

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-1216
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of	:	<u>April 3, 1980</u>
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Rodney Lilyquist, Jr.	:	
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SUBJECT: REGISTRATION PROVISIONS FOR HANDGUNS—The registration provisions and transfer restrictions of Penal Code sections 12072–12073 are not applicable to the sale of a pistol with a 14 inch barrel, where interchangeable barrels of less than 12 inches are available for purchase from the seller.

The Honorable Nelson P. Kempsey, Director, Division of Law Enforcement, Department of Justice, has requested an opinion on the following question:

Are the registration provisions and transfer restrictions of Penal Code sections 12072–12073 applicable to the sale of a pistol with a 14 inch barrel, where interchangeable barrels of less than 12 inches are available for purchase from the seller?

CONCLUSION

The registration provisions and transfer restrictions of Penal Code sections 12072–12073 are not applicable to the sale of a pistol with a 14 inch barrel, where interchangeable barrels of less than 12 inches are available for purchase from the seller.

ANALYSIS

We are informed that a particular handgun may be readily purchased with various types of interchangeable barrels of either 10 or 14 inch length. The question presented for analysis is whether the sale of the handgun with one 14 inch barrel would be subject to the registration and transfer provisions or Penal Code sections 12072–12073.¹ We conclude that it would not.

Section 12072 states:

“No person, corporation or dealer shall sell, deliver, or otherwise transfer *any pistol, revolver, or other firearm capable of being concealed upon the person* to any person whom he has cause to believe to be within any of the classes prohibited by Section 12021 from owning or possessing such firearms, nor to any minor, under the age of 18 years. In no event shall any such firearm be delivered to the purchaser within 15 days of the application for the purchaser thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. Where neither party to the transaction holds a dealer’s license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section is a misdemeanor.” (Emphasis added.)

Section 12073 provides:

“Every person in the business of selling, leasing or otherwise transferring *a pistol, revolver or other firearm, of a size capable of being concealed upon the person*, whether such seller, lessor or transferor is a retail dealer, pawnbroker, or otherwise, except as provided by this chapter, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer’s number, caliber, or other marks of identification on such pistol, revolver or other firearm.

“This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transport of unloaded firearms as merchandise to other wholesale or retail dealers by mail, express or other mode of shipment, to points outside of the city or county wherein they are situated.” (Emphasis added.)

¹ All unidentified section references hereinafter are to the Penal Code.

It is apparent that for purposes of sections 12072–12073, the Legislature has distinguished between handguns “capable of being concealed upon the person and those that are not. The Legislature has concluded that concealable weapons require certain controls that are not required for nonconcealable weapons.

Sections 12072–12073 are part of the Dangerous Weapons’ Control Law (§§ 12000–12098). Of particular significance to our analysis is section 12001:

“‘Pistol,’ ‘revolver,’ and ‘firearm capable of being concealed upon the person’ as used in [sections 12900–12098] shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, *and which has a barrel less than 12 inches in length.* ‘Pistol,’ ‘revolver,’ and ‘firearm capable of being concealed upon the person’ as used in Sections 12021, 12072, and 12073 *include the frame or receiver of any such weapon.*” (Emphasis added.)

It is now well established that if the barrel of the gun is 12 inches or more, it does not meet the statutory definition of a concealable weapon; the measurement is made after the barrel is unscrewed from the frame so that its true total length can be ascertained from tip to tip. (See *People v. Osterman* (1970) 4 Cal. App. 3d 763, 765; *People v. Jackson* (1968) 79 Cal. App. 2d 341, 348; *People v. Boyd* (1947) 79 Cal. App. 2d 90, 93.)

The provision of section 12001 that refers to “the frame or receiver of any such weapon”² was added by the Legislature to nullify the rule in *People v. Jackson, supra*, 266 Cal. App. 2d 341, 347, requiring the weapon to be operable. (See *People v. Thompson* (1977) 72 Cal. App. 3d 1, 3-5; *People v. Favalora* (1974) 42 Cal. App. 3d 988, 994.)

Accordingly, the handgun in question would be subject to the provisions of sections 12072–12073 if sold with one of its 10 inch barrels or if sold without a barrel. We are unable to conclude, however, that the sale of the handgun with one of its 14 inch barrels would come within these statutory provisions.

Where the language of a statute is clear, its plain meaning should be followed (*Great Lakes Properties Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155; *Leroy T. v. Workmen’s Comp. Appeals Bd.* (1974) 12 Cal. 3d 434, 438.) As was stated by the Supreme Court in *People v. Belleci* (1979) 24 Cal. 3d 879, 884:

² The “frame” or “receiver” of the housing of the gun into which the barrel is threaded. (See Steindler, *Firearms Dict.* (1970) pp. 107–108, 180; *Websters’ New Internat. Dict.* (3d ed. 1966) pp. 902, 1894; *People v. Osterman, supra*, 4 Cal. App. 3d 763, 765.)

“It is settled that “We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. (Citations.)” (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal. 3d 650, 658 [147 Cal. Rptr. 359, 580 P. 2d 1155].) Stated otherwise, ‘When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.’ (*Solberg v. Superior Court* (1977) 19 Cal. 3d 182, 198 [137 Cal. Rptr. 460, 561 P. 2d 11481; accord, *People v. Boyd* (1979) 24 Cal. 3d 285, 294 [155 Cal. Rptr. 367, 594 P. 2d 4843; *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155 [137 Cal. Rptr. 154, 561 P. 2d 244].)

“We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to absurd results. (See, e.g., *Younger v. Superior Court (Mack)* (1978) 21 Cal. 3d 102, 113–114 [145 Cal. Rptr. 674, 577 P. 2d 1014]; *Silver v Brown* (1966) 63 Cal. 2d 841, 845 [48 Cal. Rptr. 609, 409 P. 2d 689].)”

The mere fact that a handgun may conceivably be changed in form by the addition of another barrel to meet the definition of a concealable weapon does not in itself frustrate the overall purposes of the Dangerous Weapons Control Law or lead to absurd consequences.³ If the Legislature had intended to include such speculative circumstances within the provisions of sections 12072–12073, it need only have added the words “or a barrel less than 12 inches in length” to the end of section 12001. We cannot provide such language in the guise of statutory construction. (See *Keeler v. Superior Court* (1970) 2 Cal. 3d 619, 632; *People v. Vasquez* (1979) 94 Cal. App. 3d 42, 48; *Cemetery Board v. Telophase Society of America* (1978) 87 Cal. App. 3d 847, 858; *Estate of Tkachuk* (1977) 73 Cal. App. 3d 14, 18.)

We are thus constrained to follow the holdings of *People v. Osterman, supra*, 4 Cal. App. 3d 763, 765, *People v. Jackson, supra*, 79 Cal. App. 2d 341, 348, and *People v. Boyd, supra*, 79 Cal. App. 2d 90, 93, in concluding that the sale of a pistol with a 14 inch barrel would be outside the scope of the provisions of sections 12072.19073 even though interchangeable barrels of less than 12 inches are available for purchase from the seller.

It is to be noted, however, that the Legislature has provided for some limited regulation of the sale of a pistol with a 14 inch barrel. Section 12350 states:

“Every person engaged in the business of selling pistols other than

³ No facts have been presented that would indicate subterfuge on the part of the purchaser to evade the requirements of sections 12072-12073.

those defined in Section 12001 of this code at retail shall keep a register in which shall be entered the name, age, occupation and residence (if residing in a city then the street number of such residence) of each and every purchaser of such pistols, together with the number or other mark of identification if any on pistol, which register shall be open to the inspection of all peace officers at all times.”

Hence, although the provisions of sections 12072–12073 would not govern in the facts presented or analysis, the provisions of section 12350 would be applicable.
