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FILE NO. S-1291

CRIMINAL LAW AND PROCEDURE:
Application of Sections
24-3 and 24-4 of the Criminal
Code of 1961 to Auctioneers

Honorable John W. Cox, Jr.
State's Attorney
Jo Daviess County
Courthouse
Galena, Illinois 61036

Dear Mr. Cox:

I have your letter wherein you inquire whether an auctioneer, in selling firearms at auction, is exempt from sections 24-3 and 24-4 of the Criminal Code of 1961. (Ill. Rev. Stat. 1975, ch. 38, par. 24-3 and 24-4.) For the reasons hereinafter stated it is my opinion that an auctioneer is not exempt from the aforementioned provisions but must follow the restrictions on the sale and delivery of firearms contained in section 24-3 and must keep the register required

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by section 24-4.

Section 24-3 prohibits the sale of firearms to certain persons and places conditions on delivery to others. You direct my attention to item (g) of section 24-3 which provides as follows:

"A person commits the offense of unlawful sale of firearms when he knowingly:

* * *

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least 24 hours after application for its purchase has been made. However, this paragraph shall not apply to: (1) the sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or (2) a mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or (3) the sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Law Enforcement; or (4) the sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States;

* * *

(Emphasis added.)

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Section 24-4 of the Code requires in general that the seller of firearms keep a register of firearms sold and provides specifically as follows:

"(a) Any seller of firearms of a size which may be concealed upon the person, other than a manufacturer selling to a bona fide wholesaler or retailer or a wholesaler selling to a bona fide retailer, shall keep a register of all firearms sold or given away.

(b) Such register shall contain the date of the sale or gift, the name, address, age and occupation of the person to whom the weapon is sold or given, the price of the weapon, the kind, description and number of the weapon, and the purpose for which it is purchased and obtained.

(c) Such seller on demand of a peace officer shall produce for inspection the register and allow such peace officer to inspect such register and all stock on hand.

(d) Sentence.

Violation of this Section is a Class B misdemeanor." (Emphasis added.)

The purpose of both provisions is clearly to insure that firearms do not fall into the hands of persons not competent to handle them.

Words contained in a statute should be given their plain and commonly accepted meaning. (People v. McCoy (1976), 63 Ill. 2d 40, 45.) Applying the plain and commonly accepted

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meanings to the words "sell" and "deliver" which are contained in section 24-3, one must conclude that those functions are ones performed by an auctioneer. Furthermore, an auctioneer falls within the meaning of the term "seller" which is employed in section 24-4 because of his authority to make a sale of another's property. City of Chicago v. Ornstein (1926), 323 Ill. 258, 260; First State Bank of Shannon v. Harter (1939), 301 Ill. App. 234, 236.

Since an auctioneer, in most circumstances, is the one who deals directly with the buyer, he is the one most suited to make the determinations required by section 24-3 and is in the best position to keep the records required by section 24-4. Furthermore, it appears that the purpose of the aforementioned sections will be best accomplished in an auction situation if the auctioneer is subject to the requirements set forth in those sections.

Since nothing in sections 24-3 and 24-4 specifically exempts an auctioneer from those provisions and since an auctioneer is a seller or deliverer within the plain meanings of those terms, it must be concluded that an auctioneer is

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subject to those sections. Therefore, an auctioneer must follow the restrictions placed by section 24-3 upon sale and delivery of firearms and must keep the register required by section 24-4.

Very truly yours,

A T T O R N E Y G E N E R A L