

All,

The San Juan County Sheriff's Office has concluded our inquiry into the lawfulness of "gun buyback" programs as they relate to non-profit groups partnering with law enforcement and if a background check is necessary to satisfy New Mexico State statute 30-7-7.1 *Unlawful sale of a firearm without a background check*. The question of the lawfulness of such events was brought to my attention by concerned San Juan County citizens during a planned gun buyback event scheduled for December 8, 2023 coordinated by 'New Mexicans to Prevent Gun Violence' (NMPGV) in partnership with the Farmington Police Department. The event was cancelled to allow for further community input.

During our inquiry, we learned through a NMPGV Facebook post members of NMPGV (to include Co-President Miranda Viscoli) returned to Farmington on or about December 16, 2023 and went to residences of citizens who were planning to attend the cancelled event and received firearms. Law enforcement was not involved, and no stolen firearm checks were conducted. On or about December 18, 2023, Viscoli gave an interview on 'Krazy KALH' stating during NMPGV December 16th return to Farmington, one gift card was given in exchange for a firearm. An inquiry into whether a non-profit group could conduct their own gun buyback program without partnering with law enforcement was conducted based on the post and interview.

The same NMPGV Facebook post highlighting their non-law enforcement involved event in Farmington included a photo of firearms that had been cut in half. The photo and multiple other photos obtained from NMPGV social media and website showed dozens of guns cut in a similar manner. This expanded our inquiry once again as these firearms were not destroyed per Alcohol, Tobacco, & Firearms (ATF) regulations/methods and are still considered firearms. The cut firearms are taken by NMPGV to Albuquerque schools to be made into gardening tools and musical instruments to further NMPGV programs.

The San Juan County Sheriff's Office and San Juan County District Attorney's Office asked for a legal analysis by the New Mexico Attorney General's Office in reference to the legality of non-profit groups not having to undergo background checks on firearms they purchase while conducting their gun buyback program with and without law enforcement. We also forwarded our findings of firearms not being properly destroyed to the ATF due to this being a federal violation.

Non-profit gun buyback programs conducted with law enforcement (legal):

In summary, it is the opinion of the New Mexico Attorney General's Office (AG) that non-profit groups can partner with law enforcement in a gun buyback event without having the seller or buyer undergo a background check. These types of events would be viewed as a sale to law enforcement that is exempt under the law. The AG was not provided photos of NMAGV gun destructions. In the AG's opinion, a "firearm" is defined according to NM State Statute 30-7-7.1 (*any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; and includes any handgun, rifle or shotgun; but shall not include an antique firearm as defined in 18 U.S.C. Section 921(16), a powder-actuated tool or other device designed to be used for construction purposes, an*

emergency flare or a firearm in permanently inoperable condition). However, New Mexico has no definition of what is considered “permanently inoperable condition”. In the AG’s opinion, they refer to a surrendered firearm as being “shredded” and being placed in a “metal shredder”. Shredding is an approved method of destruction by the ATF. Photos of the firearms obtained in Farmington and other gun buyback events in New Mexico show NMAGV are not shredding firearms but cut them in half with a chop saw (equal to a bandsaw). This is not allowed by ATF. The ATF provides the public information on how to properly destroy firearms on their website. Acceptable methods of destruction is to completely melt (smelt), shred or crush the firearm receiver. Torch cuts are accepted alternatives to shredding (specific to cut locations and the number of cuts that need to be made). An unserviceable firearm is not destroyed and is still regulated as a “firearm” under federal law. The Farmington Police Department was sent an email from NMAGV containing a document titled, “What to expect from us”. This document outlines what will occur during the buyback event. Item #5 on the document states, “*We will dismantle all guns onsite to ATF standards and remove all scraps from the premises.*” This same document has been given to other law enforcement agencies participating in NMAGV gun buyback events.

I would strongly encourage law enforcement agencies participating in gun buyback events (with and without non-profit entities) to review the ATF website on how to properly destroy firearms according to ATF regulations prior to the event.

(The letter dated January 9, 2024 addressing the AG’s opinion on this matter is attached).

Non-profit gun buyback programs conducted without law enforcement (legal/ not legal):

In summary, Without the participation of law enforcement, a gun buy-back event might violate the background check law if a non-profit entity provides “consideration” (defined as anything of value exchanged between the parties to a sale) in exchange for the transfer of a firearm and does not conduct a background check. When a non-profit entity exchanges a gift card for a firearm (absent law enforcement) that makes the gift card a sale. However, such an event would not require background checks in the absence of providing consideration. The background check law does not apply to the transfer of a firearm as a gift or donation.

If an individual surrenders (gift or donation) to a non-profit entity without consideration and destroys it, and provides, after the destruction, a gift card in appreciation for the surrender, the gift card may not be viewed as “consideration” because it would be provided in exchange for a destroyed item. According to the AG’s opinion in these scenarios, it would assume that the non-profit entity makes no promise of something of value to the individual surrendering the firearm before the exchange occurs. Therefore, this type of event would not be a gun buyback, but a donation event with no advertisement of gift cards.

In this opinion, the AG states “Even though there may be limited situations in which a gun buyback event operated without law enforcement’s participation would not trigger the requirement of a background check, we emphasize that it would be prudent to conduct such events only in association with law enforcement. A law enforcement presence provides an added measure of safety in conducting such an event. In addition, police officers have the authority to enter the serial

numbers of a firearm into the National Crime Information Center to determine whether a firearm has been reported stolen, and police officers can determine whether a firearm should be preserved in the event it is later found to be evidence of a crime. Law enforcement are also able to determine whether a certain destruction method satisfies ATF regulations. In sum, there may be lawful methods of conducting a gun buyback event without the presence of law enforcement and without conducting background checks, but it would be a better practice to have law enforcement present and involved in these events”.

Our Sheriff’s Office attempted to reach Farmington residents that participated in NMAGV (non-law enforcement) gun buyback but received no response. NMAGV advertises their events as anonymous. No stolen firearm check was conducted on the firearms, and we do not know the firearms location due to them being removed from San Juan County. The event was advertised with the value of firearms to be bought through the Farmington Police Department and NMAGV. According to NMAGV social media, the individuals who participated in their non-law enforcement gun buyback had planned to attend the cancelled Farmington Police Department event. Based on the opinion of the AG and what we have gathered, NMAGV may have inadvertently violated New Mexico State statute 30-7-7.1 *Unlawful sale of a firearm without a background check.*

(The letter dated March 4, 2024 addressing the AG’s opinion on this matter is attached).

Violation of ATF firearms destruction regulations:

Photos of NMAGV gun buyback events showing single cut firearms, the method used, and firearms not properly destroyed that had been converted into musical instruments by public school(s) in Albuquerque were forwarded to the ATF for review. These photos were analyzed by ATF and deemed to be improperly destroyed.

In the state of New Mexico “a firearm in permanently inoperable condition” is not considered a firearm; however, “permanently inoperable condition” is not defined in New Mexico State law. Federal law does define *permanently inoperable* (27 CFR 479.11) as “*a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to fire condition. An acceptable method of rendering most firearms permanently inoperable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearm permanently inoperable. Contact ATF for instructions*”. In their opinion the AG states, “These ATF regulations, while not binding on New Mexico, are persuasive in interpreting the legislative intent in section 30-7-7.1”. The New Mexico legislation needs to define “permanently inoperable condition” to interpret our laws.

The ATF and United States Attorney’s Office have held a meeting with NMAGV Co-President Miranda Viscoli in reference to federal firearms violations and to educated NMAGV on the proper firearms destruction. ATF has also offered hands-on training to NMAGV members on proper firearms destruction methods.

Conclusion:

In 2019, '30-7-7.1- *Unlawful sale of a firearm without a background check*' became law. Law enforcement was vocal that this would be a difficult law to enforce and would most likely be a secondary offense to another crime. I would suspect this law has been enforced very few times if any. Some new laws require revisions over time to clarify legislative intent and other times case law is made. I do not feel it was the intent of NMAGV to purposely violate New Mexico law; although they assisted in drafting this law. It would be in the best interest of NMAGV to accept ATF's offer to be educated on the proper destruction of firearms.

I would like to thank the New Mexico Attorney General's Office (Now the New Mexico Department of Justice), the San Juan County District Attorney's Office, ATF Albuquerque, and San Juan County Sheriff's Office Detective J. Courtney for their assistance in this inquiry.

Respectfully,

Sheriff R. Shane Ferrari
San Juan County, N.M.