

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

December 14, 2016

Opinion No. 16-44

Private, Occasional Sales of Firearms in Tennessee

Question 1

Does Tennessee law differ from the federal law's occasional-sale exemption to firearms licensing requirements?

Opinion 1

No. Tennessee has no specific provision of law governing the occasional sale of firearms, and since Tennessee law provides that federal licensing requirements apply to persons in this state, the federal law provision exempting occasional sales of firearms from licensing requirements applies.

Question 2

Are persons who are not engaged in the business of dealing in firearms required to obtain a criminal background check in connection with the occasional sale or transfer of a firearm?

Opinion 2

No. In Tennessee, persons who are not engaged in the business of dealing in firearms under federal law are not required to obtain a background check before making an occasional sale or transfer of a firearm pursuant to Tenn. Code Ann. § 39-17-1316(c)(2).

ANALYSIS

- 1. Tennessee has no specific provision of law governing the occasional sale of firearms, and since Tennessee law provides that federal licensing requirements apply to persons in this state, the federal law provision exempting occasional sales of firearms from federal licensing requirement applies.**

In Tennessee, occasional sales of firearms are governed by federal law. Federal law prohibits persons from engaging in the business of dealing in firearms without a license. 18 U.S.C. § 923(a). It is unlawful for “any person except a licensed importer, licensed manufacturer, or licensed dealer” to “engage in the business of importing, manufacturing, or dealing in firearms.”

Federal law defines a “dealer” as:

- (A) any person engaged in the business of selling firearms at wholesale or retail,
- (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or
- (C) any person who is a pawnbroker. The term “licensed dealer” means any dealer who is licensed under the provisions of this chapter.

18 U.S.C. § 921(a)(11). The term “engaged in the business”

as applied to a dealer in firearms, as defined in section 921(a)(11)(A), [means] a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through repetitive purchase and resale of firearms, but *the term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.*

18 U.S.C. § 921(a)(21)(C) (emphasis added). *See also United States v. Gray*, 470 Fed.Appx. 468, 472 (6th Cir. 2012) (finding evidence was sufficient to support conviction for unlicensed firearms dealing when defendant displayed signs and flyers advertising that his store dealt in firearms and ammunition, displayed guns and price tags, sold firearms to undercover agents and others, offered to obtain a handgun for an agent, and resold or traded guns shortly after acquiring them); *United States v. Kish*, 424 Fed.Appx. 398, 405 (6th Cir. 2011) (finding evidence of 500 firearms seized from defendant’s gun store after firearms license revoked was sufficient to establish that defendant engaged in repetitive purchase and resale of firearms for livelihood and profit, supporting conviction for dealing in firearms without a license).

Thus, under the plain language of 18 U.S.C. § 921(a)(21)(C), federal law does not reach occasional, private sales between individuals who are not engaged in the business of dealing in firearms, and such individuals are thus exempted from federal licensing requirements.

The Tennessee Legislature has deferred to federal law provisions governing the licensing of firearms dealers. In Tennessee, there is no state crime committed by a person who deals in firearms without a license, nor are there any other statutory or regulatory provisions to prohibit anyone from engaging in such activity. Rather, Tenn. Code Ann. § 39-17-1316(a)(1) provides: “[a]ny person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms.” By its plain terms, Tenn. Code Ann. § 39-17-1316(a) indicates that the legislature intended to permit persons to engage in the business of dealing in firearms who possess a valid federal firearms license and operate under federal licensing provisions. The absence of any specific state licensing requirement and the legislature’s deference to federal

licensing provisions means that Tennessee law is effectively coextensive with federal law with respect to the occasional sales exemption contained in 18 U.S.C. § 921(a)(21)(C).

Since federal law imposes the only licensing requirements applicable to firearms transactions in Tennessee, it is the sole source of any exemption from those licensing requirements to persons within the State of Tennessee. Accordingly, a person who engages in an occasional sale as defined in 18 U.S.C. § 921(a)(21)(C) is exempt from the federal licensing requirement and may also sell in Tennessee as long as the specific transaction is not otherwise prohibited under state law.

2. In Tennessee, persons who are not engaged in the business of dealing in firearms under federal law are not required to obtain a background check before making an occasional sale or transfer of a firearm pursuant to Tenn. Code Ann. § 39-17-1316(c)(2).

The 1993 Brady Handgun Violence Prevention Act (“Act”), codified at 18 U.S.C. § 922, included a requirement that prospective purchasers/transferees undergo a criminal history records check to determine whether they may lawfully take possession of a firearm from a licensed dealer through the implementation of a nationwide instant check system. *See* 18 U.S.C. § 922(t). Under the Act, firearms dealers are required to conduct a criminal background check before completion of a sale or transfer of a firearm. *Id.* By its terms, section 922(t) is directed toward persons who are engaged in the business of selling firearms. Federal law imposes no such requirements on private parties who make occasional sales or transfers of firearms.

A similar requirement exists under state law. Tennessee Code Ann. § 39-17-1316(c)(2) requires firearms dealers, that is, persons who are engaged in the business of dealing in firearms as a regular course of business, to obtain a criminal background check before completing the sale or transfer of a firearm. The obligation to conduct a background check in subdivision (c)(2) applies only to firearms sales or transfers conducted by dealers. No such requirement is imposed on persons who are not in the business of dealing in firearms who make occasional sales or transfers of firearms; there are no other Tennessee statutes that impose a similar obligation on occasional sales or transfers by persons who are not firearms dealers.

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