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ATTORNEY GENERAL

December 16, 2019

Colonel Robert Evanchick
Commissioner
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

Dear Commissioner Evanchick:

You requested legal advice¹ on behalf of the Pennsylvania State Police ("PSP") concerning the stage of manufacture at which a receiver meets the definition of "firearm" contained in the following sections of the Uniform Firearms Act² ("UFA"):

- 18 Pa. C.S. § 6105(i),
- 18 Pa. C.S. § 6105.2(i),
- 18 Pa. C.S. § 6106(e)(1),
- 18 Pa. C.S. § 6107(c),
- 18 Pa. C.S. § 6110.2(c),
- 18 Pa. C.S. § 6111(f)(1),
- 18 Pa. C.S. § 6111.1(k),
- 18 Pa. C.S. § 6111.2(d),
- 18 Pa. C.S. § 6111.4,
- 18 Pa. C.S. § 6113(d),
- 18 Pa. C.S. § 6117(a),
- 18 Pa. C.S. § 6120(b), and
- 18 Pa. C.S. § 6128(f) (collectively, "the Applicable Sections").³

The definition of firearm contained in the Applicable Sections includes any weapon which is "designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon."⁴ While a fully manufactured

¹ See Section 204 of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a).

² 18 Pa. C.S. § 6101 *et. seq.*

³ The analysis of this Opinion does not apply to the definition of "firearm" as it appears in 18Pa. C.S. § 6102. Furthermore, although PSP did not specifically request advice on interpreting the "firearm" definitions applicable in 18 Pa. C.S. §§ 6111.2(d) and 6117(a), these sections are addressed because the same analysis impacts all sections of the UFA in which this definition appears.

⁴ In the interest of clarity, the Applicable Sections do not all use the same exact language; however, these slight variations in punctuation and word choice do not affect the analysis.

receiver clearly meets this definition, your question seeks guidance on when a receiver that is not fully manufactured becomes a “firearm” as defined under the Applicable Sections.

After careful review, we conclude a receiver, that is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive, is a firearm as defined in the Applicable Sections. As explained below, under the plain language of the UFA, a partially-manufactured receiver is a firearm as defined in the Applicable Sections if it is either “designed” or “may readily be converted” into a completed receiver with the capability to expel any projectile by the action of an explosive. The UFA does not provide a definition for either of these phrases. In order to aid the PSP, the agency charged with administering and enforcing the UFA,⁵ this Opinion provides the legal framework essential to PSP’s analysis when taking any enforcement action or providing any interpretive guidance involving the Applicable Sections.

Unquestionably, the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa. C.S. § 1921(a). If possible, a statute must be construed to give effect to all of its provisions. *Id.* Furthermore, when enacting legislation, the General Assembly enjoys a presumption that it does not intend a result that is absurd, impossible of execution, or unreasonable. 1 Pa. C.S. § 1922(1). Words and phrases in a statute shall be construed according to rules of grammar and their common and approved usage. 1 Pa. C.S. § 1903(a). Here, the word “designed” and the phrase “may readily be converted” must be analyzed within this framework.

I. A partially-manufactured receiver is a firearm because it is “designed” to expel a projectile by the action of an explosive.

In *Commonwealth v. Zortman*, 611 Pa. 22 (2011), the Pennsylvania Supreme Court interpreted a largely identical definition of “firearm” previously contained in 42 Pa. C.S. § 9712.1(f) (relating to sentencing enhancements for certain crimes committed with firearms).⁶ This section defined “firearm” as “any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or the expansion of gas therein.” Using the rules of statutory construction, the Court construed the meaning of “designed to . . . expel a projectile by action of an explosive.” The Court held the definition of “firearm” was clear and unambiguous in requiring “only that the weapon be capable of firing a bullet (‘will’), easily rendered capable of firing a bullet (‘may readily be converted’) or . . . ‘designed’ to fire a bullet.” 611 Pa. at 33. This definition applied equally to weapons that are “functional, defectively manufactured, or temporarily inoperable for some other reason.” *Id.*

⁵ See 18 Pa. C.S. § 6111.1(a).

⁶ The Pennsylvania Superior Court in *Commonwealth v. Watley*, 81 A.3d 108 (2013) found 42 Pa. C.S. § 9712.1 unconstitutional for violating a defendant’s right to a jury trial because it permitted the trial court, not the jury, to increase the length of a minimum sentence based on the possession of a firearm without requiring proof of that fact as an element of the crime. The basis for that ruling did not involve interpreting the definition of a “firearm”; therefore, Pennsylvania Supreme Court’s analysis of the “firearm” definition in *Zortman* remains good law.

Of particular importance, the statute at issue in *Zortman* clearly differentiated between firearms that “will” fire a projectile and those merely “designed” to do so. *Id.* In the UFA, the firearm definition at issue in this Opinion mirrors the language from former 42 Pa. C.S. § 9712.1, with one exception; the General Assembly chose to focus upon firearms that are “designed” to expel a projectile, rather than those that “will.” Therefore, under the plain language of the UFA a weapon *designed* to fire a projectile is a firearm regardless of whether it *will* actually fire a projectile. Since the UFA definition of “firearm” in the Applicable Sections also considers the frame or receiver of a weapon “designed to . . . expel any projectile by the action of an explosive” a firearm, it follows that these same principles apply. In order to be a “firearm,” a receiver need not be capable of firing a projectile; it needs only to be designed to do so.

In *Zortman*, the Court used dictionary definitions to interpret the plain meaning of “designed,” concluding that the various definitions meant “that the design itself, or the thing designed, is something planned, intended, purposeful, deliberate, or even ‘schemed’ towards some specific end or outcome.” *Id.* Receivers, even those in a state of partial manufacture, are unequivocally “designed to . . . expel any projectile by the action of an explosive” because they are manufactured with the necessary specifications, intended, and marketed for the purpose of firing a projectile.

II. A partially-manufactured receiver that “may readily be converted” to expel any projectile by the action of an explosive is a firearm.

As a matter of first impression, there is no controlling caselaw providing a definition or standard for applying the phrase “may readily be converted.”⁷ There is, however, caselaw from other jurisdictions interpreting the similar phrase “may readily be restored” as it applies to machine guns—a subset of firearms—in the National Firearms Act.⁸ Although not binding here, decisions from other jurisdictions can provide persuasive authority. *Com. v. Nat’l Bank & Tr. Co. of Cent. Pennsylvania*, 469 Pa. 188, 194, 364 A.2d 1331, 1335 (1976).

The “may readily be restored” standard is analogous to the “may readily be converted” standard as they both embody the essential concept of whether a weapon may be readily transformed into a fully operable firearm. The Sixth Circuit provides the most comprehensive summary of the law surrounding “may readily be restored” in *U.S. v. One TRW Model M14, 7.62 Caliber Rifle from William K. Alverson*, 441 F.3d 416 (2006).

⁷ Similarly, there is no caselaw providing an interpretation of the phrase “may readily be converted” from the Gun Control Act, 18 U.S.C. § 921.

⁸ The National Firearms Act defines a machinegun as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). Similar to the Uniform Firearms Act, the National Firearms Act does not define the phrase “can be readily restored.”

When enforcing or interpreting the UFA, implicating the definition in the Applicable Sections, it is essential for the PSP to utilize the framework provided by the court in *One TRW Model* by collectively applying the following factors: time, ease, expertise, necessary equipment, availability, expense, and feasibility of converting an object into something “designed to expel any projectile by the action of an explosive.”⁹ Courts have examined these factors in the following ways:

- **Time:** How long it would take to convert the receiver so that it is capable of firing a projectile has been the factor most commonly emphasized by courts. While there is no clear ceiling on the time requirement, courts in various jurisdictions have found a weapon could be readily converted or restored in as little as two minutes and as long as eight hours.¹⁰
- **Ease:** This factor measures the level of difficulty in converting a receiver so that it is capable of firing a projectile.
- **Expertise:** This weighs the knowledge and skill required to convert the weapon so that it is capable of firing a projectile.¹¹
- **Equipment:** This evaluates the tools necessary to convert a receiver to be capable of firing a projectile. Courts have found this to occur in a variety of circumstances, ranging from the use of basic tools to a properly-equipped machine shop.¹²

⁹ The court also includes “scope” as a factor relating to the extent that a machine gun had been altered, focusing on the “can be readily restored to shoot” aspect of the machine gun definition. While this factor is not instructive for our analysis of whether a receiver “may readily be converted,” it does not prevent us from using the remaining factors articulated in *One TRW Model*.

¹⁰ *E.g., Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (a Pennsylvania case determined that a starter pistol that could be converted to fire a projectile in approximately 15 minutes with proper tools or in an hour for an unskilled individual with basic tools and limited knowledge was a firearm under the UFA.); *U.S. v. Alverson*, 666 F.2d 341, 345 (9th Cir. 1982) (defined readily as the ability to manufacture required parts in four to six hours with particular machinery or in two to three hours by hand); *U.S. v. Dodson*, 519 F. App'x 344, 347 (6th Cir. 2013) (90 minutes); *U.S. v. Woodlam*, 527 F.2d 608, 609 (6th Cir. 1976) (considering the element of time only readily meant a modification that was capable of being completed in two minutes); *U.S. v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973) (8 hours in a machine shop); *But See, U.S. v. Seven Miscellaneous Firearms*, 503 F. Supp. 565, 577 (D.D.C. 1980) (Not readily restorable if it would require a master gunsmith working in a gun shop, the equipment and tools costing \$65,000, and 13 3/4 hours to make the necessary modifications).

¹¹ *E.g., United States v. Kelly*, 276 F. App'x 261, 267 (4th Cir. 2007) (rejecting the argument that “the statute must be applied not based upon the knowledge and skills of an expert and what an expert may be able to accomplish, but upon the knowledge and skills of an ordinary person”).

¹² *E.g., United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999) (tools commonly understood by and available to such workers); *Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (skilled machinist with proper equipment or an unskilled person with basic tools, limited knowledge, and approximately one hour to accomplish the task); *United States v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973).

- **Availability:** This reflects whether the parts necessary to convert a weapon are easily available. For instance, a disassembled machine gun missing only one necessary part was found to be readily restorable where the necessary part was available on the open market.¹³
- **Expense:** Any analysis must also consider the relative cost of the parts and equipment necessary to convert a receiver so that it is capable of firing a projectile.¹⁴
- **Feasibility:** A weapon is not readily convertible where the attempted conversion would damage or destroy the weapon or cause it to malfunction.¹⁵

No single factor is dispositive. The PSP must weigh all the applicable factors together to determine whether a receiver “may readily be converted” to expel any projectile by the action of an explosive. This analysis is dependent on the factual circumstances in each specific case. For instance, a receiver is a “firearm” if it can be converted to expel a projectile by individual with reasonable skill (expertise), basic tools (equipment) available to and understood by such an individual, and commonly available parts (availability) in a reasonable amount of time (time).¹⁶

In contrast, an example where a receiver would not be considered “readily convertible” comes from the District of D.C., where the court considered these factors in determining whether certain weapons were “readily restorable.” In that case, the weapons were held not to be machine guns because it would have taken a master gunsmith (expertise) over 13 hours (time) working with specialized equipment (equipment), required parts that are not commonly available (availability), cost \$65,000 to make the conversion, and the conversion could have damaged or destroyed the firearm as well as caused injury to the shooter upon firing.¹⁷

III. Conclusion.

A receiver does not need to be fully manufactured to be a firearm as defined in the Applicable Sections. A receiver is a firearm under the Applicable Sections if it is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive. Given the UFA does not provide statutory definitions of these terms, PSP shall utilize the legal

¹³ *United States v. Cook*, 1993 WL 243823 (6th Cir. 1993); *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (replacement parts available from Smith & Wesson plant).

¹⁴ *E.g.*, *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (readily restored when it only requires a \$15.00 part); *But see*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980) (may not be readily restored when it required \$65,000 worth of specialized equipment and tools).

¹⁵ *E.g.*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

¹⁶ A court ruled a machine gun was readily restorable under these circumstances in *United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999)

¹⁷ A court ruled a machine gun was not readily restorable under these conditions in *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

framework set forth in this Opinion when enforcing or issuing interpretive guidance regarding the Applicable Sections of the UFA.¹⁸ Along with direct enforcement of the UFA, PSP has the ability to issue interpretive rules through internal documents, manuals, or policy statements; while not controlling, these interpretations would be entitled to deference. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 164, 89 L. Ed. 124 (1944). Additionally, PSP can further interpret the definitions through formal rulemaking. 18 Pa. C.S. § 6111.5. Any regulation properly promulgated by PSP is entitled to deference, unless clearly erroneous. *Harkness v. UCBR*, 591 Pa. 543, 920 A.2d 162.

You are further advised that in accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), PSP shall follow the advice contained in this Opinion and will not in any way be liable for doing so.

All the best,



JOSH SHAPIRO

cc: Gregory G. Schwab, General Counsel
Nolan B. Meeks, Acting Chief Counsel
Keli M. Neary, Executive Deputy Attorney General

¹⁸ Nothing in this opinion shall restrict or supersede PSP's discretion in choosing when to enforce or issue interpretive guidance involving the UFA.