

HIGHWAY PATROL: Concealed weapons subject to provisions of Section 4433 R.S. Mo. 1929, as a person.

June 1, 1936.

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Captain R. E. Moore
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your request for an official opinion from this Department under date of May 8, 1936, which reads as follows:

"We would like to have an opinion covering the following type of case. In various instances the State Highway Patrol, as an organization, has cause to receive, by express, various revolvers or pistols which are forwarded to this office by the Colt Company, either as new guns or forwarded after having been repaired at the Colt factory. These guns are all the property of the State Highway Patrol. In the past the express company has refused to deliver these firearms without first being given a permit issued by the circuit clerk and signed by the sheriff, authorizing the State Highway Patrol to receive this property.

"It appears to us that the statute requiring such a permit should not apply to a state police organization, inasmuch as we believe they are not to be considered as a person. We shall appreciate an opinion from you as to whether or not it will be necessary, in order to conform with the law, for the Patrol to secure a permit on each gun received. It should be borne in mind that some of these guns are returned to the factory several times for adjustment and repair, and in the past it has been necessary to secure permits on some guns more than once."

In answering this request it is necessary that we construe the meaning of the words "no person" appearing the first line of Section 4433, R.S. Mo. 1929, which provides:

"No person, other than a manufacturer or wholesaler thereof to or from a wholesale or retail dealer therein, for the purposes of commerce, shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive, in this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, unless the buyer, borrower or person receiving such weapon shall first obtain and deliver to, and the same be demanded and received by, the seller, loaner, or person delivering such weapon, within thirty days after the issuance thereof, a permit authorizing such person to acquire such weapon. Such permit shall be issued by the circuit clerk of the county in which the applicant for a permit resides in this state, if the sheriff be satisfied that the person applying for the same is in good moral character and of lawful age, and that the granting of the same will not endanger the public safety. The permit shall recite the date of the issuance thereof and that the same is invalid after thirty days after the said date, the name and address of the person to whom granted and of the person from whom such weapon is to be acquired, the nature of the transaction, and a full description of such weapon, and shall be countersigned by the person to whom granted in the presence of the circuit clerk. The circuit clerk shall receive therefor a fee of fifty cents. If the permit be used, the person receiving the same shall return it to the circuit clerk with-

in thirty days after its expiration, with a notation thereon showing the date and manner of the disposition of such weapon. The circuit clerk shall keep a record of all applications for such permits and his action thereon, and shall preserve all returned permits. No person shall in any manner transfer, alter or change any such permit or make a false notation thereon or obtain the same upon any false representation to the circuit clerk granting the same, or use or attempt to use a permit granted to another."

It is a fundamental rule of construction that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein in *Grimes v. Reynolds*, 184 Mo. 679, l. c. 688, the Court said:

"The object of all rational interpretation is to reach the true intent and meaning of the law-making authority as expressed in the language it has employed to convey its thought. All other rules are subordinate to that great one.

"Another principle of interpretation which must be closely adhered to is to consider all the statutes treating of the same subject-matter, so that the meaning of any particular provision may be enlightened by a view of the general purpose pervading the entire law of the subject."

In using the words "No person, other than a manufacturer or wholesaler thereof" in Section 4433, supra, we are of the opinion that the Legislature fully intended to include everyone except those expressly exempted, namely, manufacturer or wholesaler. It is a well known canon of statutory construction that an "expression of one thing is the exclusion of another." In *State ex inf. Conkling, ex rel. Hendricks, v. Sweaney*, 195, S.W. 714, l. c. 716; 270 Mo. 685, the Court said:

"Section 10881, in its present form, was enacted in 1909. Laws 1909, p. 819. Prior to that time it has been expressly held by this court that the law providing for division of common school districts did not apply to village school districts. State ex rel. v. Fry, 186 Mo. 198, 86 S. W. 328. Such being the case, the Legislature, when it enacted section 10881, knew that the provisions of section 10837, relating to the division of on common school district into two new districts, would not apply to town or consolidated districts, unless it so provided in the act; and knowing this to be true, and failing to so provide, it would be but to do violence to the plain language used to hold that it expressed an intention to apply provisions other than those expressly mentioned. To so hold would be to violate the well-known canon of statutory construction, viz. that the expression of one thing is the exclusion of another."

The Legislature in using the above words "no person, other than a manufacturer or wholesaler" apparently intended to classify manufacturers and wholesalers as persons, and we infer from this construction by implication that the word "person" would include all persons natural or artificial, corporations, governmental agencies, etc. We are unable to locate any case exactly in point holding the word "person" in a statute to include or exclude a Highway Patrol. However, there are many definitions given for the word "person" as used in various sections in the Revised Statutes of 1929, and hardly without exception the word "person" as intended to be used by the Legislature includes individuals, firm, corporation, partnership, association, and in many instances municipalities and other governmental agencies.

Section 4478 is a part of Chapter 30, R. S. Mo. 1929, as is Section 4433, supra, and defines "person" as follows:

"When the term 'person' is used in this statute to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this state or any other state, government or country, a county, or any other municipal, public or private corporation, which may lawfully own any property within this state, as well as individuals."

In *State v. Broeker*, 11 S. W. (2d) 81, l. c. 83, the Court said:

"It is well understood that the object of all rational construction of statutory enactment is to seek out and effectuate the purpose and intent of the lawmaking body in enacting the same; that such intent is to be determined from a general view of the entire act with reference to the subject-matter to which it applies; and that sections of the same act relating to the same general subject, and enacted at the same time, must be read and construed together in interpreting the act and parts thereof. *State ex rel. v. Davis*, 314 Mo. Sup. 373, 284 S. W. 464; *Palmer v. Omer*, 316 Mo. 1188, 295 S. W. 123; *Betz v. Kansas City Southern Ry. Co.* 314 Mo. 390, 284 S.W. 455; *Consolidated School District v. Hackmann*, 302 Mo. 558, 258 S.W. 1011."

Section 361 U.S. Criminal Code, Title 18, prohibits concealed weapons being deposited in the mails except under such regulations as the Postmaster General shall prescribe for use and connection with the official duty of certain officers. This Section provides as follows:

"Pistols, revolvers, and other fire-arms capable of being concealed on the person are hereby declared to be nonmailable and shall not be deposited in or carried by the mails

or delivered by any postmaster, letter carrier, or other person in the Postal Service: Provided, That such articles may be conveyed in the mails, under such regulations as the Postmaster General shall prescribe, for use in connection with their official duty, to officers of the Army, Navy, Marine Corps, or officers' Reserve Corps; to officers of the National Guard or Militia of the several States, Territories, and Districts; to officers of the United States or of the several States, Territories, and Districts whose official duty is to serve process of warrants of arrest or mittimus of commitment; to employees of the Postal Service; and to watchmen engaged in guarding the property of the United States, the several States, Territories, and Districts: And provided further, That such articles may be conveyed in the mails to manufacturers or firearms or bona fide dealers therein in customary trade shipments, including such articles for repair or replacement of parts, from one to the other, under such regulations as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery, or shall knowingly cause to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any pistol, revolver, or firearm, declared by this section to be nonmailable, shall be fined not exceeding \$1,000 or imprisoned not more than two years, or both."

In State ex rel. Williams v. Purl, 128 S. W. 196, 228 Mo. 1, the Court held where words having a well defined meaning at common law and in ordinary use are used in a statute, the presumption is that they are used in their usual sense. Following is the definition of "person" given by Webster's International Dictionary:

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"'Person' A human being (natural person), or a body of persons, or, in a wider sense, an aggregate of property (artificial, conventional, or juristic person), that is recognized by law as the subject of rights and duties."

Funk and Wagnall's New Standard Dictionary defines "person" as follows:

"Any human being, corporation, or body politic having legal rights and duties."

CONCLUSION.

From the foregoing it is the opinion of this Department that the Missouri State Highway Patrol must comply with the law as required of any person in Section 4433, supra.

Yours very truly

J. E. TAYLOR
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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