

FIREARMS: The "Spitfire" 45 caliber carbine manufactured by the  
MACHINE GUNS: Spitfire Manufacturing Company, Phoenix Arizona, is a  
machine gun, possession of which is a felony under pro-  
visions of Section 564.590, RSMo, except possession by members of  
police departments, sheriffs, city marshals or the military or naval  
forces of this state or the United States in the discharge of their  
duties.

OPINION NO. 326

September 19, 1968

Honorable James S. Corcoran  
Circuit Attorney, City of St. Louis  
Municipal Courts Building  
St. Louis, Missouri 63103



Dear Mr. Corcoran:

This is in response to your request for an opinion concerning whether the "Spitfire" 45 caliber carbine is a machine gun, possession of which is a felony under provisions of Section 564.590, RSMo.

According to Internal Revenue Rev. Rul. 68-368, the Spitfire carbine was determined by tests and examination to be a weapon which is capable of automatically firing more than one shot without manual reloading and by a single function of the trigger, and therefore was found to be a machine gun as defined by 26 U.S.C. § 5848(2). As stated by the Ruling: "Examination and test-firing of the Spitfire carbine disclosed that the design of the weapon's sear and safety lever are such that when the safety lever is depressed at the time the trigger is pulled, the sear will jam in its lowered position and cause automatic firing. \* \* \* "

Section 564.600, RSMo 1959, which is almost identical to § 5848(2), defines a "machine gun" as a gun " . . . capable of discharging automatically and continuously loaded ammunition of any caliber . . . by means of clips . . . "

United States v. Kokin, 365 F.2d 595 (3d Cir. 1966) holds that, a carbine, in itself not a machine gun, together with all parts necessary to convert it into a type of machine gun constitutes a machine gun within 26 U.S.C. § 5848(2). See also United States v. Cosey, 244 F.Supp. 100 (1965); and Precise Imports Corporation v. Kelly, 378 F.2d 1014 (1967), for similar holdings.

Section 564.590, RSMo 1959, provides that possession of a "machine gun" is a felony with punishment from two to thirty years or by fine not to exceed \$5,000 or by both fine and imprisonment.

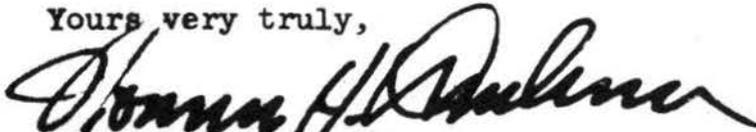
Honorable James E. Corcoran

CONCLUSION

The "Spitfire" 45 caliber carbine manufactured by the Spitfire Manufacturing Company, Phoenix Arizona, is a machine gun, possession of which is a felony under provisions of Section 564.590, RSMo, except possession by members of police departments, sheriffs, city marshals or the military or naval forces of this state or the United States in the discharge of their duties.

The foregoing opinion which I hereby approve, was prepared by my assistant Howard L. McFadden.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General