

2494

PERSON POSSESSING A SUB-MACHINE GUN NOT REQUIRED TO RENEW PERMIT (WHICH ALLOWS THEM TO HAVE CUSTODY OF THE WEAPON) ANNUALLY, AND SUCH PERMIT IS VALID SO LONG AS A VALID BOND FOR \$5,000. IS KEPT WITH ADJUTANT GENERAL—§2923.04, R.C.

## SYLLABUS:

Section 2923.04, Revised Code, does not require the annual renewal of a permit to own, possess, transport, or have custody of a machine gun, light machine gun or submachine gun; and where a permit has been issued under that section, such permit is valid so long as a satisfactory and valid bond in the amount of \$5,000.00 remains on file in the office of the Adjutant General.

Columbus, Ohio, August 29, 1961

Hon. Loren G. Windom, The Adjutant General  
Adjutant General's Department, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Section 2923.04 of the Revised Code of Ohio provides in part that, ‘No person shall own, possess, transport, have custody of, or use a machine gun, light machine gun or submachine gun, unless he first procures a permit therefor from and at the discretion of the adjutant general . . .’ Also: ‘Before obtaining such permit, each applicant shall give bond to this state, to be approved by the adjutant general, in the sum of five thousand dollars, conditioned to save the public harmless. . .’

“The question now arises whether a new, or renewed, permit must be requested and issued annually. If an applicant for machine gun permit has provided required indemnity bond, and has been issued a permit by the adjutant general, is it necessary that said applicant each year, on or before the anniversary date of the permit issued to him, apply for a new machine gun permit? Or, having once been issued, is this permit valid as long as the accompanying indemnity bond remains in force?”

Section 2923.04, Revised Code, provides:

“No person shall own, possess, transport, have custody of, or use a machine gun, light machine gun or submachine gun, unless he first procures a permit therefor from and at the discretion of the adjutant general, or having such permit, use or consent to the use by another of such weapon in an unlawful manner. The adjutant general shall keep a complete record of each permit so issued. A separate permit shall be obtained for each gun so owned, possessed, or used. The adjutant general shall require each applicant for such permit to give an accurate description of such weapon, the name of the person from whom it was obtained, the name of the person to have custody thereof, and the place of residence of the applicant and the custodian. Before obtaining such permit each applicant shall give bond to this state, to be approved by the adjutant general, in the sum of five thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapon while under the control of such applicant or under the control of another with his consent; and any person injured by such improper use may have recourse on said bond. This section does not affect the right of the national guard of Ohio, sheriffs, regularly appointed police officers of municipal corporations regularly elected constables, wardens and guards of penitentiaries, jails, prisons, penal institutions, or financial institutions maintaining their own police force, and such special officers as are authorized to possess and use such weapons when on duty.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.”

A consideration of Section 2923.04, *supra*, indicates that the legislature intended to protect the public by requiring all persons who possess, own, transport or have custody of a machine gun, light machine gun or sub-machine gun to obtain a permit and post a bond of \$5,000.00. The only requirements set forth for the obtaining of a permit are the filing of an application containing certain information and the submission of a bond approved by the Adjutant General in the amount of \$5,000.00. There is no specific requirement or provision which requires the annual filing of an application for renewal and thus it becomes necessary to determine whether such requirement may be implied from the language of the statute.

Section 2923.04, *supra*, does not provide for a fee to offset the cost which would be present if applications were submitted annually nor does it contain any provision which directs the adjutant general to review and deny a permit for certain statutory grounds. The section does state, however, that the permit is issued at the discretion of the adjutant general. Thus, it would appear that the adjutant general may refuse to issue a permit should he decide that to be the proper action.

Section 2943.04, *supra*, further indicates that whenever there is a change in possession, ownership, custody or when someone is transporting one of the specified weapons he must file application and post the necessary bond. This provision seems to indicate that no useful purpose would be served by renewal since the purpose of the statute is served when all persons having control of such weapons are revealed by such applications and the required bonds are posted.

I further note that said Section 2923.04 is a penal statute which regulates the ownership and control of private property and as such must be strictly construed. *State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St., 406. Thus, it is apparent that the statute may not be enlarged by reading into it the additional burden of filing an annual application for such a permit. The statute without such provision serves the purpose of providing a complete list of all persons having any interest in a machine gun and further in compelling such persons to provide a substantial bond to protect the public from the unlawful use of such weapon.

Accordingly, it is my opinion and you are advised that Section 2923.04, Revised Code, does not require the annual renewal of a permit to own, possess, transport, or have custody of a machine gun, light machine gun

or submachine gun; and where a permit has been issued under that section, such permit is valid so long as a satisfactory and valid bond in the amount of \$5,000.00 remains on file in the office of the Adjutant General.

Respectfully,

MARK MCELROY

Attorney General