

June 27, 1969



OPINION LETTER NO. 290

Honorable Lawrence J. Lee
Senator, District Three
418 State Capitol
Jefferson City, Missouri 65101

Dear Senator Lee:

You have asked for my opinion as to the constitutionality of House Bill 608 of the 75th General Assembly and the Federal Gun Control Act of 1968.

The Federal Gun Control Act of 1968 (18 U.S.C.A., Sections 921-928) generally provides:

(1) for the licensing of, and record-keeping by, importers, manufacturers, dealers and collectors of firearms and ammunition moving in interstate commerce;

(2) for the prohibition on interstate transfers of firearms or ammunition other than between licensees;

(3) for the prohibition on interstate transportation of firearms other than by licensees;

(4) for the prohibition on transfers by licensees of firearms or ammunition to:

- a. Minors,
- b. Persons under indictment for, or convicted of, felonies,
- c. Fugitives from justice,
- d. Drug addicts,

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- e. Mental defectives,
- f. Persons disqualified by state law or local ordinance;

(5) for the regulation of intrastate sales of firearms by licensees to the extent that all but over-the-counter purchasers must submit a sworn statement of proper age, eligibility to make the purchase under state and local law, and name of the principal law enforcement officer in the purchaser's residence. Prior notice of the sale to such law enforcement officer is required;

(6) for the disability of indicted or convicted felons, fugitives from justice, drug addicts or mental defectives to ship in, or receive from, interstate commerce, firearms or ammunition;

(7) for a system of identification through serial numbers of all firearms subsequently manufactured or imported.

The Act's prohibition on interstate transfers to non-licensees and transportation by non-licensees is qualified by an exception permitting sales and deliveries of rifles and shotguns to non-licensed residents of any state contiguous to that of the licensee if the law of the contiguous state so permits and if the same procedures for intrastate, not over-the-counter sales, are observed. It is the obvious purpose of House Bill 608 to take advantage of this exception in the Federal law so as to permit non-licensed residents of the State of Missouri to purchase, in person or by mail, rifles and shotguns from neighboring states, and to permit non-licensed residents of neighboring states to make similar purchases in Missouri.

Pursuant to its powers to regulate commerce among the several states (Section 8, Article I, Constitution of the United States) the Federal Gun Control Act appears to be constitutional. One Federal Court has stated that Congress has the power to prohibit interstate transfer of firearms altogether so that permission of Congress to transfer firearms subject to well-defined regulation is valid Varitimos v. United States, 404 F.2d 1030 (1st Cir. 1968). I can conceive of no other constitutional objection to the Federal Gun Control Act of 1968 than that it constitutes an infringement on the "right of people to keep and bear arms" (Amendment II, Constitution of the United States). However, this provision of the Federal Constitution has been construed to mean only that each of the States has the right to keep and maintain a well-regulated militia and not as conferring an individual right to possess arms. Cases v. United States, 131 F.2d 916 (1st Cir. 1942); cert. den. 319 U.S. 770 (1943). Accordingly, I see no constitutional infirmity in the Federal Act.

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House Bill 608 in no way extends the scope of the Federal law, but merely permits residents of Missouri to do an act in a neighboring state, and neighboring state residents to do an act in Missouri, which might otherwise be prohibited by Federal law. Accordingly, I am of the opinion that House Bill 608 does not offend the provision in the Missouri Constitution,

"That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; . . ."
(Article I, Section 23, Constitution of Missouri, 1945)

In other words, the Federal Gun Control Act does not depend upon House Bill 608 to be effective in Missouri, and therefore possible limitations placed upon the Missouri legislature by the Missouri Constitution do not apply. The Federal law stands upon its own feet, and if valid under the Federal Constitution, which I believe it is, the Missouri Constitution will not render it invalid.

The states surrendered a portion of their sovereignty when they granted Congress power to regulate commerce (Parden v. Terminal Ry. of Alabama, 377 U.S. 184, 12 L.Ed.2d 233 (1964)).

" . . . This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution . . . If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. . . ." (Gibbons v. Ogden, 9 Wheat 1, 196-197, 6 L.Ed. 23, 70 (1824)).

Therefore, it is my opinion that House Bill 608 and the Federal Gun Control Act of 1968 are constitutional.

Yours very truly,

JOHN C. DANFORTH
Attorney General