

OPINION NO. 68-022

Syllabus:

A tear gas gun or other device which would spray a chemical and upon contact render a person helpless or temporarily incapacitated, but would not cause great bodily harm, and the effects of which last for only a short period of time is not a dangerous weapon as defined in Section 2923.01 of the Revised Code.

To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio
By: William B. Saxbe, Attorney General, January 25, 1968

You have requested my opinion as to whether a tear gas gun, or other device which would spray a chemical and upon contact render a person helpless or temporarily incapacitated would be a "dangerous weapon" and subject to the prohibition of Section 2923.01 of the Revised Code, which provides in pertinent part:

"No person shall carry a pistol, bowie

knife, dirk, or other dangerous weapon concealed on or about his person.* * *

The definition which appears to have been accepted for some years is that a dangerous weapon is one likely to produce death or great bodily harm. As the court stated in United States v. Williams, 2 Fed. 61, 65:

"Whether a particular weapon is a deadly or dangerous one is generally a question of law. Sometimes owing to the equivocal character of the instrument - as a belaying pin - or the manner and circumstances of its use, the question becomes one of law and fact, to be determined by the jury under the direction of the court. But where it is practicable for the court to declare a particular weapon dangerous or not, it is its duty to do so. A dangerous weapon is one likely to produce death or great bodily injury.* * *

See also United States v. Reeves, 38 Fed. 404,407 and State v. Cavender, 243 PAC (Or) 766.

In Price v. United States, 156 Fed. 950, 952 (CA9) it was stated:

"A dangerous weapon is one likely to produce death or great bodily injury. United States v. Williams (CC) 2 Fed. 64. Or perhaps it is more accurately described as a weapon which in the manner in which it is used or attempted to be used may endanger life or inflict great bodily harm."

I am advised that the chemicals used in the devices under consideration are non-lethal and normally do not inflict a great bodily harm.

It is, therefore, my opinion and you are hereby advised that a tear gas gun or other device which would spray a chemical and upon contact render a person helpless or temporarily incapacitated, but would not cause great bodily harm, and the effects of which last for only a short period of time is not a dangerous weapon as defined in Section 2923.01 of the Revised Code.