



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

August 2, 1971

FILE NO. S-329

**CRIMINAL LAW:**  
**Unlawful Use of Weapons.**

Honorable Herbert D. Brown  
Director, Department of Law Enforcement  
103 State Armory  
Springfield, Illinois 62706

Dear Director Brown:

In your recent letter you ask my opinion on the following question:

"Are the components used in the manufacture of black powder bombs or Molotov Cocktails, in close proximity and readily accessible to their possessor sufficient to constitute the offense of unlawful use of weapons."

The Act to which you refer provides:

"(a) A person commits the offense of unlawful use of weapons when he knowingly:

\* \* \* \* \*

(7) Sells, manufactures, purchases,

possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing any explosive substance, such as but not limited to black powder bombs and Molotov cocktails;

\* \* \* \* \*  
Ill. Rev. Stat. 1969, ch. 38, § 24-1.

Interpretation of the above Act is not aided by an examination of "explosive substance" statutes and court decisions under either federal or Illinois law. Accordingly, the answer to your question lies within the purpose of the Act itself and by reference to analogous situations or statutes.

Our Appellate Court this year in Chicago  
Division Horsemen's Benevolent and Protective Association  
et al. vs. Illinois Racing Board et al., No. 55705

(volume citation not yet available), said:

"In construing this statutory language, the primary object is ascertainment of legislative intent, a fact to be gathered from the entire act, not from one section, sentence or clause. People ex rel. Small v. Board of Education, 343 Ill. App. 362, 99 N.E. 2d 385. We must examine the language employed, the evil which

the legislature sought to remedy and the objective it sought to accomplish. People v. Laporte, 28 Ill. App. 2d 139, 171 N.E. 2d 95; Mills v. County of Winnebago, 104 Ill. App. 2d 366, 244 N.E. 2d 65. The words, phrases and sentences of a statute are to be understood as used, with due regard to the statutory context as a whole. And in expounding one part of a statute, resort must be had to every other part. 82 C.J.S. Statutes, §348."

The general purpose of Chapter 38, the Criminal Code, is set out in Section 1-2 as being (a) to forbid and prevent the commission of offenses and (b) to define adequately the act which constitutes each offense.

In seeking to remedy the danger from the unauthorized use of weapons, the General Assembly enacted Article 24 of the Criminal Code, designated "Deadly Weapons" and appearing as Sections 24.1 through 24.6 of Chapter 38. This covers the use, possession, transportation and sale of various weapons including Section 24-1, (a) (7) quoted above.

In seeking to ascertain the legislative intent as shown by the statutory context as a whole, it is helpful by analogy to study the differing treatment

given different weapons. Section 24.2 setting out as specific exemptions the situations where the Act does not apply is especially helpful.

Section 24-1 Chapter 38 in sub-paragraph (a) lists nine separate types of weapons the possession or transportation of which is defined as committing "the offense of unlawful use of weapons." Section 24-2 - "Exemptions" - then lists in sub-paragraph (a) (1) to (6), in sub-paragraph (b) (1) to (3), and in sub-paragraph (c) (1) to (3) various classes of persons to whom the Act does not apply. In sub-paragraph (b) (4) and (c) (4), Section 24-2 then lists the two classes of weapons to which the Act does not apply providing they are "broken down in a non-functioning state or not immediately accessible." These two classes of weapons are covered in sub-paragraphs (a) (4) and (a) (7) of Section 24-1.

Sub-paragraphs (a) (4) and (a) (7) of said Section 24-1 read as follows:

- (4) "Carries concealed in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol.

revolver or other firearm;"

- (7) "Sells, manufactures, purchases, possesses or carries any weapon from which more than 6 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 16 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails;"

Exemption (b) (4) relating to the "pistol, revolver, or other weapon" covered in 24-1 (a) (4) reads:

"Transportation of weapons broken down in a non-functioning state or not immediately accessible."

Exemption (c) (4) relating to the above quoted sub-paragraph

24-1 (a) (7) reads:

"Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this Subsection to possess machine guns, if the machine guns are broken down in a non-functioning state or not immediately accessible."

It is to be noted that the "non-functioning" exemption (b) (4) covers all weapons in Section 24-1 (a) (4), but that exemption (c) (4) covers only machine guns from all of the weapons listed in Section 24-1 (a) (7) and then only "manufacture, transportation and sale . . . . . to

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persons authorized under (1) through (3) of this subsection to possess machine guns". Such "authorized persons" are limited to (1) peace officers, (2) prison or penitentiary officials and (3) members of the armed services while in the performance of their official duty

Comparing the two exemptions, the carefully limited language used by the General Assembly in 24-2 (c) (4) shows the "non-functioning" exemption applies only to the manufacturer who is transporting machine guns pursuant to an authorized sale. Any individual, not a manufacturer, who sells, purchases, possesses or carries a machine gun is violating Section 24-1 (a) (7), whether or not the gun is broken down in a non-functioning state.

It is fundamental that a statute which includes one or more of several comparable situations excludes others not mentioned. Our Supreme Court in People vs. Wiersema State Bank, 361 Ill. at page 85 said:

"The rule that expression of one thing or one mode of action in an enactment excludes any other even though there be no negative words prohibiting it, has been the settled law of the state since 1852."

See also Blakeslee's Warehouses vs. City of Chicago,

369 Ill. 480 at page 483.

Where an exception appears in a statute, no other exception can be read into it. Our Supreme Court in In Re Estate of Tilliski, 390 Ill. 273 at page 283 said:

"It is a fundamental principle of statutory construction that the enumeration of certain things in a statute implies the exclusion of all other things. (People ex rel. Hansen v. Collins, 351 Ill. 551; Tennant v. Epstein, 356 Ill. 26.) And as a corollary of this rule it has been held that other exceptions than those designated by statute cannot be read into it under the rule expressio unius exclusio alterius. People v. Deep Rock Oil Corp., 343 Ill. 388."

Since the only exclusion (exemption) relating to Section 24-1 (a) (7) applies to machine guns, and even as to them, only to a very limited extent, there is no exemption from the law as to "any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black

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powder bombs and Molotov cocktails" regardless of whether it is broken down in a non-functioning state

The General Assembly by setting off in a separate sub-paragraph such inherently dangerous weapons as machine guns, sawed-off shotguns, and bombs and their component parts, indicated its extreme concern over the special dangers resulting from their possession and possible use. This is especially true as to bombs. In certain situations the mere possession of bomb components may be separated from actual use by a great degree of time, both as to capability and availability. On the other hand, certain components, although not combined, are combinable very rapidly and are as susceptible to use as are combined components, the separation from actual use by time, as to both capability and availability, being, in certain circumstances, measurable in mere seconds. In analogous situations under firearm statutes, courts have determined that temporary nonfunctioning does not categorize an item as other than a deadly weapon when an "effective" weapon may be obtained rapidly merely



by: easily assembling the parts; making a slight repair, replacement or adjustment; or inserting a clip or magazine. See People v. Guyette, 41 Cal. Rptr 875 (Cal. App. 1964); Commonwealth v. Colton, 333 Mass. 607 (1956); Commonwealth v. Bartholomew, 326 Mass. 218 (1950).

For these reasons the General Assembly provided that the mere possession or carrying of bombs constituted the unlawful use of weapons without regard to the intent with which they were possessed or carried. It is significant that Chapter 38, Section 20-2 of the Arson statute required a specific intent as follows:

"Possession of Explosives or Explosive or Incendiary Devices. Whoever possesses, manufactures or transports any explosive compound, \* \* \* or incendiary device and either intends to use such explosive or device to commit any offense or knows that another intends to use such explosive or device to commit any offense for which one of the possible penalties is imprisonment in the penitentiary or knows that another intends to use such explosive or device to commit any offense for which one of the possible penalties is imprisonment in the penitentiary shall be imprisoned in the penitentiary from one to 20 years. As amended by act approved Aug. 14, 1967, p. 2972."

The special concern of the General Assembly over

the possession and carrying of bombs is shown not only by defining it as a crime without proof of special intent but also by the difference in penalties provided. Chapter 38, Section 24-1 (b) provides the penalty for carrying a concealed pistol, revolver or other firearm under subparagraph (a) (4) shall be a fine not to exceed \$500 or imprisonment is not to exceed 1 year or both. However, the same paragraph provides that a person convicted of violation of subsection 24-1 (a) (7) shall be imprisoned in the penitentiary from 1 to 5 years.

As noted herein above, an analysis of the comparable sections within the Deadly Weapons Act and comparable statutes indicated the intention of the General Assembly to make the carrying or possession of a bomb or its component parts a felony in Illinois.

The authorities cited herein above indicate the General Assembly provided no exemptions whatever to that specific offense. It is my opinion accordingly that the possession or carrying of components which could be used in the manufacture of black powder bombs

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or Molotov cocktails in close proximity and readily accessible to their possessor constitutes the offense of unlawful use of weapons.

Very truly yours,

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