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Our reference: Mr Kotze

8 March 2016.

Your reference: Mr Herman Els.

The CEO,  
NATIONAL HUNTING AND SHOOTING ASSOCIATION.

Dear Herman,

**OPINION IN RESPECT OF AMOUNT OF AMMUNITION THAT CAN  
BE POSSESSED.**

1. Our discussion on 8 March 2016, when you requested a legal opinion in respect of the following questions refer:
  - 1.1. Whether a person who has a licensed self defence firearm which has been licensed in terms of section 13 of the Firearms Control Act (Act 60 of 2000) (the FCA), but who is also a dedicated hunter or sport shooter, is limited to possess only 200 rounds for the self defence firearm?;
  - 1.2. Whether a person who has obtained a licence as an occasional sport shooter or occasional hunter in terms of section 15 of the FCA, but who has, after the section 15

license has been issued, become a dedicated hunter or dedicated sport shooter, can possess more than 200 cartridges?

In other words, should the dealer who sells the ammunition only look at what is stated on the licence, or is he obliged to sell more than 200 cartridges when the purchaser produces a dedicated hunter's or sports-shooting certificate;

- 1.3. Whether a person who has obtained a license as an occasional sport shooter or occasional hunter for certain firearms in terms of section 15 of the FCA, and thereafter obtains dedicated status and licences a firearm in terms of section 16, can also possess more than 200 cartridges in respect of the firearms that had been licensed in terms of section 15?
  
2. The general interpretation of DFOs and Dealers seem to be that:
  - 2.1. one can not possess more than 200 cartridges for a firearm that has been licensed in terms of section 13 as a self defence firearm;
  - 2.2. That **what is stated on the licence** determines whether a firearm owner may possess more (or less) than 200 cartridges for that particular firearm;
  - 2.3. That one can only possess more than 200 cartridges in respect of firearms that has been licensed under section 16 of the FCA (as dedicated firearms).
  
3. In order to give an opinion, it is important to read section 91 of the FCA carefully. **It provides the following rule:**

“91(1) The holder of a license to possess a firearm **referred to in Chapter 6** may not possess more than 200 cartridges

for each firearm in respect of which he or she holds a licence.”

4. We should interject at this stage and establish which licenses are referred to in chapter 6.

#### CHAPTER 6 LICENCE TO POSSESS FIREARM.

11. Separate licence in respect of each firearm.  
 12. Additional licences.  
**13 Licence to possess for self defence;**  
**14. License to possess restricted firearm for self defence;**  
**15. Licence to possess firearm for occasional hunting or sports- shooting**  
**16. Licence to possess firearm for dedicated hunting and dedicated sports-shooting;**  
 17. Licence to possess firearm in private collection.  
 18. **Permit** to possess ammunition in private collection;  
 19. License to possess a firearm and **permit** to possess ammunition in public collection.  
 20. Licence to possess firearm for business purposes.

5. It is therefore clear that all licences (including self defence and occasional hunting or sports-shooting) are licenses referred to in chapter 6.

6. **The exception** to the rule in (1) reads as follows:

“(2) The limitation in subsection (1) does not apply to-

- a) **a dedicated hunter or dedicated sports person who holds a licence issued in terms of this Act** or any other holder of a license issued in terms of this Act authorized by the Registrar to possess more than 200 cartridges for a

firearm in respect of which he or she holds a license on good cause shown"; (this last part refers to firearm owners who are not dedicated members and who have applied for a permit to possess more than 200 cartridges).

7. The question is whether the words "a dedicated hunter or dedicated sports person who holds a **(should it read "any")** license issued in terms of **(section 16 of)** this act", should be interpreted:

7.1. **restrictively** to mean "a licence issued in terms of **section 16** (my insertion) of the act; or

7.2. **widely** namely **any** (my word for "a") license issued in terms of this act"

8. It is clear that section 91 (2) provides for two categories of firearm owners who can possess more than 200 cartridges per firearm:

8.1. Dedicated Hunters or Dedicated sportspersons; and

8.2. Persons who possess licenses in terms of section 13, 14, 15 or 17 or 20 **who do not have dedicated status**. They must apply for a permit and provide good cause.

9. It is also important to note that the legislature clearly excluded the exception that dedicated hunters and sports- shooter may possess more than 200 cartridges, from ammunition that is held in terms of a permit to collect ammunition in a private collection in terms of section 18(2)(b) and ammunition in a public collection and section in terms of section 19 (3).

10 It can also be argued that if the legislature intended to exclude self defence firearms or firearms licenced in terms of section 15 from the exception, it could have included a similar provision.

- 11 When ordinary words are given their ordinary meaning and the **wide interpretation** is applied, it means that **that once a person obtains dedicated hunter or sports-shooting status, he is entitled to possess more than 200 cartridges for any firearm that has been licensed in terms of the FCA** (and not only the firearm that has a license that has been issued in terms of section 16).
12. When however the **restrictive interpretation** is followed (by accepting that the legislature intended to refer only to licenses that had been issued in terms of section 16) is applied, it is clear that the legislature intended the exception (that more than 200 rounds may be possessed) to apply only in respect of firearms that had been licenced in terms of section 16.
- 13 In order to answer the question which interpretation should be favoured, one should look at the rules of interpretation of statutes.
- 13.1. The golden rule of the interpretation of statutes is set out by the learned author, LC Steyn, in "Uitleg van Wette" on page 2 where he states the following:  
"Dit bring ons dadelik by die eerste reël, 'n reël waaraan alle ander reëls ondergeskil is nl dat indien dit eenmaal vasstaan wat die werklike bedoeling is wat die woorde wil uitdruk, aan daardie bedoeling uiting gegee moet word."
- 13.2. Further on page 2, he states as follows:  
"Duideliker en sterker nog word hierdie reël gestel deur Eckhard waar hy beweer dat hoewel die betekenis van 'n wet uit die

woorde daarvan gehaal moet word, niemand die werklike sin en uitwerking daarvan kan begryp nie, tensy hy ag slaan op die bedoeling daarvan, dws tensy hy oorweeg wat beoog is, en nie net wat geskryf is nie. Want die bedoeling van 'n spreker kom eerste, en is sterker as sy woord. Daarom sê hy moet ons so buitengewoon versigtig wees om ons nie aan die woorde van die wet te hou, teen die wil daarvan te stel nie.”

- 13.3. Our courts have also in the words of Appeal Judge De Villiers in *Principal Immigration officer vs Hawabo and another* (1936 AD 26) accepted the idea that **the intention of the legislature should be the guiding light.**

He states as follows:

*“We are to take the whole statute together and construe it altogether, giving the words their ordinary signification unless when so applied they produce an inconsistency....., so as to justify the court in placing them some other signification, which though less proper, is one which the court think the words will bear”.*

- 13.4. In *R vs Westraad* 1941 OPD page 105 the following is stated about the importance of the legislature’s intention:

*“In construing statutes, the paramount rule to be observed is that the statute is to be expounded according to it’s express and manifest intention.”*

14. It is clear that by just interpreting the words, one can not come to a final conclusion and we should therefore establish what the legislature’s intention was.

15. The act is titled "The Firearms Control Act". The legislature's intention was clearly to control firearms - and ammunition. The intention is also to distinguish between **occasional** and **dedicated** hunters and sports-shooters. The dedicated hunters and sports-shooters are by definition hunters and shooters who are actively involved in hunting or sports-shooting –and therefore shoot more often and probably more rounds per session than occasional hunters or sports-shooters.
16. The legislature's logic was in all probability that occasional hunters and sports-shooters, and owners of firearms used for self defence, should be restricted to possess only 200 rounds for each firearm. (hence the clear rule in section 91 (1)).
17. The legislature also provided that a permit can be issued to possess more than 200 rounds on application to the registrar by an occasional shooter or self defence firearm owner **if good cause is shown.**
18. From the above, it is clear that the legislature had an intention to control the amount of rounds that can be possessed for special categories of firearms.
19. In my opinion it could never have been the legislature's intention that a person, who has dedicated status in respect of shotgun shooting (and buys ammo in boxes of 250 rounds) should also be allowed to possess more than 200 rounds (or an unlimited quantity) for each other firearm that he owns (but only shoots occasionally) or in self defence- merely because he has dedicated sports shooting or –hunting status.

20. **This could clearly not have been the legislature's intention and the wide interpretation can therefore in my opinion not be supported.**

SUMMARY.

21. In my opinion, the words that the legislature used can only be interpreted to mean that a firearm owner can only possess more than 200 rounds of ammunition **in respect of a firearm for which a licence in terms of section 16 had been issued.**
22. The only legitimate way to be able to possess more than 200 cartridges for a self defence weapon, or a firearm that had been licenced in terms of section 15 as an occasional sport or hunting firearm, will be to apply for a permit.

Yours faithfully.



JUAN KOTZE