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OPINION	:	No. 81-611
of	:	JANUARY 28, 1982
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THE HONORABLE RAY JOHNSON, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Do California's fish and game laws prohibit the purchase, possession or use of (a) a shotgun which holds more than three cartridges or (b) an attachment to a shotgun which holds up to thirty cartridges?

CONCLUSION

California's fish and game laws do not prohibit the purchase of any shotgun or attachment thereto. Fish and Game Code section 2010 prohibits the possession or use of a shotgun capable of holding more than six cartridges at any one time for the purpose of taking any game and the regulations of the Fish and Game Commission prohibit use of a shotgun capable of holding more than three cartridges in the magazine and chamber combined in the taking of certain specified game, but California's fish and game laws do

not prohibit the possession or use of any shotgun for purposes other than taking game. California's fish and game laws do not prohibit the possession or use of any attachment to a shotgun, though its possession with a shotgun may make the shotgun capable of holding excessive cartridges.

ANALYSIS

Fish and Game Code section 2010 (F&G § 2010)[1] provides:

> "It is unlawful to use or possess a shotgun larger than 10 gauge, or to use or possess a shotgun capable of holding more than six cartridges at one time."

Title 14, section 311 of the California Administrative Code (14 CAC § 311)[2] provides in part:

> "Only the following weapons or methods may be used to take resident small game and migratory game birds:
>
> "(a) Shotguns 10 gauge or smaller using shot shells only and incapable of holding more than three shells in the magazine and chamber combined. If a plug is used to reduce the capacity of a magazine to fulfill the requirements of this section, the plug must be of one piece construction incapable of removal without disassembling the gun;
>
> ". . . . . ."

Other regulations make similar limitations on the cartridge capacity of shotguns. 14 C.A.C. § 353(c) provides in part:

> "Shotguns capable of holding not more than three shells firing single slugs may be used for the taking of deer, bear, and wild pigs."

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[1] Sections of the Fish and Game Code will be designated "F&G — ," Penal Code sections as "PC — " and sections in title 14 of the California Administrative Code as "14 C.A.C.— ."

[2] Sections of the Fish and Game Code will be designated "F&G — ," Penal Code sections as "PC — " and sections in title 14 of the California Administrative Code as "14 C.A.C.— ."

14 C.A.C. § 475(c) provides:

> "Fallow deer, sambar deer, axis deer, sika deer, aoudad, mouflou, tahr and feral goats may be taken only with the weapons and ammunition specified in Section 353 of these regulations."

14 C.A.C. § 485(c) provides:

> "Crows may only be taken by shotguns 10 gauge or smaller using shot shells only and incapable of holding more than three shells in the magazine and chamber combined, . . ."

14 C.A.C. § 507 provides in part:

> "Migratory waterfowl . . . shall not be taken with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of being removed without disassembling the gun, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. . . ."

14 C.A.C. § 600.4(g)(1) limits taking domesticated migratory game birds on licensed areas to certain weapons including:

> "Shotguns 10 gauge or smaller using shotshells only and incapable of holding more than three shells in the magazine and chamber combined."

We are asked whether these fish and game laws prohibit the purchase, possession or use of (a) a shotgun which holds more than three cartridges or (b) an attachment to a shotgun which holds up to thirty cartridges.

In construing these provisions we apply the rules of statutory construction. The principal rules were summarized in *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 as follows:

> "We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an

> act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Citations and quotations omitted.)

First we address the question of the purchase of a shotgun or attachment described in the question. Nothing in F&G § 2010 or 14 C.A.C. § 311 purports to govern the purchase of shotguns or attachments to shotguns. Those provisions govern only the possession or use of shotguns. Our research has revealed no other provision in the Fish and Game Code or the regulations of the Fish and Game Commission which governs the purchase of shotguns or attachments thereto. Other state and federal laws do regulate the purchase of firearms[2/3] but the question presented and this analysis are confined to an interpretation of California's fish and game laws. We conclude that California's fish and game laws do not prohibit the purchase of shotguns or attachments for shotguns.

Next we address the question of the extent to which California's fish and game laws regulate the use and possession of shotguns. We note first that F&G § 2010 contains no express limitation of its application to fish and game. Is such a limitation to be implied from the fact that F&G § 2010 was enacted as a fish and game regulation as evidenced by its placement in the Fish and Game Code? The legislative history of F&G § 2010 sheds light on this question.

F&G § 2010 was derived from PC § 627. That section as amended by Statutes of 1897, chapter 89, page 92 provided:

> "627. Every person who shall use a shotgun of a larger caliber than that commonly known and designated as a number ten gauge, shall be guilty of a misdemeanor. The proof of the possession of said gun in the field, or marsh, bay, lake, or stream, shall be prima facie evidence of its illegal use. Every person who, upon any enclosed or cultivated grounds which are private property, and where signs are displayed forbidding such shooting, shall shoot any quail, bob-white, pheasant, partridge, grouse, dove, wild duck, or deer, without permission first obtained from the owner or person in the possession of such ground, or who shall maliciously tear down, mutilate, or destroy any sign, signboard, or other notice forbidding shooting on private property, shall be guilty of a misdemeanor. Every railroad company, express

[3] See e.g., California's Dangerous Weapons' Control Law, PC § 12000 et seq.

company, transportation company, and every other person, who shall transport, carry, or take out of this State, or who shall receive for the purpose of transporting from the State, any deer, deer skin, buck, doe, or fawn, or any quail, partridge, pheasant, grouse, prairie chicken, dove, or wild duck, except for purposes of propagation, or who shall transport, carry, or take from the State, or receive for the purpose of transporting from this State, any such animal or bird, shall be guilty of a misdemeanor; *provided*, that the right to transport for the purposes of propagation shall first be obtained by permit, in writing, from the Board of Fish Commissioners of the State of California. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty dollars, or more than five hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days, or more than one hundred and fifty days, or be punished by both such fine and imprisonment."

In *Ex parte Peterson* (1898) 119 Cal. 578 Peterson was convicted and imprisoned on a charge that he "did willfully and unlawfully use a shotgun of a larger caliber than that commonly known and designated as a No. 10 gauge, to wit, a No. 8 gauge." The court said:

> "This is in the language of the statute defining the offense (Pen. Code, sec. 627, as amended March 9, 1897; Stats. 1897, p. 92), but still it does not sufficiently charge the offense, because the statute contains a qualification which it does not express. The legislature did not mean to make it a misdemeanor to use a No. 8 gun in any possible or conceivable way, or for any possible purpose. Taking the whole context of the act, it is apparent that the intention was to prohibit the use of guns of large caliber for the purpose of killing game or other animals."

The court held the complaint did not state facts sufficient to constitute an offense and ordered Peterson discharged.

The first sentence was deleted from PC § 627 by Statutes of 1901, chapter 274, section 15 and later added to PC § 626o by Statutes of 1919, chapter 300, § 1. Chapter 430, Statutes of 1923 revised PC § 626o to provide in paragraph 3:

> "Every person who shall use a shotgun of larger gauge than that commonly known and designated as a number ten gauge or who shall use or have in possession any shotgun capable of carrying more than six shotgun shells is guilty of a misdemeanor."

With the enactment of the 1933 Fish and Game Code the provision was incorporated in section 1153 of that code with the same wording as in the present F&G § 2010. The provision was renumbered section 2010 with the enactment of the 1957 Fish and Game Code.

The Supreme Court in the *Peterson* case implied the additional element of use "for the purpose of killing game or other animals" in the offense defined by PC § 627 by reading the first sentence of that section "in the whole context of the act." Similarly we must read F&G § 2010 in the context of the Fish and Game Code and in the light of its legislative history to ascertain the intention of the Legislature when it first enacted the provision as section 1153 of the 1933 Fish and Game Code. When the Legislature enacts a law framed in substantially similar language of a previous law on the same subject which has been judicially construed there is a very strong presumption that the Legislature intended to adopt the construction as well as the language of the prior law. (*Buchwald* v. *Katz* (1972) 8 Cal.3d 493, 502; *People* v. *Rogers* (1971) 5 Cal.3d 129, 136; *People* v. *West Side County Water Dist.* (1952) 112 Cal.App.2d 228.) Section 4 of the 1933 Fish and Game Code (§ 3 in the 1957 Fish and Game Code) provided in part:

> "The provisions of this code so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. . . ."

Section 1153 of the 1933 Fish and Game Code provided:

> "It is unlawful to use or possess a shotgun larger than ten gauge, or to use or possess a shotgun capable of holding more than six cartridges at one time."

Thus the former proscription of PC §§ 627 and 626o against use or possession of shotguns larger than ten gauge was incorporated in section 1153 of the new Fish and Game Code together with a similar proscription against use or possession of shotguns capable of holding more than six cartridges at one time. In enacting these proscriptions we believe the Legislature intended the same limitations upon their applicability as the Supreme Court had announced in the *Peterson* case, namely that they were to apply only as fish and game regulations and not in other contexts. This intent is indicated by its placement of the proscriptions in the new Fish and Game Code enacted by chapter 73, Statutes of 1933, entitled "An act to establish a Fish and Game Code, therein revising and consolidating the law *relating to fish and game* and other wild life, and repealing certain provisions of law therein specified." (Emphasis added.) Another verb, i.e., "take," was introduced by the Fish and Game Code to describe several acts in relation to fish and game which is used frequently in the provisions of that code. "Take" was

defined in section 4 of the 1933 Fish and Game Code to mean "hunt, pursue, catch, capture, or kill." (Cf. § 86 of the present Fish and Game Code.) In light of this definition, we believe that the additional element to be implied in section 2010 (formerly § 1153) of the Fish and Game Code to limit its proscriptions to the fish and game context may best be expressed by the phrase "for the purpose of taking game."

The regulations (*supra*, p. 2) limiting the cartridge capacity of shotguns to not more than three in the magazine and chamber combined apply only to the taking of certain specified game. These regulations do not conflict with F&G § 2010. F&G § 2010 proscribes the use of a shotgun capable of holding more than six cartridges in the taking of any game. The regulations impose a stricter rule for shotguns used to take certain specified game and thus provides an exception to the more general rule of F&G § 2010. The Legislature has expressly authorized the Fish and Game Commission to provide for more restrictive methods and means in the taking of certain game in F&G § 203(d). Thus F&G § 2010 should be regarded as an upper limit on the cartridge capacity of shotguns used to take game. We believe this interpretation best harmonizes the two statutes by giving effect to the purposes of each. (Cf. *Industrial Welfare Com.* v. *Superior Court* (1980) 27 Cal.3d 690, 733; and 2 Ops.Cal.Atty.Gen. 456, 457 (1943).)

We conclude that California's fish and game laws prohibit the use of a shotgun which holds more than three cartridges in the taking of the game specified in 14 C.A.C. § 311 and the possession and use of a shotgun capable of holding more than six cartridges at any one time in the taking of any game, but do not prohibit the possession or use of shotguns for other purposes.

The final question is whether California's fish and game laws prohibit the possession or use of an attachment to a shotgun which holds up to 30 cartridges. Our research has not disclosed any provision in the Fish and Game Code or the regulations of the Fish and Game Commission which directly regulates attachments to shotguns. Such attachments are indirectly regulated by F&G § 2010 and 14 C.A.C. § 311 by reason of their function to increase the cartridge capacity of a shotgun. Nevertheless it is important to recognize that the proscriptions are against the possession and use of a *shotgun* with excessive cartridge capacity, not against the possession and use of the *attachment* as such.

In an unpublished opinion issued in 1934 (Opn. No. 9294) this office concluded that possession of an "extension magazine" separate and detached from a shotgun could violate section 1153 of the 1933 Fish and Game Code in certain circumstances. We stated:

> "The mere possession of an extension magazine without the possession of a shotgun to which such extension magazine could be attached

> would not constitute a violation of Section 1153, inasmuch as the possession of an extension is not expressly prohibited; . . . However, if a person possesses both the extension and the shotgun to which the same may be attached . . . such shotgun would be one capable of holding more than six cartridges at one time, even though at the time of the use the extension was not in fact fastened to the gun."

It is the proximity of the attachment to the shotgun which makes the latter "capable" of holding more cartridges. A similar issue regarding a disassembled slung-shot under the Deadly Weapons Act was addressed in *People* v. *Williams* (1929) 100 Cal.App. 149 in which the court stated (at p. 151):

> "The rule is well settled that a deadly weapon does not cease to be such by becoming temporarily inefficient, nor is its essential character changed by dismemberment if the parts may be easily assembled so as to be effective."

In *People* v. *Guyette* (1964) 231 Cal.App.2d 460 the court affirmed a conviction of possession of a sawed-off shotgun though the weapon was broken down into its three component parts at the time. The court cited the *Williams* case after noting that the evidence showed that the gun could be assembled and used in a matter of seconds. In *People* v. *Ekberg* (1949) 94 Cal.App.2d 613, 616 the court affirmed the conviction of possession of a deadly weapon by a felon though the clip to the automatic pistol that defendant had was not in the gun but was in his pocket.

We conclude that while possession of an attachment to a shotgun which holds up to 30 cartridges is not proscribed by California's fish and game laws its possession with a shotgun which it fits at the same time and place though not attached thereto makes the shotgun capable of holding the additional number of cartridges held by the attachment within the meaning of F&G § 2010 and 14 C.A.C. § 311.

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