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State of California

KAMALA D. HARRIS  
Attorney General

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OPINION	:	No. 10-504
	:	
of	:	October 29, 2013
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KAMALA D. HARRIS	:	
Attorney General	:	
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MARC J. NOLAN	:	
Deputy Attorney General	:	
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THE HONORABLE BOB LEE, DISTRICT ATTORNEY FOR THE COUNTY OF SANTA CRUZ, has requested an opinion on the following question:

Is the offense of completing an “unlicensed firearm transaction”—that is, the sale, loan, or transfer of a firearm by persons not licensed as firearms dealers—committed by both the person transferring the firearm and the person receiving it, such that both persons may be prosecuted and punished under the applicable penal statutes for committing the offense?

CONCLUSION

The offense of completing an unlicensed firearm transaction is committed by both the person transferring the firearm and the person receiving it, and both persons may be prosecuted and punished under the applicable penal statutes for committing the offense.

## ANALYSIS

Subject to enumerated exceptions, “No person shall sell, lease, or transfer firearms unless the person has been issued a license pursuant to Article[s] 1 . . . and 2 . . . of Chapter 2 [of the Deadly Weapons Recodification Act of 2010 (hereafter “Act”).”<sup>1</sup> For purposes of the Act, a “firearm” is “a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”<sup>2</sup> The Act defines a “licensee” as “a person who satisfies all of the following requirements:”

- (a) Has a valid federal firearms license.
- (b) Has any regulatory or business license, or licenses, required by local government.
- (c) Has a valid seller’s permit issued by the State Board of Equalization.
- (d) Has a certificate of eligibility issued by the Department of Justice pursuant to Section 26710.
- (e) Has a license issued in the format prescribed by subdivision (c) of Section 26705.
- (f) Is among those recorded in the centralized list specified in Section 26715.<sup>3</sup>

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<sup>1</sup> Pen. Code § 26500(a). The Act is codified at Penal Code sections 16000-34370. The Act effected a comprehensive, non-substantive reorganization of Penal Code provisions relating to deadly weapons. *See* 2010 Stat. ch. 711, eff. Jan. 1, 2012.

<sup>2</sup> Pen. Code § 16520.

<sup>3</sup> Pen. Code § 26700. With respect to the other Penal Code sections cross-referenced in subdivisions (d), (e), and (f), we note that:

Penal Code section 26710 directs the Department of Justice, in determining whether to issue a certificate of eligibility, to examine its own records, and the records available to it, to ascertain whether the applicant is “prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.”

Penal Code section 26705(c) states that a “license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance” and that such a license must be issued in one of three specified formats.

Penal Code section 26715 directs the Department of Justice to maintain a list of authorized firearm retailer licensees, provides the circumstances under which the Department is to remove a person from the list and notify local law enforcement and

Penal Code section 27545<sup>4</sup> states that, “Where neither party to the transaction holds a dealer’s license . . . , the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer . . . .” In other words, the sale, loan, or transfer of a firearm may not be lawfully accomplished other than through a licensed dealer. Under Penal Code section 27590, engaging in an unlicensed firearm transfer is a “wobbler” offense—that is, a misdemeanor that is punishable as a misdemeanor in some cases, and as a felony in other cases where specified aggravating circumstances are present.<sup>5</sup>

Here, we are asked whether both parties to an unlicensed firearm transaction—i.e., both the person transferring the firearm and the person receiving it—are guilty of violating Penal Code section 27545 and subject to the penalties imposed under section 27590. For the reasons that follow, we conclude that both parties may be prosecuted and punished under these provisions.

In interpreting a statute, we employ established rules of statutory construction, with the paramount goal of ascertaining and carrying out the Legislature’s intent.<sup>6</sup> In doing so, we “look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.”<sup>7</sup> Where the plain meaning of the statutory

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licensing authorities of such removal, and specifies and limits the persons and entities to whom information from the list may be made available.

<sup>4</sup> The requester of this opinion referenced former Penal Code section 12072, subdivisions (d) and (g), as describing the offense and punishments at issue here. Those provisions were recently recodified as sections 27545 and 27590, as part of the Deadly Weapons Reorganization Act mentioned above. *See* 2010 Stat. ch. 711, § 6, eff. Jan. 1, 2012; Cal. Law Rev. Commn. Comments to Pen. Code § 27545 (“Section 27545 continues former Section 12072(d) without substantive change.”); Cal. Law Rev. Commn. Comments to Pen. Code § 27590 (“Section 27590 continues former Section 12072(g) without substantive change.”).

<sup>5</sup> Pen. Code § 27590; *see* Pen. Code § 17(a) & (b); *People v. Park*, 56 Cal. 4th 782, 789 (2013) (“wobbler” is offense chargeable and punishable as either felony or misdemeanor); *People v. Moomey*, 194 Cal. App. 4th 850, 857 (2011) (same).

<sup>6</sup> *Freedom Newsps., Inc. v. Orange Co. Employees Ret. Syst.*, 6 Cal. 4th 821, 826 (1993).

<sup>7</sup> *Dyna-Med., Inc. v. Fair. Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987). Absent the use of specialized definitions, we give a statute’s words “their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary.” *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th 1, 30 (2010); *see also Flannery v. Prentice*, 26 Cal. 4th 572, 577 (2001).

language is “clear and unambiguous, then we need go no further.”<sup>8</sup> To the extent an ambiguity exists, however, we may look to “extrinsic aids, such as the statute’s legislative history, to assist us in our interpretation.”<sup>9</sup> In any event, we do not read a single statute in isolation, but rather we interpret the relevant statutory provisions “in context, examining legislation on the same subject, to determine the Legislature’s probable intent,”<sup>10</sup> thereby following the principle that “every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect.”<sup>11</sup>

Guided by these principles, we begin our analysis by examining the words used in Penal Code section 27545. The statute specifies that, under circumstances “[w]here neither party to the transaction holds a dealer’s license,” the “parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer . . . .”<sup>12</sup> The statute’s command that the “parties (plural) to the transaction *shall*”<sup>13</sup> go through a licensed dealer in order to lawfully complete their transaction indicates to us that the parties’ (plural) failure to do so would subject both of them—transferor and transferee—to liability for violating the statute. If the Legislature had intended to subject only the transferor to liability, there would have been no reason for it to use the plural term “parties” in describing who “shall” complete the transaction “through a licensed firearms dealer.”

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<sup>8</sup> *Hoechst Celanese Corp. v. Fran. Tax Bd.*, 25 Cal. 4th 508, 519 (2001); see *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

<sup>9</sup> *MacIsaac v. Waste Mgt. Collection & Recycling, Inc.*, 134 Cal. App. 4th 1076, 1083 (2005); see *Flannery v. Prentice*, 26 Cal. 4th at 579.

<sup>10</sup> *Cal. Teachers’ Assn. v. Governing Bd. of Rialto Unified Sch. Dist.*, 14 Cal. 4th 627, 642 (1997).

<sup>11</sup> *Moore v. Panish*, 32 Cal. 3d 535, 541 (1982); *Lincoln Place Tenants Assn. v. City of Los Angeles*, 155 Cal. App. 4th 425, 440 (2007); see *State Farm Mut. Auto. Ins. Co. v. Garamendi*, 32 Cal. 4th 1029, 1043 (2004); *Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003); *Garcia v. McCutchen*, 16 Cal. 4th 469, 476 (1997).

<sup>12</sup> Pen. Code § 27545.

<sup>13</sup> Emphasis added. Of course, the use of the word “shall” in statutory language generally connotes a mandatory duty, rather than a permissive option. *Abernathy Valley, Inc. v. Co. of Solano*, 173 Cal. App. 4th 42, 57 (2009).

Further, Penal Code section 26500 specifies that “[n]o person shall sell, lease, or transfer firearms” without a license to do so,<sup>14</sup> and subjects a violator to misdemeanor liability.<sup>15</sup> If section 27545 were read as applying only to the transferor in an unlicensed firearm transaction, then it would be duplicative of section 26500.<sup>16</sup> We are not to presume that the Legislature enacts superfluous or redundant statutory provisions.<sup>17</sup>

Finally, to the extent that any ambiguity might remain, the legislative history of section 25745 confirms our interpretation. Before the 2010 recodification of the deadly weapons statutes, current Penal Code section 27545 was numbered 12072(d). Until 1994, that provision was worded as follows:

Where neither party to the transaction holds a dealer’s license issued pursuant to Section 12071, *in order for a person to sell or otherwise transfer a firearm*, the parties to the transaction shall complete the transaction through either of the following:

- (1) A licensed dealer pursuant to Section 12082.
- (2) A law enforcement agency pursuant to Section 12084.<sup>18</sup>

The italicized language was removed in 1994, as part of Senate Bill 1308,<sup>19</sup> such that the revised section provided:

Where neither party to the transaction holds a dealer’s license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

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<sup>14</sup> Pen. Code § 26500(a).

<sup>15</sup> Pen. Code § 26500(b).

<sup>16</sup> While a violation of Penal Code section 26500 is punishable only as a misdemeanor, a restrictive reading of section 27545 (such that only the transferor of the firearm could be guilty of violating it) would render 27545 duplicative of the offense described in section 26500. Under such a construction, committing the offense described in section 26500 would be the same as committing the offense described in section 27545, and a violation of either provision would be a violation of both. In all instances, then, the increase in penalty authorized under section 27590 when aggravating circumstances are present would be available whenever the facts supported it.

<sup>17</sup> *Cal. Teachers Assn.*, 14 Cal. 4th at 634; *Shoemaker v. Myers*, 53 Cal. 3d 1, 22 (1990).

<sup>18</sup> Former Pen. Code § 12072(d) (West 1994) (emphasis added).

<sup>19</sup> Stat. 1994, ch. 716, § 6.5.

- (1) A licensed firearms dealer pursuant to Section 12082.
- (2) A law enforcement agency pursuant to Section 12084.<sup>20</sup>

A bill analysis prepared for the Assembly Committee on Public Safety<sup>21</sup> explained the change this way:

**12072(d) Violation.** In the minds of persons familiar with firearms laws, it is clear that both parties to a private transaction that is not brokered through a dealer or a local law enforcement agency, both persons commit a violation for doing so. DOJ wants to make this crystal clear through grammatical changes in Section 12072(d). The specific language is in the bill and has been “signed off on” by the affected parties. The author is making this grammatical change to accommodate DOJ.<sup>22</sup>

The phrase that was deleted in 1994 was “in order for a person to sell or otherwise transfer a firearm.” Because this phrase focused on the *transferor*, it gave rise to a concern in the law enforcement community that the statute could be read as imposing liability only on the transferor. The removal of the phrase clarifies that the purpose of the statute is to impose liability on *both* parties to an unlicensed firearm transaction.

We acknowledge the maxim that an ambiguous penal statute should be interpreted in the defendant’s favor,<sup>23</sup> but we find that it has no bearing on our analysis. An ambiguous penal statute is one that is fairly susceptible of two different constructions. Here, though, the Legislature’s clarification of the statute in 1994 establishes beyond any reasonable question that the statute applies to both parties to an unlicensed firearm transaction.

Because Penal Code section 27545 applies to both parties to an unlicensed firearm transaction, it follows that the penalties prescribed for the offense in section 27590 also

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<sup>20</sup> Former Pen. Code § 12072(d) (West 1995). Later legislation removed the second option (for conducting an otherwise unlicensed firearm transaction through a law enforcement agency), leaving former Penal Code section 12072(d) to be, in substance, what is now contained in current Penal Code section 27545. *See* 2005 Stat. ch. 715, § 10.

<sup>21</sup> A legislative committee analysis can be a helpful indicator of the Legislature’s intent. *In re Chavez*, 114 Cal. App. 4th 989, 400 (2004); *DeCastro West Chodorow & Burns, Inc. v. Super. Ct.*, 47 Cal. App. 4th 410, 418 (1996).

<sup>22</sup> Assembly Comm. on Pub. Safety Analysis of Sen. 1308 (1993-1994 Reg. Sess.) as amended Jun. 30, 1994, at 9 (Jul. 5, 1994).

<sup>23</sup> *See People v. Davis*, 166 Cal. App. 3d 760, 766 (1985).

apply to both parties. Therefore, we conclude that the offense of completing an unlicensed firearm transaction is committed by both the person transferring the firearm and the person receiving it, and both persons may therefore be prosecuted and punished under the applicable penal statutes for committing the offense.

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