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DEPARTMENT OF JUSTICE



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May 1, 2003

Mr. Chuck Michel
Trutanich Michel
407 North Harbor Boulevard
San Pedro, California 90731-3358

COPY

RE: DOJ Position on Firearms

Dear Mr. Michel:

This letter is in response to your request dated February 10, 2003, regarding DOJ's position on firearm issues:

1. Does that "capacity to accept" provision apply to both the detachable magazine and the characteristics enumerated in 12276.1(a)(1)(A)-(F)? Or does the "capacity to accept" provision of this section apply solely to the detachable magazine feature and thereby requires the characteristics enumerated in 12276.1(a)(1)(A)-(F) actually be installed on the firearm to be deemed a Category 3 "assault weapon"?

◆ **The "capacity to accept" provision only applies to the detachable magazine.**

2. Would the following configurations violate any California law:

- BRP Corps. XMG semi-automatic upper receiver if placed on a registered AR15 lower receiver?
- Any otherwise legally possessed "upper receiver" if placed on a registered AR15 lower receiver?

◆ **No to part 1 and no to part 2.**

3. Would possession of a completely disassembled Category 3 "assault weapon" constitute an unlawful possession of an "assault weapon"? In practical terms, if someone has removed any SB 23 offending feature(s) from their rifle so that it is no longer an "assault weapon", are they in violation of the law if they continue to possess the removed feature along with the rifle?

◆ **No.**

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4. Does the possession of all of the necessary component parts of a firearm, that could be used to assemble a Category 1 "assault weapon", possessed in a disassembled state, constitute an unlawful possession of an "assault weapon"?

◆ **Yes.**

5. Does the possession of all of the necessary component parts that could be used to assemble a Category 2 "assault weapon", if possessed in a disassembled state, constitute an unlawful possession of an "assault weapon"?

◆ **Yes.**

6. Does the possession of all of the necessary components that could be used to assemble a Category 3 "assault weapon", if possessed in a disassembled state, constitute an unlawful possession of an "assault weapon"?

◆ **Same question as question #3 - answer is no.**

7. Does the possession of some, but not all, of the components which could be used to assemble an "assault weapon" constitute an unlawful possession of an "assault weapon"? If so:

- Which components, if possessed individually in a disassembled state, would be deemed to be an "assault weapon"?
- Which combination of components possessed in a disassembled state would be deemed an "assault weapon"?

◆ **Answer to both part 1 and part 2: category 1 and 2 the receiver.**

8. Is it lawful to possess a magazine adapter that would permit the use of a magazine designed for another type of firearm. For example, a magazine adapter that would permit the use of an AR15 magazine in a Steyr-Aug.

◆ **No.**

9. Would the handrest identified in the attached photograph be deemed a "conspicuously protruding pistol grip"?

◆ **Please send us an exemplar to examine.**

10. Is an SKS rifle with the "capacity to accept a detachable magazine", but without an offending SB23 feature and without a compatible detachable magazine in the receiver, a

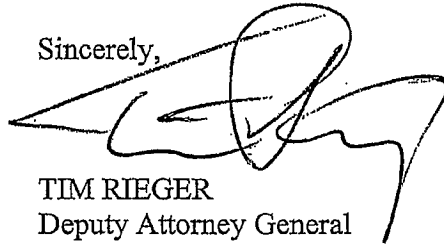
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category one an "assault weapon"?

- ◆ The law states in 12276(a)(11) an SKS with detachable magazine is an assault weapon. We believe an SKS rifle with the capacity to accept a detachable magazine is an assault weapon within the meaning of 12276(a)(11). However, during the preliminary hearing in the case of *People (County of Monterey) vs. Reynolds*, the trial court held that 12276(a)(11) is violated with the detachable magazine in the same gun case, but not installed, with the original fixed 10 round magazine removed, an interesting interpretation. Also, as you recall, this was the subject of the *Dingman* litigation.

I hope this information is helpful to you. If you have any further questions, please do not hesitate to contact me.

Sincerely,



TIM RIEGER
Deputy Attorney General

For BILL LOCKYER
Attorney General

TR/ldm

cc: James Ching

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION

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December 17, 2003

C.D. Michel, Attorney at Law
407 North Harbor Boulevard
San Pedro, CA. 90731-13355

RE: Public Record Act Requests- CALDOJ-072103-PG

Dear Mr. Michel:

Thank you for your letter of July 21, 2003, regarding your client's proposed Barrett 82A1 alternative "thumb hold" grip exemplar. The California Department of Justice, in light of the law, and the pistol grip and thumbhole stock regulatory definitions, has made the following observations:

Pistol Grip Characteristic

Penal Code section 12276.1 (a) (1), among other things, defines as assault weapons: "A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip."

11 CCR 978.20 (d) defines a pistol grip that protrudes conspicuously beneath the action of the weapon to mean, "...a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing."

A "pistol style grasp" allows the fingers to wrap firmly around the grip. The alternative Barrett 82A1 "thumb hold" exemplar cannot be considered an assault weapon pistol grip because the device allows only for the thumb, and not all the fingers, to grasp the device.

Thumbhole Stock Characteristic

Penal Code section 12276.1 (a) (1), among other things, defines as assault weapons: "A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

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- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip."

11 CCR 978.20 (c) defines a thumbhole stock as, "...a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing."

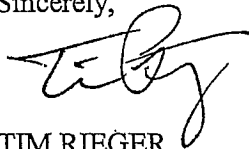
The Department has already articulated policy that features fixed or attached to the action of the weapon are differentiated from those attached to the stock, and do not necessarily constitute offending stock characteristics. In the case of the Kel Teck SU-16, because the weapon folds at the action and can not be fired when folded, the rifle does not feature an offending folding stock that would qualify this semiautomatic, centerfire rifle as an assault weapon.

Similarly, the Barrett 82A1 alternative "thumb hold" exemplar attaches to the action of the weapon and is not part of the stock. Thus, it would be inconsistent with existing policy to consider the exemplar a stock feature and is not, therefore, a "thumbhole stock."

Conclusion

The California Department of Justice opines that the Barrett 82A1 "thumb hold" exemplar does not fall within the regulatory definitions of thumbhole stock or pistol grip. As always, we remind you that other constitutional officers, including the 58 duly elected District Attorneys may have a difference of opinion, but we stand by our analysis and conclusion.

Sincerely,



TIM RIEGER
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General