



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

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Washington, DC 20226

www.atf.gov

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Mr. Chuck Canterbury
National President
Fraternal Order of Police
309 Massachusetts Avenue, NE
Washington, DC 20002

Dear Mr. Canterbury:

This letter is in response to your inquiry concerning whether 18 U.S.C. § 926B and § 926C supersede State laws concerning large capacity ammunition feeding devices (magazines). Specifically, you are requesting an opinion as to whether 18 U.S.C. § 926B and § 926C would allow a qualified law enforcement officer or retired law enforcement officer to not only carry a concealed firearm but also allow him to carry a concealed firearm with a magazine that is restricted by State law.

As you are aware, 18 U.S.C. § 926B and § 926C permit, under certain conditions and with certain exceptions, a qualified law enforcement officer or qualified retired law enforcement officer to carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, notwithstanding any other provision of the law of any State or any political subdivision.

Firearm is specifically defined in 18 U.S.C. § 921(a)(3) as:

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. § 926B and § 926C specifically limit the definition of firearm in subsection (e) of both sections and reads:

As used in this section, the term "firearm" does not include—

- (1) any machinegun (as defined in section 5845 of the National Firearms Act);
- (2) any firearm silencer (as defined in section 921 of this title); and
- (3) any destructive device (as defined in section 921 of this title).

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As you can see, the statute was carefully drafted by limiting the existing statutory definition of firearm to include only particular firearms. Congress could also have taken this opportunity to broaden the definition to include firearms parts, including magazines, but did not. As such, it does not appear that this section would impact State laws that regulate magazines. However, if the State law restricted a firearm that incorporates a high capacity magazine, sections 926B and 926C would supersede that law. If the law only restricts magazines, it is clear that the law would not be superseded.

For example, if a State law restricts a *firearm* that can accept a magazine that holds more than ten rounds of ammunition, that law would be superseded. However, if a State has a law that restricts *magazines* that hold in excess of ten rounds of ammunition, that law would not be affected.

Unlike other provisions of the Gun Control Act (GCA), sections 926B and 926C expressly preempt State law. Accordingly, we believe it is appropriate to strictly construe these new provisions of law so that States have the opportunity to enforce their laws to the fullest extent possible. Congress limited the application of sections 926B and 926C to "concealed firearm[s]" and did not include magazines or ammunition in these sections.

Further, 18 U.S.C. § 927 specifically limits the impact that the sections in this chapter will have on State laws:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

Since there is no direct conflict in restricting magazines as opposed to firearms, it is clear that those laws which are applicable only to magazines would not be superseded by these sections.

We trust that this has been responsive to your question. Should you have any further questions, please do not hesitate to contact us.

Sincerely yours,

A handwritten signature in black ink, appearing to be "D. Chipman", with a long horizontal line extending to the right.

David H. Chipman
Chief, Firearms Programs Division