

CONCEALED WEAPONS

Sheriffs, deputy sheriffs, police officers, members of the highway patrol, town marshals, judges of courts, and all persons deputized by any of the above persons to aid in conserving the peace, or to serve criminal or civil process, are exempt from the provisions of Section 564.610. Further, that firearms capable of being concealed upon the person which were acquired prior to the enactment of the law requiring a permit before acquiring such firearms, does not apply to firearms so acquired prior to the enactment of the law. Further, the above section does apply to firearms acquired by Missouri residents in other states, or to firearms acquired by inheritance.

May 24, 1956

Honorable James E. Woodfill
Prosecuting Attorney
Vernon County
Nevada, Missouri

FILED 99



Dear Sir:

Your recent request for an official opinion reads as follows:

"In my official capacity as Prosecuting Attorney of Vernon County, Missouri, I wish to request an opinion from your office regarding the interpretation of the Missouri Statutes relating to firearms capable of being concealed upon the person.

"The first statute is Section 564.610 of the Missouri Revised Statutes of 1949. What persons in a third class county, other than police officers and sheriffs, are exempt from the provisions of said section?

"Sections 564.620 to 564.660 of the Missouri Revised Statutes of 1949 make it mandatory to secure a permit before acquiring such firearms. These sections were apparently taken from the Laws of 1921. My question regarding these sections is, do they apply to such firearms which were acquired prior to the passage of this law, acquired by inheritance or acquired out of the State of Missouri?

"In these cases, and in other cases where the firearms have been held for many years, never having been 'registered', it would now be impossible to procure the signature of the person from whom the weapon was acquired as is required by Section 564.630, because of the unavailability of such persons.

"As far as I can determine, there are no cases cited under these sections regarding the securing of a permit to acquire such weapons. My opinion would be that persons possessing such firearms which were acquired under the above circumstances, would not come within the provisions of these sections because of the impossibility

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of compliance therewith, but that if there are any further transfers of such firearms, such transfer should comply with the statutes.

"If you will give me an opinion on these matters it will be greatly appreciated as I have received inquiries from several persons who wish to comply with the law as to the possession of such firearms."

Your first question is, what persons in a third class county, other than police officers and sheriffs, are exempt from the provisions of Section 564.610, RSMo 1949.

The exemption clause of the above section reads as follows:

"* * * provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state."

The section prohibits carrying concealed weapons. It is clear that sheriffs, and their deputies, who have the same powers as the sheriff, would be exempt.

The term "police officers" has been held to include all members of the police force. Constables would not be included because your inquiry is as to a third class county, and the office of constable in second, third, and fourth class counties has been abolished since 1947. Members of the highway patrol are by Section 43.190, RSMo 1949 made peace officers.

In the case of State v. Davis, 284 Mo. 695, the Supreme Court of Missouri held that a justice of the peace was a conservator of the peace. A magistrate is made a conservator of the peace by Section 542.020 RSMo 1949, which reads:

"The following officers shall have power and jurisdiction to cause to be kept all laws made for the preservation of the public peace, to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail; require persons to give security to keep the peace, and to execute the powers and duties herein conferred in relation thereto: The judges of the supreme court throughout the state; judges of the courts of record, except probate judges, within their respective juris-

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dictions; clerks and deputy clerks of magistrate courts within their respective counties; the mayors and police judges of incorporated cities and towns within the limits of their respective corporations; provided, that nothing herein contained shall be so construed as to authorize the mayors and police judges of incorporated cities and towns to exercise jurisdiction in prosecutions under the laws of this state, other than those instituted under sections 542.020 to 542.140 for surety to keep the peace."

The above listing is only partial. All persons who are made conservators of the peace are exempted from the operation of the statute. This would also include all persons deputized by sheriffs, or police, or peace officers, or courts, to conserve the peace and serve process, civil or criminal. A town marshal is made a conservator of the peace by Section 80.410, RSMo 1949.

The only discussion of this matter which we have been able to find is in the case of State v. Owen, 258 SW2d 662, which, at l.c. 665, reads in part:

"* * *The powers, authority and duties of sheriffs and of emergency deputy sheriffs such as defendant, are limited primarily to the county of the sheriff's election, the county for which the deputy sheriff is commissioned. In this case and under the instant circumstances defendant's power and authority was limited to Taney County. Section 57.110, State on inf. McKittrick, Att'y Gen. v. Williams, Sheriff, 346 Mo. 1003, 144 S.W. 2d 98, 104, 80 C.J.S., Sheriffs and Constables, § 36, p. 205. Defendant was a deputy sheriff in Taney County, but under instant circumstances he was not a deputy sheriff in Boone County. When in another county upon official business, which originates in the county of his election or appointment, a sheriff or his deputy clearly is entitled to the immunity of Section 564.610. But under these circumstances when in Boone County defendant was not entitled to the immunity of Section 564.610.

"It may be conceded that the exemption of Section 564.610 was written into that statute for obviously sound reasons. When within the territorial limits of his own county, the sheriff or his commissioned deputy may be called upon at any time to perform duties which may require the use or display of the

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weapons listed by this statute. But when such a deputy sheriff commissioned as above is on business of his own and in another county hundreds of miles from the county wherein he has deputy sheriff authority, and where he could not be called upon under any circumstances to conserve the peace or execute process or make arrests or use deadly weapons there is no logical reason whatever for the application of the exception. * * *

Your second question is whether Sections 564.620 through 564.660 RSMo 1949, apply to firearms which were acquired prior to the enactment of the law requiring a permit before acquiring such firearms. We think it clear that they do not.

Section 564.630 prohibits any person, other than a manufacturer or wholesaler, to transfer possession of a weapon capable of concealment upon the body without a permit.

Section 564.640 reads:

"Weapons must be stamped. - No person within this state shall lease, buy or in anywise procure the possession from any person, firm or corporation within or without the state, of any pistol, revolver or other firearm of a size which may be concealed upon the person, that is not stamped as required by section 564.620; and no person shall buy or otherwise acquire the possession of any such article unless he shall have first procured a written permit so to do from the circuit clerk of the county in which such person resides, in the manner as provided in section 564.630."

It will be observed that the above section applies only to acquiring these weapons, and we think clearly does not have any application to weapons which are already in the possession of some individual.

On December 29, 1955, this department rendered an opinion to J. W. Grossenheider, Prosecuting Attorney of Laclede County. We enclose a copy of this opinion, which opinion rules on the matter of the acquisition of firearms in other states. We believe that firearms acquired by inheritance would be subject to Section 564.610, supra.

CONCLUSION

It is the opinion of this department that sheriffs, deputy sheriffs, police officers, members of the highway patrol, town marshals, judges of courts and all persons deputized by any of the

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above persons to aid in conserving the peace, or to serve criminal or civil process, are exempt from the provisions of Section 564.610.

It is the further opinion of this department that firearms capable of being concealed upon the person, which were acquired prior to the enactment of the law requiring a permit before acquiring such firearms, does not apply to firearms so acquired prior to the enactment of the law.

It is the further opinion of this department that the above section does apply to firearms acquired by Missouri residents in other states, or to firearms acquired by inheritance.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours

John M. Dalton
Attorney General

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