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STATEHOUSE MAIL

Per Request for Attorney General Opinion

ISSUE PRESENTED

You have asked for an opinion regarding the constitutionality of § 36-401, Idaho Code. Specifically, you question whether this statute imposes a form of licensure or registration upon ownership or possession of firearms prohibited by article 1, § 11, of the Idaho Constitution.

CONCLUSION

Because the intent of Idaho Code § 36-401 is only to punish a use of firearms by unlicensed hunters, it has not been made unconstitutional by subsequent amendment of article 1, § 11, Idaho Constitution. So long as a charge under Idaho Code § 36-401 presents proof of both a criminal act (being unlicensed and in possession of an uncased firearm while in the fields and forests of the state), and criminal intent (intent to engage in hunting), the law is constitutional and enforceable.

ANALYSIS

Idaho Code § 36-401 was enacted March 12, 1976. Those sections of the statute which are pertinent to the present inquiry have remained unchanged since adopted. The statute provides:

It is a misdemeanor for any person to hunt, trap, or fish for or take any wild animal, bird, or fish of this state or have in his possession any uncased firearm while in the fields or forests of the state, without first having procured a license (emphasis added).

The statute in its present form then provides 14 instances where no license is required. Relevant exceptions will be discussed below.

On November 7, 1978, the citizens adopted an amendment to article 1, § 11, of the Idaho Constitution which deals with the right of citizens to keep and bear arms. Prior to the 1978 enactment, this section read:

Right to bear arms. -- The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.

Through its 1978 amendment, this section now sets out ways in which the legislature may and may not regulate firearms. It now reads:

Right to keep and bear arms. -- The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon,

nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration, or a special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony (emphasis added).

At issue, then, is whether Idaho Code § 36-401 has been rendered unconstitutional on its face by the amendment to the constitution. At first glance there appears to be reason to question the constitutionality of the statute because the statute appears to require licensure of persons having possession of firearms and the constitutional provision explicitly provides that: "No law shall impose licensure ... on the ownership or possession of firearms or ammunition."

Legal analysis cannot end with the mere highlighting of the word "possession" in the statutory and constitutional clauses and the hasty conclusion that the statute has, therefore, been nullified by the constitutional amendment.

Legal analysis must commence with recognition of the well-established principle that a statutory enactment is presumed to be valid until clearly shown to run afoul of the state's constitution. In a recent criminal case, the Idaho Supreme Court upheld Idaho's drug paraphernalia law against a facial challenge to its constitutionality. The court said: "It is hornbook law that legislative enactments are presumed constitutional and that appellate courts are obligated to seek an interpretation of the statute which upholds its constitutionality." (citations omitted) State v. Newman, 108 Idaho 5, 13, 696 P.2d 856 (1985).

The first step in finding an interpretation of a statute which upholds its constitutionality is to determine what it is that the legislature intended by its enactment. Idaho Code § 36-401 is the first section within chapter four of title 36, which chapter is entitled: "Licenses to hunt, fish and trap." The legislature's concern could not be more apparent; chapter four sets out laws dealing with the subject of hunting, not with the licensing or registration of firearms. A close reading of

Idaho Code § 36-401 focuses even more clearly the legislature's intent to prohibit hunting or attempted hunting of Idaho's fowl and other game without being licensed. The statute does not prohibit mere possession of a firearm without licensure; rather, the statute punishes a form of firearm use: Being in the fields and forests of the state with an uncased firearm while in the activity of hunting. "Uncased firearm" is not defined in the law but presumably refers to a firearm which is not encumbered, packaged, or protected by a sheath, scabbard, or other container; if operational and loaded, it would be in a condition ready to be discharged.

Therefore, Idaho Code § 36-401 quite apparently prohibits an intended use of a firearm for hunting shown by the carrying of a firearm while in fields and forests -- places where one would go to hunt game and fowl. The statute creates a prima facie case of unlawful use of a firearm during hunting by inferences which may be drawn from the following facts:

1. The person is in the fields or forests of the state without a license to hunt.
2. The person is in possession of an uncased firearm (presumably, one which is ready for use).
3. The person does not fit into any of the exemptions listed in the statute, i. e.:
 - a. The person is not in field or forested property owned, leased, or controlled by that person, or on adjoining property for the purpose of taking predatory animals. Idaho Code § 36-401(a).
 - b. The person is not carrying the uncased firearm for protection of life and property. Idaho Code § 36-401(k).

It is difficult if not impossible to postulate a scenario in which the statute would be applied unconstitutionally to mere possession of a firearm. Nevertheless, as with any prima facie case, a prosecution for violation of § 36-401(a)(k) can be controverted by evidence of innocuous possession without intent to hunt or by some other reasonable, lawful explanation for the

conduct which, as applied to the particular facts, would make application of the statute conflict with the constitution.

There are, of course, many statutory provisions which give rise to a prima facie case against an accused. It is not, therefore, persuasive to object that Idaho Code § 36-401 creates an unlawful or unconstitutional presumption against the accused so long as the jury is properly instructed. Idaho Rule of Evidence 303(a) and (b) provide guidance for such cases:

(a) Scope. Except as otherwise provided by statute, in criminal cases, presumptions against an accused ... including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(b) Submission to jury. The court shall not direct the jury to find a presumed fact against the accused. The court may submit the question of guilt or the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt on the presumed fact beyond a reasonable doubt.

This statute does not abrogate the basic principles of criminal justice. If a charge is brought for violation of Idaho Code § 36-401 for failure to obtain a license to hunt, the state continues to have the burden of proving unlawful hunting from the inferences created by the statute and reasonably suggested by the facts of the case. This, like other criminal code sections, can only be violated by union of criminal act (possession of an uncased firearm while in the fields and forests) and criminal intent (to hunt without a license). Idaho Code § 18-114. Possession of an uncased firearm in such a setting will also supply part of the proof of intent to hunt since intent is manifested by the circumstances connected with an offense. Idaho Code § 18-115.

It should be clear to any reasonable person of ordinary understanding that Idaho Code § 36-401 prohibits possession of

an uncased firearm while in the fields and forests of this state without a license to hunt while being in the act of or intending to hunt. The intent to hunt is implicit in the statutory description of the prohibited act and by the context of the section.

CONCLUSION

The prohibition of Idaho Code § 36-401 is quite exoteric. The statute prohibits the possession of an uncased firearm while a person is in the forests and fields intending to hunt without a license. Giving the words of Idaho Code § 36-401 a meaning consonant with the legislature's intent in enacting the statute, the law conforms to article 1, § 11, of the Idaho Constitution.

AUTHORITIES CONSIDERED:

Article 1, § 11, Idaho Constitution

Idaho Code § 36-401

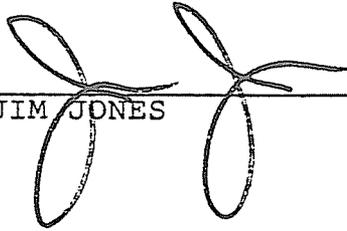
Idaho Code §§ 18-114, 115

Idaho Rules of Evidence 303(a) and (b)

State v. Newman, 108 Idaho 5, 13, 696 P.2d 856 (1985)

DATED this 2nd day of July, 1986.

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