



COMMONWEALTH of VIRGINIA

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Colonel W.S. Flaherty
Superintendent
Department of State Police
Post Office Box 7472
Richmond, Virginia 23261-7472

Dear Colonel Flaherty:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505(A) of the *Code of Virginia*.

Issues Presented

You inquire whether a trust may register a machine gun in Virginia under the Uniform Machine Gun Act (the "Act").¹ Should the answer be in the affirmative, you further inquire who must be in possession of the machine gun to remain in compliance with the Act, and what action must be taken when a trustee of the trust is substituted.

Response

It is my opinion that a trust may not register a machine gun pursuant to the Uniform Machine Gun Act as enacted by the Virginia General Assembly.²

Applicable Law and Discussion

The Act requires the registration of every machine gun in the Commonwealth with the Department of State Police, and provides for no exceptions to this requirement.³ In relevant part, § 18.2-295 provides that

Every machine gun in this Commonwealth shall be registered with the Department of State Police within twenty-four hours after its acquisition or, in the case of semi-automatic weapons which are converted, modified or otherwise altered to become machine guns, within twenty-four hours of the conversion, modification or alteration [T]o comply with this section the application as filed shall be notarized and shall show the model and serial number of the gun, the name, address and occupation of the person

¹ VA. CODE ANN. §§ 18.2-288 through 18.2-298 (2009).

² Based upon the conclusion reached herein that a trust may not register a machine gun under the Act, it is not necessary to address your additional inquiries.

³ See § 18.2-295.

in possession, and from whom and the purpose for which, the gun was acquired or altered. The Superintendent of State Police shall upon registration required in this section forthwith furnish the registrant with a certificate of registration, which shall be valid as long as the registrant remains the same.

The Act defines a “machine gun” as “any weapon which shoots or is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.”⁴ In addition, § 18.2-297 provides that “[t]his article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.”

The Act further provides that the term “person” applies to and includes any “firm, partnership, association or corporation.”⁵ A trust⁶ is not listed, and thus, I conclude that the General Assembly did not intend to include a trust among the non-natural person, *i.e.*, “legal,” entities that might be considered a “person” for purposes of the Act’s regulatory scope.^{7,8} Indeed, this omission is particularly noteworthy because the general definition of “person” found in § 1-230 includes “trust” among the other legal entities listed.⁹ When the legislature omits language from one statute that it has included in another, courts may not construe the former statute to include that language, as doing so would ignore “an unambiguous manifestation of a contrary intention” of the legislature.¹⁰ The maxim “*expressio unius est exclusio alterius*” “provides that mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.”¹¹ Thus, I conclude that by omitting the word

⁴ Section 18.2-288(1).

⁵ Section 18.2-288 (3).

⁶ A “trust” is defined generally as

The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*).

BLACK’S LAW DICTIONARY 1513 (7th ed. 1999). For the purposes of your inquiry, I conclude that you intend to use the term “trust” in accordance with this general definition. In Virginia, most forms of trusts are governed by the terms of the Uniform Trust Code. *See* VA. CODE ANN. § 64.2-700 through 64.2-808 (2012 & Supp. 2013). *See especially* § 64.2-704 (2012) (providing that “The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of the Commonwealth.”).

⁷ “When construing a statute, our primary objective is ‘to ascertain and give effect to legislative intent,’ as expressed by the language used in the statute.” *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 230 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 877, 882 (2011)) (further citation and internal question marks omitted). In addition, “[r]ules of statutory construction prohibit adding language to or deleting language from a statute.” *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706, 733 S.E.2d 250, 256 (2012) (citing *BBF, Inc. v. Alstom Power, Inc.*, 274 Va. 326, 331, 645 S.E.2d 467, 469 (2007)).

⁸ VA. CODE ANN. § 1-230 (2011) provides that, “[w]henver the term ‘person’ is defined to include both ‘corporation’ and ‘partnership,’ such term shall also include ‘business trust and limited liability company.’” As noted above, this Opinion interprets the term “trust” in its broader, more general usage.

⁹ Section 1-230.

¹⁰ *Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 654, 604 S.E.2d 403, 408 (2004).

¹¹ *GEICO v. Hall*, 260 Va. 349, 355, 533 S.E.2d 615, 617 (2000) (quoting *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992)).

“trust” from the definition of “person” in § 18.2-288, the General Assembly intended that a trust may not register a machine gun under the Act.¹²

You additionally ask, in the event a trust may register a machine gun under the Act, who may be its “person in possession” for compliance with the requirements of § 18.2-295, and what registration-related actions must taken upon a substitution of trustee. In light of the above-noted conclusion, it is not necessary to address these matters.

Conclusion

Accordingly, it is my opinion that a trust may not register a machine gun pursuant to the Uniform Machine Gun Act as enacted by the Virginia General Assembly.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ken C II', with a stylized flourish at the end.

Kenneth T. Cuccinelli, II
Attorney General

¹² The Act does not specifically define the term “registrant.” Nevertheless, based upon the public safety-related, regulatory purposes of the Act, it cannot reasonably be defined more broadly than the term “person.” “[I]t is well established that every act of the legislature should be read so as to give reasonable effect to every word and to promote the ability of the enactment to remedy the mischief at which it is directed.” *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984).