

OPINION NO. 69-024**Syllabus:**

Section 2903.05, Revised Code, prohibits sale or exhibition for sale to minors under sixteen years of age, toy pistols made of hard substances, including air guns, or any form of explosive gun.

To: Donald L. Dodd, Champaign County Pros. Atty., Urbana, Ohio
By: Paul W. Brown, Attorney General, March 5, 1969

I have before me the request of your predecessor for my interpretation of Section 2903.05, Revised Code, which reads in pertinent part as follows:

"No person shall sell or exhibit for sale, to a minor under sixteen years of age, a pistol manufactured of a metallic or hard substance, commonly known as a 'toy pistol' or an air gun, or any form of explosive gun."

In attempting to ascertain the intention of the legislature in enacting a statute prohibiting the sale of toy pistols to minors under sixteen, special attention must be paid to the history of the statute.

As the statute now reads, there is a question whether the legislature intended the phrase "air gun" to further define "toy pistol" since no comma separates the two phrases. In researching the history of the statute, I conclude that the legislature intended "an air gun" to be a restrictive phrase which is for the purpose of clarifying the phrase "toy pistol."

In 1883, Section 6986 of the Ohio Laws prohibiting the sale of toy pistols to minors under the age of fourteen was passed. It referred only to a "toy pistol" and made no reference whatever to an air gun. However, in 1913, Section 6986 (b) of the Ohio Laws was revised and incorporated into the General Code as Section 12966. It read as follows:

"Whoever sells or exhibits for sale, to a minor under sixteen years of age, a pistol manufactured of a metallic or hard substance, commonly known as a 'toy pistol' or air gun, or any form

of explosive gun, shall be fined not less than ten dollars nor more than fifty dollars or imprisoned not less than ten days nor more than twenty days, or both, and be liable in damages to any person injured by such sale."

It will be noted that the phrase "or air gun" was included in this section. The comma which had previously followed the term "toy pistol" was dropped and no mention was made of its omission. So for many years, the pertinent portion of Section 12966 of the General Code read "* * * 'toy pistol' or air gun, * * *."

In 1953 this section of the code was again revised and incorporated into the Ohio Revised Code as Section 2903.05. In final form, the word "an" is inserted to modify "air gun" with the portion of the statute in question now reading "* * * commonly known as a 'toy pistol' or an air gun,* * *." (Emphasis ours).

The question of interpretation, as the law now stands, is centered on the word "an", which was added by the General Assembly when it promulgated the Ohio Revised Code in 1953. The General Assembly makes it clear, however, that the revised statutes will be presumed to bear the same meaning as the original sections and will be so construed unless it appears that a change was intended by the legislature. We can interpret the construction of the statute which has undergone revision and codification to be changed only when the intent of the legislature to make such a change is clear. Part of the reason for the revision in 1953 was to correct typing and spelling errors and also to improve the grammar of the statutes. Since the words "air gun" had no modifier in the General Code, the addition of "an" before "air gun" makes this phrase consistent with "a toy pistol."

As stated in Loftin v. Loew's, Inc., 75 App. 448, 31 O.O. 267:

"When the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification, the revised section will be presumed to bear the same meaning as the original sections, unless it is clearly manifested that the Legislature intended a change."

The same attitude is expressed by the legislature in Section 1.24, Revised Code:

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not new enactments."

In light of the aforementioned statements by the court and the legislature, the addition of the word "an" in the Revised Code does not change the essential meaning of the statute.

However, Section 1.02 (H), Revised Code, states that the word "or" may be read "and" if the sense requires it. In this case, it appears that the legislature wished to include air guns within the broad provisions of toy pistols made of hard substances, but not to limit the prohibition merely to air guns. Thus, the statute should read in pertinent part, "* * * 'toy pistol' and (sic) an air gun, or any form of explosive gun."

Therefore, it is my opinion and you are hereby advised that Section 2903.05, Revised Code, prohibits sale or exhibition for sale to minors under sixteen years of age toy pistols made of hard substances, including air guns, or any form of explosive gun.