

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 20, 1979

The Honorable Leland Davis
House of Representatives
Augusta, Maine 04333

Re: Interpretation of 25 M.R.S.A.
§ 2031.

Dear Representative Davis:

Your request for an opinion regarding four questions concerning concealed weapons has been referred to me for response. Your questions, in substance, are as follows:

- 1) Whether a person possessing a valid concealed weapons permit may legally use the weapon listed on the permit to shoot animals caught while trapping.
- 2) Whether it is illegal for a person to have an encased knife attached to one's belt while hunting where such knife is covered by a jacket.
- 3) Whether it is illegal to carry a loaded pistol or revolver in a holster while hunting where the pistol or revolver is covered by a jacket or coat.
- 4) Whether it is illegal to place an unloaded gun or pistol in the glove compartment of a car or truck.

The paragraphs below correspond to the questions as they are numbered above.

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1. The discharge of a firearm to shoot an animal caught while trapping is unrelated to the possession of a valid concealed weapons permit. The question of whether a particular animal caught while trapping may be shot with a firearm is governed by the hunting laws and not by the concealed weapons permit law. Thus, the possession of a valid concealed weapons permit does not give the person a greater or lesser right to use the weapon to shoot game. If the conduct is legal under the hunting laws, the use of the weapon covered by the person would not by itself make the conduct unlawful.

2. 25 M.R.S.A. §2031 provides that:

No person...shall wear under his clothes or conceal about his person any firearm,...bowie knife, dirk, stiletto or other dangerous or deadly weapon: except that the chief of police or city marshall of any city or the selectman of any town may upon written application thereof issue to any legal resident of such city or town of good moral character, a certificate setting forth that such person has been duly licensed to carry such weapon mentioned in the certificate.

As a preliminary matter, it should be noted that section 2031 does not prohibit the concealment of every kind of knife. The Legislature specifically included only the terms "bowie knife", "dirk" and "stiletto." Under the ejusdem generis rule of statutory construction, where general words follow an enumeration of things with specific meaning, the general words apply to things of the same kind or class as those specifically mentioned. State v. Ferris 284 A.2d 288, 290 (Me. 1971). To determine what other kinds of knives the Legislature intended to include under the concealed weapons law it is necessary to consider the characteristics of the included terms. The characteristics common to a bowie knife, a dirk and a stiletto are a straight, pointed, dagger-type blade capable of inflicting death, and primarily fitted for stabbing. State v. Giltner 56 Haw. 342, 375, 537 P.2d 14, 16 (1975). It is uncertain whether a hunting knife can be said to be primarily fitted for stabbing. Yet, section 2031 could be interpreted to include an encased hunting knife because of its similarity to a bowie knife, whereas a pen knife or a pocket knife would probably not be included within the statute. See People v. Syed Shaw 91 Cal.App.2d 716, 720, 205 P.2d 1081, 1083 (1949). Beyond these general considerations, whether a particular knife comes within the terms of the concealed weapons statute is a factual question that must be determined on an individual case-by-case basis.

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Your question refers to a person wearing an encased knife covered by a jacket while hunting. The statutory language clearly states that a person must not "wear under his clothes or conceal about his person" certain weapons. In order for a weapon to be "concealed," as that term applies in Maine law, it need not be invisible; rather, a weapon is concealed if it is carried under clothing "in such a way as to escape notice by anyone only casually observing" the person. State v. Gwinn 390 A.2d 479, 482 (Me. 1978). A person whose encased knife is covered by a jacket would, for the above reasons, be wearing a statutorily specified weapon under his clothes or concealing it about his person. Since the statute makes no reference to exceptions to the rule where a person is engaged in a certain activity, the fact that a person is hunting while doing the activity described in your question is irrelevant.

In summary, unless a person had a concealed weapons permit to carry a certain knife it would be unlawful for him to have an encased knife attached to his belt while hunting where the knife is covered by a jacket.

3. The same reasoning used in response to question No.2 applies to question No.3. The only difference in the questions is that a different weapon is being carried, a firearm in No.3 as opposed to a knife in No.2. The statute set forth above includes firearms, regardless of whether they are loaded.

Again, unless a person had a valid concealed weapons permit to carry a specific firearm, it would be illegal to carry a loaded pistol or revolver in a holster while hunting where the pistol or revolver is covered by a coat or jacket.

4. Preliminarily, it must be noted that your question concerns unloaded firearms in a motor vehicle. Where a firearm is loaded and in a motor vehicle, a different question is presented, see 12 Me.Rev.Stat. Ann §2456 (1978 Supp.), and that question will not be considered in this opinion.

As set forth above, section 2031 provides that "[n]o person shall...conceal about his person any firearm... The problem presented by your question is whether the statutory language "about his person" would include a glove compartment. Although Maine courts have not interpreted the language in question here, the plain meaning of statutory language is generally considered controlling by the courts on the issue of what the Legislature intended. See, e.g., State v. Snow, 383 A.2d 1385, 1388 (Me.1978). Thus, an individual concealing something "about his person" could do so not only by concealing the thing near his body or in his clothes but also by putting the thing near the place which he is occupying. Such an interpretation would embody the legal notion

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of "constructive possession", that is, the power and intention to exercise dominion or control over a particular thing. In determining whether a person is in constructive possession of a firearm, courts focus on the accessibility and availability of the weapon to the person. Mack v. State, 312 A.2d 319, 322 (Del. 1973); State v. Kelly 507 P.2d 837, 839 (Or.App.1973).

In the absence of specific facts it is difficult to say with certainty whether a driver of a car or truck would be in violation of the concealed weapons law by putting an unloaded gun or pistol in the glove compartment. In most circumstances, however, the plain meaning of the statute suggests that either the driver of the car or truck or a front seat passenger who places a firearm in the glove compartment may well be in violation of the law, where that person did not have a valid concealed weapons permit for the firearm. Indeed, one state court held a person to be unlawfully in "possession" of a pistol which was inside a tool box in the trunk of the car he was driving, State v. Atkinson 215 Kan.139, 523 P.2d 737 (1974). Although the particular facts of a case would alone be determinative, a person wishing to carry a firearm in the glove compartment of his car would be well advised to obtain a permit for the firearm.

I hope this answers your questions. If I can be of any further assistance to you, please feel free to contact me.

Very truly yours,



MICHAEL E. SAUCIER
Assistant Attorney General

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