

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

November 9, 2015

Opinion No. 15-75

Ownership and Possession of Firearms after Conviction for a Felony or Misdemeanor

Question 1(a)

If a person who has been convicted of a felony or misdemeanor involving domestic violence obtains a complete restoration of the right to own and possess firearms by expungement under Tenn. Code Ann. §§ 40-32-101(g) or (h) or by successfully obtaining a handgun carry permit under Tenn. Code Ann. § 39-17-1351(j), are there any restrictions under federal or state law on the types of firearms that such a person may possess?

Opinion 1(a)

No.

Question 1(b)

If a person who has been convicted of a felony or misdemeanor involving domestic violence obtains a complete restoration of the right to own and possess firearms by expungement under Tenn. Code Ann. §§ 40-32-101(g) or (h), is that person also required to obtain a valid handgun carry permit to lawfully possess a firearm?

Opinion 1(b)

No.

Question 2(a)

Does Tennessee law prohibit a person who has been convicted of a felony and who has not obtained a full restoration of his firearms rights from possessing black powder firearms?

Opinion 2(a)

Yes. As a general rule, a person who has been convicted of a felony may not possess any antique, black powder or any other type of firearm unless his firearms rights have been completely restored. But there are certain exceptions that permit a nonviolent felony offender to possess black powder and antique long guns and that permit convicted felons to possess black powder long guns and handguns only at their places of residence.

Question 2(b)

Do the prohibitions against possession of antique and black powder firearms apply only to offenders who have been convicted of violent felonies and felony drug offenses?

Opinion 2(b)

Subject to limited exceptions for possession of black powder and antique long guns by nonviolent felons and for any felony offender's possession of black powder firearms at that offender's place of residence, convicted felons of any class are prohibited from possessing antique or black powder firearms.

Question 2(c)

Does Tenn. Code Ann. § 39-17-1307(e) permit a person who has been convicted of a violent felony or felony drug offense to possess a black powder firearm in a motor vehicle if the offender is in lawful possession of the motor vehicle?

Opinion 2(c)

Tennessee Code Annotated § 39-17-1307(e), by its plain terms, provides an exception to Tenn. Code Ann. § 39-17-1307(a), which prohibits the carrying of weapons for purposes of going armed. It does not permit possession of any firearm, including a black powder firearm, by a person who has been convicted of a violent felony or felony drug offense.

Question 2(d)

Does Tenn. Code Ann. § 39-17-1364 operate as a limited exception to the prohibitions against the possession and sale of black powder firearms in Tenn. Code Ann. §§ 39-17-1307 and 39-17-1364?

Opinion 2(d)

Yes.

Question 3

Is Tennessee law sufficiently clear to provide convicted felons with fair warning about prohibitions on the possession of various types of firearms?

Opinion 3

Yes.

Question 4

Is Tennessee law sufficiently clear to provide convicted felons with fair warning regarding applicable prohibitions on the possession of antique or black powder firearms?

Opinion 4

Yes.

ANALYSIS

I. Applicable Law

A. Federal and State Laws Imposing Firearms-related Disabilities as a Consequence of Criminal Convictions

As a general rule, a legal disability against possession of firearms is imposed by both state and federal law upon all persons who have been convicted of a felony or misdemeanor involving domestic violence. These federal and state laws are interrelated, and both must be examined to determine whether a disability has been imposed and the extent of the disability.

1. Federal Law Disabilities

Disability under federal law is imposed by 18 U.S.C.A. § 922(g) which prohibits possession of firearms by persons convicted of offenses that are punishable by imprisonment by a term of greater than one year or any misdemeanor crime of domestic violence. Under federal law, a firearm is “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C.A. § 921(a)(3). The term firearm “does not include an antique firearm.” *Id.* “Antique firearms” are defined in 18 U.S.C.A. § 922(a)(16) as firearms manufactured in or before 1898 or replicas of such firearms and muzzle-loading firearms that are designed to use black powder.

Read together, the relevant provisions of federal law specify that a person who has been convicted of a felony or a domestic violence misdemeanor is prohibited from possessing any type of firearm, except an antique firearm as defined by 18 U.S.C.A. § 921(16). Thus, under federal law, a convicted felon may possess an antique firearm even though possession of other types of firearms is prohibited.

2. State Law Disabilities

Disability under state law is imposed by Tenn. Code Ann. § 39-17-1307. The extent of the disability under state law depends on the nature of the offense. Persons convicted of any “felony involving the use or attempted use of force, violence, or a deadly weapon,” or felony drug offenses, are prohibited from possessing any firearm. Tenn. Code Ann. § 39-17-1307(b)(1). That same disability is imposed on persons who have been convicted of the misdemeanor crime of domestic violence or who are subject to an order of protection. Tenn. Code Ann. § 39-17-1307(f). Persons

who have been convicted of nonviolent felonies are prohibited from possessing handguns but are permitted under state law to possess long guns. Tenn. Code Ann. § 39-17-1307(c).

Under Tennessee law, a firearm is defined as “any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.” Tenn. Code Ann. § 39-11-106(11). The difference between the definition of a firearm under federal and a firearm under state law results in the general rule that state law prohibits persons who have been convicted of felony offenses involving the use of a weapon, force or violence, felony drug offenses, and misdemeanor offenses involving domestic violence from possessing antique and black powder firearms while federal law imposes no such prohibition.

But Tenn. Code Ann. § 39-17-1364 states, in relevant part:

Notwithstanding § 39-17-1307, or any other law, it is lawful in this state for a person to purchase, and have shipped directly to such person’s residence, the following:

(1) A black powder weapon; provided that it meets the definition of 18 U.S.C. § 921. . . .

Under the rules of statutory construction, the two statutes should be read together and, if possible, they should be interpreted to harmonize any potentially conflicting provisions. *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526-27 (Tenn. 2010). “When two statutes seemingly address the matter in question, and one is special and particular and the other is general, then the general statute will be construed so as to operate on all subjects introduced therein except the particular one which is the subject of the special provision.” *Smallwood v. Mann*, 205 S.W.3d 358, 365 (Tenn. 2006). The purpose of statutory interpretation is to give effect to the intent of the legislature. *Morgan Keegan Co., Inc. v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013). If the statutory text is clear and unambiguous, legislative intent is to be found in the ordinary and natural meaning of the statutory language. *Nye v. Bayer Cropscience, Inc.*, 347 S.W.3d 686, 694 (Tenn. 2011).

The plain language indicates that the legislature enacted Tenn. Code Ann. § 39-17-1364 to carve out an exception to the prohibitions against firearms possession set forth in Tenn. Code Ann. § 39-17-1307. Tennessee Code Annotated § 39-17-1364 is narrowly drawn to permit an offender, including those convicted of violent felonies and felony drug offenses and those convicted of misdemeanor offenses involving domestic violence, to purchase and possess black powder firearms meeting the federal definition, but only if the firearm is shipped directly to the offender’s residence. Implicit in the phrase “have shipped directly to such person’s residence” is a prohibition against the convicted felon/purchaser taking physical possession of the firearm at the point of sale and personally transporting it to his residence. When Tenn. Code Ann. § 39-17-1364 is read together with Tenn. Code Ann. § 39-17-1307, it is clear that the legislature did not intend to authorize the public possession of any black powder firearms, including possession for the sole purpose of transporting the firearm from the place of purchase to the purchaser’s residence.

3. Coordinating State and Federal Law

Coordinating 18 U.S.C.A. § 922(g) and Tenn. Code Ann. §§ 39-17-1307 and 39-17-1364, persons who have been convicted of felonies involving the use of weapons, violence or force, felony drug offenses, or misdemeanor offenses involving domestic violence are prohibited from possessing any firearm that uses smokeless powder. Such offenders may, however, purchase and possess any black powder handgun or long gun so long as it is kept at the residence only and the purchaser does not at any time carry or possess the firearm outside the residence.

Persons who have been convicted of other types of felonies are only prohibited from possessing handguns. Tenn. Code Ann. § 39-17-1307(c). Handguns are defined as “any firearm with a barrel length of less than twelve inches (12”) that is designed, made or adapted to be fired with one (1) hand.” Tenn. Code Ann. § 39-11-106(a)(16). While state law would otherwise permit such persons to possess rifles and shotguns, federal law prohibits any convicted felon from possessing such firearms. Reading state and federal law together, as a general rule, such persons are permitted to possess antique rifles and shotguns, replicas of such firearms and other muzzle-loading rifles and shotguns, but not handguns.¹ State law prohibits possession of handguns only and federal law prohibits possession of any firearm except an antique firearm as defined in 18 U.S.C.A. § 921(a)(16). But under Tenn. Code Ann. § 39-17-1364, such felons are permitted to purchase black powder handguns and possess them at their residences so long as those firearms are kept at the residence and are not in the person’s possession at any time while he is out in public.

B. Federal and State Laws Governing the Removal of Firearms-related Disabilities

Federal and state laws governing the removal of firearms-related disabilities are interrelated, and thus both must be examined to determine whether and to what extent any such disabilities have been removed.

1. Disability Removal Under Federal Law

Under 18 U.S.C.A. § 921(a)(20), disabilities against firearms possession are removed by pardon, expungement, or other restoration of civil rights, unless there is an express prohibition against the possession of firearms in the pardon, expungement, or restoration of rights. To effectively remove the federal disability against firearms possession that federal law imposes because of a felony conviction under state law, a felon must first obtain a restoration of the rights to vote, hold office, and serve on juries. *See, United States v. White*, 808 F. Supp. 586, 587 (M.D. Tenn. 1992).

Federal law also requires a complete restoration of firearms rights under state law. A partial or other restricted right to possess firearms under state law will not suffice. Firearms-related disabilities will remain in place and possession of any firearm would still be prohibited even though a state might, for example, restore a person’s right to possess rifles and shotguns but still

¹ The definition of “antique firearm” in 18 U.S.C.A. § 921(a)(16) includes any firearm that was manufactured in or before 1898. By that time, smokeless powder had been invented, and firearms designed to use that propellant were commonly available. A person convicted of a nonviolent felony could thus lawfully possess a rifle or shotgun designed to use smokeless powder as long as the gun was manufactured in or before 1898.

prohibit possession of handguns. *Caron v. United States*, 524 U.S. 308 (1998). *See also, Logan v. United States*, 552 U.S. 23 (2007). Accordingly, persons who are under disabilities against possession of firearms because of a Tennessee felony conviction must obtain a complete restoration of their firearms rights under Tennessee law to obtain a restoration of federal firearms rights. Anything less keeps the federal prohibitions in effect.²

2. Removal of Disabilities Under State Law

Under Tennessee law, neither the receipt of a pardon nor restoration of citizenship rights pursuant to Tenn. Code Ann. § 40-29-101, by itself, operates to remove the disability against possession of any firearm. *State v. Johnson*, 79 S.W.2d 522, 527-28 (Tenn. 2002); *Evans v. State*, 66 Tenn. 12 (1872). Restoration of such rights is, however, a threshold requirement for restoration of firearms rights under federal law. Firearms possession by persons who have been convicted of felonies involving the use or threatened use of firearms or other weapons, force, or violence remains prohibited notwithstanding the restoration of other civil rights. *State v. Johnson*, at 527-28. The same is true for felony drug offenders. *State v. Ferguson*, 106 S.W.3d 665 (Tenn. App. 2003). As long as firearms rights are not restored under state law, under the holding in *Caron*, the federal disabilities remain in effect. Possession of antiques and other black powder firearms away from the residence of such a felon remains prohibited because, unlike federal law, Tennessee provides no exceptions for the public possession of such firearms.

Prohibitions against firearms possession by persons convicted of other felonies also remain in effect after other civil rights have been restored under Tenn. Code Ann. § 40-29-101. Pursuant to the reasoning in *Johnson* and *Ferguson*, the disabilities against possession of handguns in Tenn. Code Ann. § 39-17-1307(c) remain in effect after restoration of other civil rights. Although possession of long guns would otherwise be permitted under Tennessee law, under *Caron*, the federal prohibitions remain in effect because the gun rights of such persons are only partially and not completely restored. Such persons, however are permitted to possess antique and black powder long guns because possession of any type of long gun would be permitted under state law and possession of such firearms is also permitted under federal law. Possession of handguns, including black powder arms, away from the residence, however, remains prohibited.

Tennessee law affords no other means for persons convicted of felonies involving the use or threatened use of weapons, force, or violence to obtain restoration of any firearms rights. Therefore, the disabilities imposed under federal and state law remain in effect for life. For all other classes of felons, however, there are statutes that afford the opportunity for complete restoration of both state and federal firearms rights.

Tennessee Code Annotated § 40-32-101(g) affords persons who have been convicted of specified Class E felonies an opportunity to obtain expungement of their convictions. The offenses for which expungement may be obtained are set forth in Tenn. Code Ann. § 40-32-101(g)(1)(A). All such offenses are nonviolent and include the felony drug offenses in Tenn. Code Ann. § 40-32-101(g)(1)(A)(xxxii)-(xxxviii). Convicted felons who obtain expungements under Tenn. Code

² If, for example, a convicted felon is able to obtain a restoration of the right to possess long guns but not handguns, federal law would still prohibit possession of long guns even though their possession would be permitted under state law.

Ann. § 40-32-101(g) also obtain full restoration of their firearms rights under state law. Tenn. Code Ann. § 40-32-101(g)(15)(E). Under *Caron*, full restoration of firearms rights under federal law will also be obtained upon restoration of firearms rights under state law.

Tennessee Code Annotated § 40-32-101(h) provides other nonviolent felons who are not otherwise eligible for expungement under Tenn. Code Ann. § 40-32-101(g)(1)(A) with a means to obtain expungement of their convictions and restoration of all of their firearms rights. Relief under that section is available only if the court in which the petitioner was convicted found that the crime was not violent. In addition, the petitioner must have received a pardon and, after receipt of the pardon, must have obtained an order of expungement from the court where the conviction was entered. Tenn. Code Ann. § 40-32-101(h). Persons convicted of felony drug offenses may also obtain complete restoration of their firearms rights under Tenn. Code Ann. § 40-32-101(h) if their drug crimes were nonviolent. *See, Blackwell v. Haslam*, 2013 WL 3379364 (Tenn. App. June 28, 2013).

Tennessee Code Annotated § 39-17-1351(j)(3) affords other classes of nonviolent felons and persons who were convicted of felony drug offenses involving marijuana with another means for restoration of firearms rights. It provides that a person who has obtained a restoration of rights under Tenn. Code Ann. § 40-29-101 may obtain a handgun carry permit. Possession of such a permit by a felon who has a right to possess long guns but is otherwise prohibited from possessing handguns under Tenn. Code Ann. § 39-17-1307(c) operates to completely restore that person's firearms rights because, under Tenn. Code Ann. § 39-17-1308(a)(2), possession of a handgun carry permit is a defense to prosecution for a violation of Tenn. Code Ann. § 39-17-1307(c). Since the permit completely restores firearms rights under state law, under *Caron*, it also operates to restore firearms rights under federal law.

II. Discussion in Response to Questions

Question 1(a). A person who has been convicted of any felony under Tennessee law is prohibited by federal law from possessing any firearm unless that person has obtained a complete restoration firearms rights under state law.³ *See, United States v. Caron, supra*. Once a person has obtained a complete restoration of firearms and other citizenship rights, regardless of whether that restoration of firearms rights was obtained under Tenn. Code Ann. §§ 40-32-101(g) or (h) or under Tenn. Code Ann. §§ 39-17-1351(j)(3), that individual may lawfully possess or purchase any firearm that may be lawfully possessed or purchased by any other private citizen.

Question 1(b). Tennessee Code Annotated § 40-32-101(g)(15)(D) explains the intent and purpose of an expungement under subsections (g) and (h):

Expunction under this subsection (g) or subsection (h) means, in contemplation of the law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects

³The only exceptions involve the possession of black powder firearms solely at an offender's residence and the possession of black powder long guns by felons whose crimes did not involve violent felonies or felony drug offenses.

[sic] or direct disabilities by virtue of the criminal offense that was expunged.

Under the plain language of subsection (g)(15)(D), an expungement of a felony conviction under either Tenn. Code Ann. §§ 40-32-101(g) or (h) operates as a complete restoration of firearms rights, and no further action, for example, obtaining a handgun carry permit under Tenn. Code Ann. § 39-17-1351, is required.

Question 2(a). With the exception of subsection (q)(1), Tenn. Code Ann. § 39-16-1316 by its plain terms applies to persons who are licensed to deal in firearms and does not limit or remove any legal disabilities against firearms possession that are imposed by reason of a criminal conviction. Any felon who has obtained a full restoration of firearms rights—whether by expungement or receipt of a valid handgun carry permit—may lawfully possess any firearm, regardless of whether it is antique or modern, designed to use black or smokeless powder, or whether it is chambered for center- or rim-fire cartridges. Receipt of a pardon, however, does not automatically restore citizenship rights, including any right to own or possess a firearm. *See, State v. Johnson, supra; Evans v. State, supra.* To obtain restoration of firearms rights, a convicted felon must still obtain an expungement or a handgun carry permit. Felons who have not obtained a restoration of firearms rights are prohibited from possessing antique or black powder firearms, except that nonviolent felons may possess black powder and antique long guns under Tenn. Code Ann. § 39-17-1364, and all felons may lawfully possess black powder long guns and handguns only at their places of residence.

Question 2(b). Under Tenn. Code Ann. § 39-17-1307(b), any person who has been convicted of any felony involving the use or threatened use of firearms or other weapons, force or violence, or a felony drug offense, is prohibited from possessing any firearm that uses smokeless powder and is further prohibited from possessing any black powder firearm except at his place of residence. Persons who have been convicted of misdemeanor domestic violence offenses and persons who are subject to orders of protection for domestic violence are subject to the same prohibitions for as long as the disabilities arising from such conviction remain in effect. Tenn. Code Ann. § 39-17-1307(f).

A convicted felon who is prohibited from possessing handguns pursuant to Tenn. Code Ann. § 39-17-1307(c) may possess any antique or black powder long gun without restriction but may not possess a black powder handgun except at his place of residence.

Question 2(c). Tennessee Code Annotated § 39-17-1307(e) provides an exception to Tenn. Code Ann. § 39-17-1307(a) which prohibits the carrying of weapons for the purpose of going armed. Under subsection (e), a person who is not prohibited from possessing or purchasing a firearm is not subject to prosecution under subsection (a) if that person is transporting the firearm in a motor vehicle. Subsection (e) makes no reference to any other subsection of Tenn. Code Ann. § 39-17-1307. “The mention of one subject in a statute signifies the exclusion of other unmentioned subjects and ‘[o]missions are significant when statutes are express in certain categories but not others.” *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 738-39 (Tenn. 2011). The omission of any reference to any of the subsections that impose disabilities against the possession of firearms indicates that Tenn. Code Ann. § 39-17-1307(e) was not intended to authorize the

carrying of any firearm, black powder or otherwise, by persons who have been convicted of felonies or misdemeanors involving domestic violence.

Question 2(d). Tennessee Code Annotated § 39-17-1364 states, in relevant part:

Notwithstanding § 39-17-1307, or any other law, it is lawful in this state for a person to purchase, and have shipped directly to such person's residence, the following:

(1) A black powder weapon; provided that it meets the definition of 18 U.S.C. § 921. . . .

Tenn. Code Ann. § 39-17-1316 prohibits a licensed firearms dealer from selling firearms to convicted felons and other classes of persons who are prohibited from possessing them. But the prohibitions against selling firearms to convicted felons shall not apply if such "person is not prohibited from possessing a firearm by § 39-17-1307." Tenn. Code Ann. § 39-17-1316(a)(2)(D).

The language of Tenn. Code Ann. §§ 39-17-1307, 39-17-1316 and 39-17-1364 is clear and unambiguous. Reading section 1307 together with 1364 indicates that section 1307 is not violated if a convicted felon's possession of a black powder firearm satisfies the requirements set forth in Tenn. Code Ann. § 39-17-1364; that is, Tenn. Code Ann. § 39-17-1307 will not be violated as long as the offender, upon making the purchase, does not take physical delivery of the firearm at the point of purchase but has it shipped to his place of residence.

For the seller of the black powder firearm, reading Tenn. Code Ann. § 39-17-1316 together with Tenn. Code Ann. §§ 39-17-1307 and 1364, section 1364 will not be violated if the dealer places the black powder firearm in the hands of a carrier for shipment to the purchaser's residence and does not give physical possession to the purchaser at the time of sale.

Question 3. "Due process dictates, among other things, notice of what the law prohibits. Statutes must give persons of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [they] may act accordingly." *State v. White*, 362 S.W.3d 559, 567 (Tenn. 2012) (internal citations omitted). Absolute precision is not required; fair warning is sufficient. *State v. Burkhart*, 58 S.W.3d 694, 697 (Tenn. 2001).

In defining proscribed conduct, the legislature is not required to draw precisely the line between legal and illegal conduct.

[I]t is not unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line. A person who is aware of a possible application of the statute and nevertheless proceeds cannot complain of inadequate notice when arrested. Indeed, an uncertain meaning should lead to citizens "steer[ing] far wider of the unlawful zone" than if the statute were more precise in the use of its language.

Burkhart, at 698 (internal citations omitted).

The statutes prohibiting firearms possession by convicted felons and persons who have been convicted of misdemeanors involving domestic violence are sufficiently clearly drawn to give fair warning concerning the prohibitions against firearms possession. As a general rule, unless the disability against firearms possession has been removed and firearms rights have been completely restored—and subject to some well-defined exceptions related to the possession of black powder firearms—convicted felons are prohibited from possessing firearms.⁴

Tennessee law provides a clear path for certain classes of convicted felons to obtain full restoration of firearms rights by expungement under Tenn. Code Ann. §§ 40-32-101(g) or (h) or by obtaining a valid handgun carry permit under Tenn. Code Ann. § 39-17-1351.⁵ In the case of a person who has been convicted of a misdemeanor domestic violence offense, the prohibition remains in effect for as long as the offender is subject to the disabilities arising from that conviction. Tenn. Code Ann. § 39-17-1307(f)(1)(A). If a person's firearms rights have been completely restored, he may possess any type of firearm that may be lawfully possessed by any other citizen.

Question 4. The statutes governing possession of black powder and other antique firearms by convicted felons and persons who have been convicted of misdemeanor domestic violence offenses give fair warning of the nature of the prohibited conduct. The general rule is clear and unambiguous. In the absence of a statutory exception to the contrary, convicted felons and persons who have been convicted of misdemeanor domestic violence offenses are prohibited from possessing any firearm, including an antique or any other firearm that is designed to use black powder.⁶

While federal law permits convicted felons to possess black powder firearms without restriction, persons convicted of violent felonies or felony drug offenses may not possess such firearms except in their residences, Tenn. Code Ann. §§ 39-17-1307(b) and 39-17-1364, and persons convicted of nonviolent felonies may lawfully possess black powder and antique long guns but not black powder handguns which may only be lawfully possessed at their places of residence. As the Tennessee Supreme Court explained in *State v. Burkhart, supra*, if someone believes that

⁴ Even if a convicted felon might be permitted to possess limited types of firearms under state law, that person would still remain under a federal disability against possession of any type firearm because under federal law, the federal disability that is imposed for state felony convictions is only removed by a complete restoration of firearms rights under state law. *See, Caron v. United States, supra; Logan v. United States, supra.*

⁵ Restoration of citizenship rights under Tenn. Code Ann. § 40-29-101 does not operate to restore the right to possess firearms. *See, State v. Johnson, supra; State v. Ferguson, supra.* Likewise, receipt of a pardon without more does not operate to restore the right to possess a firearm or any other right of citizenship. *State v. Johnson, supra; Evans v. State, supra.*

⁶ Under 18 U.S.C. § 921(a)(16)(A), firearms that were manufactured in or before 1898 are excluded from the definition of firearms under federal law. There are no Tennessee statutes that expressly provide any exception for antique firearms as such. This distinction is significant because there are some firearms that were designed to fire smokeless powder that were manufactured in or before 1898. Those firearms would not come under state law exceptions related to the possession of black powder firearms and, as a general rule, it is unlawful under state law for persons who have been convicted of felonies to possess such firearms. The only exception is for persons who have been convicted of nonviolent felonies. Such persons could lawfully possess an antique long gun that is designed to fire smokeless powder but possession of a handgun that is designed to use smokeless powder would be prohibited.

his conduct may be approaching the line between lawful and unlawful conduct, the prudent course would be to move back from the line to an area that is within the lawful zone.

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