

**OPINION**

**SECTION 91 OF THE FIREARMS CONTROL ACT 60 OF  
2000**

by

**AJ Louw SC**

for

**Deon Retief Attorneys  
Attention: Mr Cobus Boshoff**

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## OPINION

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1. Instructing Attorney prepared a separate legal opinion regarding the interpretation of Section 91 of the Firearms Act 60 of 2000 ("the Firearms Act") in respect of the quantity of ammunition that can be legally possessed by a holder of a firearm licence.
2. Instructing Attorney requested me to provide an opinion on the matter.
3. According to my instructions the SAPS maintains that only persons issued with Section 16 licences are exempted from the limitation set by Section 91 of the Firearms Act. This interpretation causes that dedicated sportspersons and dedicated hunters to whom a licence were issued in terms of sections other than Section 16, are accused of contravening the provisions of Section 91. Secondly certain ammunition dealers refuse to sell ammunition to such persons (who hold licences other than in terms of Section 16) in quantities greater than 200 cartridges.
4. Section 3(1) of the Firearms Act says that no person may possess a firearm unless he holds for that firearm a licence.

5. Section 11(1) of the Firearms Act says that the Registrar must issue a separate licence in respect of each firearm licensed in terms of Chapter 6 of the Firearms Act.
6. Chapter 6 sets forth the various types of firearm licences that a person may apply for.
7. It goes without saying that the Firearms Act envisages strict control of the possession, licensing and utilisation of firearms.
8. Section 90 of the Firearms Act reads as follows:  

**“90. Prohibition of possession of ammunition**

*No person may possess any ammunition unless he or she –*

  - (a) holds a licence in respect of a firearm capable of discharging that ammunition;*
  - (b) holds a permit to possess ammunition;*
  - (c) holds a dealer’s licence, manufacturer’s licence, gunsmith’s licence, import, export or in-transit permit or transporter’s permit issued in terms of this Act;*

*or*

  - (d) is otherwise authorised to do so.*
9. Section 91 of the Firearms Act reads as follows:

**"91 Restrictions on possession of ammunition**

- (1) *The holder of a licence 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.*
- (2) *The limitation in subsection (1) does not apply to –*
  - (a) *a dedicated hunter, dedicated sports person or a professional hunter who holds a licence issued in terms of this Act or any other holder of a licence issued in terms of this Act authorised by the Registrar to possess more than 200 cartridges for a firearm in respect of which he or she holds a licence on good cause shown;*
  - (b) *the holder of a licence to possess a firearm issued in terms of this Act in respect of ammunition bought and discharged at an accredited shooting range.*

10. Firstly it needs to be pointed out that Section 90 outlaws the possession of ammunition without being in possession of a firearm licence in respect of a firearm capable of discharging the particular ammunition that is in possession of a person. Secondly Section 91(1) then limits a person referred to in chapter 6 (in other words all holders of licences for firearms) to possession of not more than 200 cartridges

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for each firearm in respect of which the person holds a licence. It is only in Section 91(2) that the exception is made that a dedicated hunter and dedicated sportsperson or a dedicated professional hunter who holds a licence issued in terms of the Firearms Act is then exempted from the 200 cartridges limitation. In addition a person who is not a dedicated hunter, dedicated sportsperson or a professional hunter may show good cause to the Registrar and on good cause shown the Registrar may allow him to possess more than 200 cartridges for a firearm in respect of which he holds a licence.

11. Instructing Attorney came to the conclusion that Section 91(2)(a) of the Firearms Act is intended at exempting a class, namely dedicated hunters or dedicated sportspersons or professional hunters.
12. Unfortunately, and after some contemplation of the persuasive argument presented by Instructing Attorney, my view still differs from the view of Instructing Attorney. I am namely of the view that in order for a person to be in possession of more than 200 cartridges for any type of firearm for which he holds a licence, the holder of the licence must either be issued with a dedicated hunter's licence or a dedicated sportsperson's licence or a professional hunter's licence or must specifically be authorised by the Registrar to possess more than 200 cartridges for that licensed firearm.

13. The reasons for this view are as follows:

13.1 The Firearms Act envisages strict control over firearms and ammunition.

13.2 A person may only be in possession of ammunition for which he holds a licence capable of discharging that (particular) ammunition.

13.3 The intention of this legislation is to serve the public benefit. Accordingly an interpretation that the Legislator intended to limit the interference with the rights of its citizens only within the narrowest limits, would not apply. The sole object of the interference by the Firearms Act is to benefit the public and accordingly the ordinary presumption in favour of the least possible interference with the rights of persons does not apply.

See: Stellenbosch Divisional Council v Myburgh 5 SC on 13

Cape Provincial Administration v Honiball 1942 AD 1

at 14.

13.4 The reference in Section 91(2)(a) to a dedicated hunter, dedicated sportsperson and a professional hunter "who holds a licence issued in terms of this Act" is a reference to a different type of licence than the licence referred to in the second part of

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Section 91(2)(a). After the word "or" in Section 91(2)(a) there is reference to "any other holder of a licence issued in terms of this Act" who then is a person who showed good cause to the Registrar and along that route obtained permission to hold more than 200 cartridges for a specific licensed firearm. The wording could have been clearer but in my respectful view the Legislator intends here to refer to persons licensed as dedicated hunters, sportsmen or professional hunters on the one hand and licensed persons (of other types of licences as referred to in chapter 6) who have permission from the Registrar to be in possession of more than 200 cartridges for a particular licensed firearm.

14. A person holding a licence that is not a dedicated hunter's licence or dedicated sport's licence or professional hunter's licence will perforce have to apply for a licence in one of the categories which allows him to be in possession of more than 200 cartridges if he wishes to avoid the limitation of Section 91(1). In this regard the possession of ammunition and the licence for the firearm enabling possession of the particular type of ammunition are inextricably linked to each other as is clear from Sections 11(1) and 90. In addition it naturally would also be possible for a holder of a licence to which the 200 cartridges limitation apply, to ~~it~~ not to in writing apply to the Registrar for permission to hold more than 200 cartridges for that particular firearm on grounds thereof that, in due course, an application for one or more of the exempted forms of

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licence would be applied for.

15. In my opinion, therefore, the privileges attached to a dedicated hunter's licence or dedicated sportsperson's licence or a professional hunter's licence can only be enjoyed if a person holds that particular type of licence. In addition I am unfortunately constrained to say that a person, whatever his dedicated status might be, contravenes Section 91(1) if that particular person is not the holder of one of the dedicated type of licences referred to in Sections 16 and 16A of the Firearms Act.



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ABRAHAM LOUW SC

HIGH COURT CHAMBERS  
PRETORIA

12 AUGUST 2013