

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 09-50

Obligation of pawnbroker to conduct criminal history background check

**QUESTION**

Does a pawnbroker have a legal obligation under Tenn. Code Ann. § 39-17-1316(c) to conduct a criminal history background check before returning a firearm to a pledgor who is attempting to redeem it?

**OPINION**

Under Tenn. Code Ann. § 39-17-1316(c), a gun dealer has an obligation to conduct a criminal history background check before delivery of the firearm to the purchaser. Although a pawnbroker is a gun dealer within the meaning of the statute and although a delivery of the firearm takes place at the time of redemption, the pawn broker has an obligation to conduct a background check only if the pawn transaction was a “buy-sell” contract within the meaning of Tenn. Code Ann. § 45-6-203(4)(A)(i). There is no obligation to conduct a criminal background check if the pawn transaction was a “loan of money” transaction within the meaning of Tenn. Code Ann. § 45-6-203(4)(A)(ii) and the redemption occurs within the time prescribed under Tenn. Code Ann. § 45-6-211.

**ANALYSIS**

The obligation, under state law, of a gun dealer to conduct a criminal background check and comply with other statutory requirements is set forth in Tenn. Code Ann. § 39-17-1316(c). Under that provision, a gun dealer is required to conduct a background check and satisfy the other requirements that are set forth therein before delivery to a purchaser.<sup>1</sup>

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Auto Credit of Nashville v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find that intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007).

The plain and unambiguous language of Tenn. Code Ann. § 39-17-1316(c) indicates that before the obligation to conduct the background check arises, there must be a transfer, the transfer must be made by a gun dealer and the transfer must be made to a purchaser. A

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<sup>1</sup> In addition to requiring criminal history background checks, the statute also requires gun dealers to obtain proper identification, complete the required forms, obtain a thumbprint of the purchaser and obtain a unique approval number from TBI and record that number on the transfer forms.

redemption of pawned property involves a transfer in the literal sense of the word. In addition, a pawnbroker is a gun dealer as that term is defined in Tenn. Code Ann. § 39-17-1316(b)(2).

A pawnbroker's obligation to conduct a background check also depends on whether the person redeeming the property is a purchaser within the meaning of Tenn. Code Ann. § 39-17-1316(c). The term "purchaser" is not defined in Tenn. Code Ann. § 39-17-1316. It is therefore appropriate to look to the Tennessee Pawnbrokers Act of 1988 (Act), Tenn. Code Ann. § 45-6-201 through 45-6-224 to determine whether a person who redeems a firearm from a pawnbroker is a purchaser.

Tenn. Code Ann. § 45-6-203(4)(A) defines pawn transactions by providing two classifications. The first is a buy-sell agreement which is defined by Tenn. Code Ann. § 45-6-203(4)(A)(i). It states, in relevant part:

"Buy-sell" agreement means any agreement whereby a pawnbroker agrees to hold a property for a specified period of time not to be less than sixty (60) days to allow the seller the exclusive right to repurchase the property.

The second type of transaction is a "loan of money" transaction. It is defined in Tenn. Code Ann. § 45-6-203(4)(A) (ii), which states:

"Loan of money" transaction means any loan on the security of pledged goods and being a written bailment of pledged goods as a security lien for the loan, for the cash advanced, interest and fees authorized by Acts 1995, ch. 186, redeemable on certain terms and with the implied power of sale on default.

By its terms, a buy-sell transaction involves the sale of the pawned property to the pawnbroker with the seller retaining an option to repurchase the property within a set period of time. Title passes to the pawnbroker and if the customer wants to regain possession, he or she must purchase it within the set time. A customer who redeems a firearm that had been pawned under a buy sell transaction would be a purchaser of the redeemed firearm in the literal sense of the word. A pawnbroker would therefore have an obligation, under Tenn. Code Ann. § 39-17-1316(c), to conduct a criminal history background check and satisfy all of the other statutory requirements before transferring the firearm to the customer.

A loan of money transaction, on the other hand, does not involve a purchase or sale at the time the property is pawned. Under the plain and unambiguous language of Tenn. Code Ann. § 45-6-203(4)(A)(ii), there is no passage of title from the customer to the pawnbroker at the time of the transaction. The pawnbroker makes a loan and obtains a security interest in the property to secure repayment. Ownership of the property remains with the customer and the pawnbroker acquires an ownership interest only if the customer fails to redeem the property within the

period set forth in Tenn. Code Ann. § 45-6-211.<sup>2</sup> Since the customer already owns the property, he or she cannot be a purchaser. Tenn. Code Ann. § 39-16-1316(c) imposes no obligation to conduct a criminal history background check on a customer who redeems a firearm that was pawned in a loan of money transaction, as long as the redemption occurs within the period prescribed in Tenn. Code Ann. § 45-6-211.<sup>3</sup>

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<sup>2</sup> *Dunlap v. Cash America Pawn*, 158 B.R. 724 (M.D. Tenn. 1993), is instructive. In that case, the district court noted that pawned goods remained the property of the customer until the time for redemption had passed. Once that time has passed, the pawnbroker acquires ownership rights in the pledged property.

<sup>3</sup> Federal law may impose additional obligations on licensed firearms dealers, such as requiring the customer to complete a new federal firearm transfer form. See 18 U.S.C. § 922 and *Printz v. United States*, 521 U.S. 898 (1997).