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OPINION	:	
	:	No. 81-615
of	:	
	:	<u>FEBRUARY 5, 1982</u>
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THE HONORABLE TOM BANE, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. May a California peace officer lawfully possess a billy club, blackjack or policeman's baton?
2. Is it lawful to sell a billy club, blackjack or policeman's baton to a peace officer in California?

CONCLUSION

1. A California peace officer may lawfully possess a billy club, blackjack or policeman's baton if the head of his law enforcement agency has authorized such possession.

2. The sale of a billy club, blackjack or policeman's baton to a peace officer authorized by the head the officer's law enforcement agency to carry the same is lawful in California.

ANALYSIS

Section 12020(a) of "the Dangerous Weapons' Control Law" (Pen. Code, 12000, et seq.)¹ states in part:

"Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any . . . instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, nunchaku, sandclub, sandbag, sawed-off shotgun, or metal knuckles, . . . is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison"

And section 12002(a) provides:

"Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized for the enforcement of law or ordinance in any city or county."

We are initially asked whether a California peace officer may lawfully possess a billy club, blackjack or policeman's baton. Section 12020(a) prohibits the possession of a blackjack and billy but not a baton. In 56 Ops.Cal.Atty.Gen. 506, 507 (1973) we stated: "A blackjack is generally defined as 'a short bludgeon consisting of a heavy head, as of metal on an elastic shaft or with a flexible handle.' [Citation omitted.] The general characteristics of the blackjack are that it is easily concealed upon the person and so weighted as to constitute an effective and silent weapon of attack." We went on to state: "a 'billy' . . . is defined as 'a bludgeon, as one for carrying in the pocket, a policeman's club.' [Citation omitted.] . . . It should be noted that there is little, if any, difference between a blackjack and a billy." (*Id.*, at p. 508.)

Although section 12020(a) does not prohibit the possession of a policeman's baton as such, it is an "instrument or weapon of the kind" or class commonly known as a billy club or blackjack and falls within the proscription. (Cf. *People v. Wasley* (1966) 245

¹ Hereafter all unidentified section references will be to the Penal Code.

Cal.App.2d 383, 386; *People v. Canales* (1936) 12 Cal.App.2d 215, 217; 56 Ops.Cal.Atty.Gen., *supra*, at pp. 507-508.)

Section 12020 is derived from section 1 of the deadly weapon law of 1923 (Stats. 1923, ch. 339., amended Stats. 1925, ch. 323) which stated in part:

" . . . every person who within the State of California . . . keeps for sale, or offers or exposes for sale . . . any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy shall be guilty of a felony"

In Ops.Cal.Atty.Gen. 5238 (1925), we concluded that the proscription of section 1 of the deadly weapon law of 1923, applying as it did to "every person" without limitation, precluded officers of the law from carrying such weapons. Shortly thereafter the Legislature amended the section by adding the following:

" . . . *provided, however*, that nothing in this act shall prohibit police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized by the properly constituted authorities for the enforcement of law or ordinance in any town, municipality, county, city and county in the State of California." (Stats. 1925, ch. 323, § 1.)

This exemption for the specified officers, including "peace officers," allowing them to carry "any wooden club, baton, or any equipment authorized" by the properly constituted authorities, has been retained to the present time. (§ 12002, *supra*.)

In 10 Ops.Cal.Atty.Gen. 102-103 (1947) we concluded that in order for members of the California Highway Patrol to carry wooden clubs, authorization was required from the Commissioner of the California Highway Patrol. In other words, for a peace officer to carry any wooden club, baton or any other equipment for law enforcement purposes, there must be authorization by the head of that peace officer's law enforcement department. Although a billy club and blackjack are not specifically mentioned in section 12002(a), they constitute equipment which may be authorized for law enforcement use under that section.

Section 12002(a) grants to the head of a law enforcement agency the power to authorize the officers of that agency to carry equipment for the enforcement of the law where possession of such equipment would otherwise be proscribed by the Dangerous Weapons Control Law. Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included

by implication. (*Clay v. City of Los Angeles* (1971) 21 Cal.App.3d 577, 585.) Carrying an authorized weapon while on duty as a peace officer clearly includes possession of the weapon by the peace officer. Furthermore such weapon must be stored somewhere while the peace officer is off duty and be readily accessible to the officer when he goes on duty. Be therefore conclude that the power granted to authorize officers of a law enforcement agency to carry equipment for the enforcement of the law includes by implication the power to authorize such officers to possess such equipment while it is not in use at some convenient place such as a police locker, patrol car or the officer's home or vehicle.

We are also asked whether it is lawful to sell a billy club, blackjack or baton to a peace officer in California. Section 12020(a) makes the manufacture; importation; keeping, offering or exposure for sale; giving; lending or possessing any blackjack or billy in this state a felony. While the statute does not expressly proscribe their sale it has been construed to include sale by implication. In *People v. Makovsky* (1935) 3 Cal.2d 366 the defendant was charged with unlawful sale of blackjacks and billies in violation of the Dangerous Weapons Control Law of 1923. The court affirmed the conviction. Thus sale as well as keeping, offering and exposure for sale is proscribed by the statute.

Section 12002(a) carves out an exception to the proscriptions of section 12020(a) to accommodate the needs of law enforcement. This exception allows peace officers to possess the proscribed weapons when so authorized by their department head. To make this exception meaningful, authorized peace officers must have some means of obtaining such weapons themselves or leave the state to acquire them. We are persuaded that the Legislature intended to authorize those who are engaged in the business of providing equipment to law enforcement agencies to sell those weapons proscribed by section 12020(a) to those officers authorized to carry the same as provided in section 12020(a) within the State of California. Prudence would suggest that the seller of such weapons obtain a copy of some written authorization of the buyer to carry the weapon prior to its sale and delivery to the buyer. We conclude that the sale of a billy club, blackjack or policeman's baton to a peace officer authorized by the head of the officer's law enforcement agency to carry the same is lawful in California.
