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SPRINGFIELD
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File No. S-716

CRIMINAL LAW:
Weapons

Honorable Douglas Marti
State's Attorney
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Dear Mr. Marti:

You have requested my opinion on the following:

1. Is a pistol or revolver which is carried in any vehicle considered enclosed in a case when said pistol or revolver is being carried in open view and either fully enclosed in a holster or enclosed in a holster with a snap strap or cover from which the handle of said pistol or revolver protrudes or is visible, and being in compliance with Section 2.33 of the Game Code of 1971. In other words, what is a lawful pistol or revolver case?
2. If the pistol or revolver is enclosed in a case, as an example, a commercially

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made pistol or revolver case which normally has a zipper-type fastener as opposed to the snap-type fastener of a holster, within reach, would such pistol or revolver be considered as being carried in a concealed manner and contrary to Section 24-1 (a) (4) of Chapter 38, Illinois Revised Statutes of 1971?"

In order to answer the first question, it is necessary to determine the meaning of the word "case" as used in section 2.33 of the Game Code of 1971. Ill. Rev. Stat. 1972 Supp., ch. 61, par. 2.33 as amended by Public Act 78-826.

Section 2.33 provides in pertinent part:

"It is unlawful * * * for any person, except persons permitted by law, to have or carry any shotgun, rifle, pistol, revolver or airgun in or on any vehicle, conveyance or aircraft, unless such shotgun, rifle, pistol, revolver or airgun is unloaded and enclosed in a case or to have or carry any bow or arrow device in or on any vehicle unless such bow or arrow device is unstrung or enclosed in a case, except when taking or attempting to take waterfowl as set forth in Section 31 of this Act;"

In determining the words and phrases used in a statute, the words should be given the meaning intended by the legislature. Generally the words used in a statute should

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be given their plain and ordinary, or commonly accepted or popular meaning, unless such construction will defeat the manifest intention of the General Assembly. Dept. of Public Works and Buildings v. Wishnevsky, 51 Ill. 2d 550; Droste v. Kerner, 34 Ill. 2d 495, app. dis., cert. den., 385 U.S. 456.

Webster's Third New International Dictionary defines case: "as a box or receptacle to contain or hold something (as for carrying, shipping or safe keeping)". Clearly, a holster as described in your first question would be encompassed by the above definition.

Webster's Third New International Dictionary defines holster: "as a leather case for a pistol that is often open at the top to facilitate quick withdrawal that often conforms to the pistol's shape" * * * . (Emphasis added.) Therefore, it is my opinion that a pistol or revolver enclosed in a holster with a snap strap or cover from which the handle of said pistol or revolver protrudes or is visible, is contained in a "case" within the meaning of section 2.33 of the Game Code of 1971.

It should be noted that compliance with the provisions of

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section 2.33 of the Game Code of 1971 requires not only that the weapon be enclosed in a case, but also that the weapon be unloaded.

In your second question, you have posed an example where one has a pistol or revolver enclosed in a case, within reach. You then asked if such a weapon would be considered as a concealed weapon. Apparently, this example was posed so as to indicate an apparent conflict between the Criminal Code of 1961 and Game Code of 1971. In answering this question, I will add one additional fact to the example given, that being, the pistol or revolver is unloaded.

Subsection 24-1(a)(4) of the Illinois Criminal Code of 1961 (Ill. Rev. Stat. 1972 Supp., ch. 38, par. 24-1 as amended by Public Act 78-297) provides in part:

"A person commits the offense of unlawful use of weapons when he knowingly 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."

Within the purport of statutes directed against the carrying of concealed weapons, "concealed" has its common,

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ordinary, and well understood signification, meaning to hide, secret, screen or cover. 94 C.J.S. Weapons, sec. 8, p. 494 (1950).

To convict one for carrying a concealed weapon, it must be shown that there is an actual covering or obstructing of the weapon in such a manner as to at least make difficult its recognition as a firearm. (People v. Crachy, 131 Ill. App. 2d 402.) Concealment does not mean that the firearm be carried in such manner as to give absolutely no notice of its presence. It merely requires that the firearm be concealed from ordinary observation. People v. Euctice, 371 Ill. 159.

A pistol or revolver, carried in a vehicle in open view, enclosed in a holster conforming to the weapon's shape, with a snap strap or cover from which the handle protrudes, is not hidden from ordinary observation. Nor does the holster present an impediment to recognition of the weapon.

If the weapon is enclosed in a case which impedes its recognition, there is no doubt as to concealment. However, subsection 24-2(b)(4) of the Criminal Code of 1961 (Ill. Rev. Stat. 1972 Supp., ch. 38, par. 24-2 as amended by Public Acts

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78-255, 78-277 and 78-831) provides in part:

"(b) Subsection 24-1(a)(4) does not apply to or affect any of the following:

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

Therefore, a pistol or revolver broken down into a non-functioning state and completely encased, would, in my opinion, be exempt from the aforementioned Criminal Code provision.

Accessibility has been determined to mean "readily accessible for immediate use". (People v. McClendon, 23 Ill. App. 2d 10, 12.) A pistol contained in a zippered athletic bag placed beside the defendant was held to be accessible. (People v. Foster, 32 Ill. App. 2d 462.) In Foster, it was said: "It would require no more movement or manipulation on the part of the defendant to unzip the bag with a zipper shown by the evidence to be eighteen inches long, than it would to unzip a jacket if worn by the defendant". (Id. 468.) The facts of the Foster case did not disclose whether or not the pistol was loaded.

A loaded pistol located 4 to 6 inches under the seat of

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a car between the driver and transmission hump was held to be "immediately accessible" within the requirements of subsection 24-1(a)(4). (People v. McKnight, 39 Ill. 2d 577, cert. den., 394 U.S. 993.) Thus, if the weapon is unloaded and encased (in other than a holster), it is my belief that it is not immediately accessible. In this instance, to render the weapon available for "immediate use", the removal of the weapon from the case plus loading it, would be required. This would be a time consuming operation dependent upon the type of weapon and case.

I am aware of the fact that the court in People v. Halley, 131 Ill. App. 2d 1070, held that to establish a violation of the statute prohibiting the carrying of a concealed weapon, it is sufficient to show that the weapon possessed the outward appearance and characteristics of a firearm and that it was immaterial that such weapon was unloaded. In Halley, the accessibility of the weapon was not at issue, as the weapon was upon the person of the defendant. Clearly an accessibility problem does exist if the weapon is enclosed completely in a case and in an unloaded condition. The fact the weapon is unloaded becomes quite material in determining whether the

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weapon is accessible for immediate use.

Therefore, in answer to your second question, it is my opinion that an unloaded weapon carried in a case which impedes the recognition of the weapon, is not a concealed weapon as subsection 24-2(b) (4) of the Criminal Code of 1961 exempts such a weapon from the provisions of subsection 24-1(a) (4) of the Criminal Code of 1961.

Very truly yours,

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