of firearms dealers (18 U.S.C. § 923) and prohibits certain transactions involving the sale of firearms (18 U.S.C. § 922). Particularly relevant to your inquiry is 18 U.S.C. § 922(b)(3) (Cum. Supp. 1987) which currently states:

It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

....

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this

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paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes[.]

The above provision was adopted in 1986 (Pub. L. No. 99-308, § 102, 100 Stat. 449, 451) and replaced, in relevant part, language which allowed only nonresident rifle or shotgun sales to individuals living in states contiguous to the location where the transaction occurred:

It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

....

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for

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temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail[.]

Pub. L. No. 90-618, Tit. I, § 101, 82 Stat. 1213, 1218 (1968) (codified in 18 U.S.C. § 922(b)(3) (1976)).

In response to the original version of 18 U.S.C. § 922(b)(3), the Legislature adopted 1969 Montana Laws, chapter 87 (codified in §§ 45-8-341 and 45-8-342, MCA). Section 45-8-341, MCA, authorizes the purchase by Montana residents of rifles or shotguns in contiguous states, and section 45-8-342, MCA, authorizes the purchase of such weapons in this state by residents of contiguous states. The latter provision reads:

Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

The evident purpose of sections 45-8-341 and 45-8-342, MCA, was to provide the affirmative state law authorization required under the earlier version of 18 U.S.C. § 922(b)(3) for rifle and shotgun sales to, inter alia, residents of contiguous states by Montana dealers.

Sections 45-8-341 and 45-8-342, MCA, reflect no intent to proscribe independently any form of rifle or shotgun sales. Consequently, while such sales to residents of

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noncontiguous states would have violated federal law prior to the 1986 amendment to 18 U.S.C. § 922(b)(3), they would not have subjected the dealer or purchaser to criminal liability under Montana law. The absence of state prohibition of sales to residents of noncontiguous states continues, and, irrespective of their legality under federal statutes, section 45-8-342, MCA, is not violated by such transactions.

THEREFORE, IT IS MY OPINION:

Section 45-8-342, MCA, is not violated when a Montana firearms dealer sells a rifle or shotgun to a resident of a noncontiguous state.

Very truly yours,

MIKE GREELY
Attorney General