



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 5, 2014

Senator Ted Ferrioli
Senate Republican Leader
900 Court Street NE S323
Salem OR 97301

Re: Legal Opinion on Firearms Bill (Senate Bill 1551)

Dear Senator Ferrioli:

You have asked this office to determine if ORS 166.436, as amended by section 1 of Senate Bill 1551, would require a criminal background check before transferring a firearm in various factual scenarios. We think that in the context of going on a short hunting trip with a friend, a court would find that the borrowing of a firearm would not constitute a transfer under an amended ORS 166.436, even if the friends split the cost of the trip. We think that in the case of a friend loaning a firearm to another friend for the duration of a hunting season, a court would have to look at the specific circumstances of the case to determine if a criminal background check is required. Finally, we think that if a person loaned a firearm to a nonrelative for an indeterminate length of time, a court would likely view that loan as a gift and thus a criminal background check would be required under an amended ORS 166.436.

Senate Bill 1551 requires a criminal background check before any person transfers a firearm and in the amendments to ORS 166.432 by section 3 defines the transfer of a firearm as the "sale, gift or lease of a firearm." First, we must look to how the Oregon Supreme Court would define the words "sale," "gift" and "lease" to determine how those words would affect the need for a criminal background check in the factual scenarios that you provided. According to *Webster's Third New International Dictionary*, the word "sale" means "a contract transferring the absolute or general ownership of property from one person or corporate body to another for a price (as a sum of money or any other consideration)[.]"¹ The definition of the word "gift" is "something that is voluntarily transferred by one person to another without compensation[.]"² And finally the definition of the word "lease" is "a contract by which one conveys lands, tenements, or hereditaments for life, for a term of years, or at will or for any less interest than that of the lessor, usually for a specified rent or compensation[.]"³ With those definitions, we will next look to how a court might find they would or would not apply in the factual scenarios that you have provided.

¹ *Webster's Third New International Dictionary of the English Language Unabridged* 2003 (Philip Babcock Gove et al., eds., Merriam-Webster 1961).

² *Id.* at 956.

³ *Id.* at 1286.

In the scenario of the short hunting trip, we feel that a court would most likely not view this short-term loan of the firearm as a transfer requiring a criminal background check because this factual scenario does not seem to fit within the definition of “sale,” “lease” or “gift.” Since the ownership of the firearm was not transferred for compensation, it is not a sale. Even if the two friends split the cost of the trip, we do not think it likely that a court would view this as a lease because while something of value was given to the owner of the firearm, based on the facts given, the value was given for sharing the cost of the trip, not as rent or compensation for use of the firearm. The Oregon Supreme Court has stated that a gift is made when the donor gives the donor’s property to another person without any compensation in return.⁴ In this case, there was no compensation but the owner of the firearm never transferred ownership of the firearm to the friend, the owner only allowed the friend to use the firearm while in the presence of the owner.

In the scenario of loaning a firearm to a friend for an entire hunting season, we cannot point to a bright-line rule that a court would likely use when deciding whether a criminal background check is required under an amended ORS 166.436. A court would need to look at the facts and the circumstances surrounding the loan on a case-by-case basis to determine if it was in fact a loan or lease. Courts would look at the length of time of the loan and whether anything of value was exchanged between the two friends as compensation for the use of the firearm. If something of value was exchanged in return for the use of the firearm, and the hunting season lasted several months, we think that a court would likely view this as the lease of a firearm. If nothing of value was exchanged and the hunting season lasted for a matter of days, we think that a court would likely view this as closer to the factual scenario discussed above, the hunting trip loan not requiring a criminal background check. However, we cannot point to a specific number of days a loan would have to last before triggering the requirement of a criminal background check.

In the scenario of a person loaning a firearm to a nonrelative for an indeterminate length of time, we think that a court would likely view this as a gift. As noted above, the Oregon Supreme Court has stated that a gift is made when the donor gives the donor’s property to another person without any compensation in return.⁵ Therefore, for example, when a man gives his firearm to his girlfriend to use for protection without any compensation in return or any sort of expectation of a return date, a court would most likely see the transfer as a gift that would require a criminal background check under an amended ORS 166.436.

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⁴ *Allen v. Hendrick*, 104 Or. 202, 220 (1922).

⁵ *Id.*

other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read "D. Johnson", written over a light gray circular stamp.

By
Jessica L. Minifie
Deputy Legislative Counsel