

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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District Attorney Rick Tedrow
Eleventh Judicial District Attorney's Office, Division I
335 South Miller Ave.
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SENT VIA EMAIL TO: RTedrow@da.state.nm.us; ferraris@sjcso.com

Dear District Attorney Tedrow:

The Attorney General's Office received an inquiry about the lawfulness of non-profit gun buy-back programs and, specifically, about whether such an event would result in a crime for selling a firearm without a background check, as proscribed in NMSA 1978, § 30-7-7.1 (2019). We are providing your office our legal analysis of the issue because the inquiry we received referred to a gun buy-back event in Farmington. After analyzing the language and purpose of Section 30-7-7.1, we conclude that gun buy-back programs in the form described below do not violate this provision.

Gun buy-back events are designed to function as a community safety tool. In our experience, these events operate in the following way. A non-profit entity coordinates with law enforcement to set up the event, which is typically advertised to the public by the non-profit entity. The event is designated as being "no questions asked" to encourage the donation of illegally possessed firearms. At the event, individuals provide law enforcement officers with their donated firearms. A non-profit worker, in turn, gives these individuals a gift card. The dollar amount of the gift card is unrelated to the value, type, or condition of the firearm. When law enforcement officers take possession of a firearm at the event, they run the serial number through the National Criminal Information Center to determine whether the firearm has been reported as having been stolen. If the NCIC search is negative, the law enforcement officer provides the firearm to a non-profit worker, who immediately places the firearm in a metal shredder in the presence of the law enforcement officers. The shredded metal is then used to forge gardening tools, musical instruments, and other functional items. Gun buy-back events are also sometimes handled

exclusively by law enforcement agencies, with donated firearms being retained by the law enforcement agency in case they are eventually determined to be evidence of a gun crime.

Section 30-7-7.1 requires a federal instant background check with the sale of a firearm subject to certain exceptions and makes it a misdemeanor if a buyer or seller violates the provision. Section 30-7-7.1(C)(5) defines a “sale” as “the delivery or passing of ownership, possession or control of a firearm for a fee or other consideration.” The statute further defines “consideration” as “anything of value exchanged between the parties to a sale.” Section 30-7-7.1(C)(1). A firearm for purposes of this statute means “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*.” (Emphasis added.) The statute does not define “possession.”

This statute excludes from the background check requirement the sale of a firearm “to a law enforcement agency,” “between two law enforcement officers authorized to carry a firearm,” and “between immediate family members.” Section 30-7-7.1(B)(2)-(4). If a firearm is purchased by a business or other entity, “each natural person who is authorized by the buyer to possess the firearm *after the sale* shall undergo a federal instant background check before taking possession of the firearm.” Section 30-7.7.1(A)(1) (emphasis added).

The goal of statutory construction is to give effect to the intent of the Legislature. *Leger v. Leger*, 2022-NMSC-007, ¶ 26. The plain language of a statute is the primary indicator of legislative intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11. The Legislature’s intent may also be discerned through the history of the statute and the purpose the Legislature sought to accomplish. *Leger*, 2022-NMSC-007, ¶ 26.

The plain language of the statute shows that a federal instant background check is not required at the type of gun buy-back event described above. Notably, Section 30-7-7.1 does not apply to the transfer of a firearm as a gift. As a result, there is no question that an individual could donate a firearm to a non-profit entity without being subject to the statute. Section 30-7-7.1 instead requires a “sale,” and a sale is a transfer of ownership, possession, or control. At a gun buy-back event, the individual initially in possession of the firearm surrenders the firearm to a law enforcement officer, not to the non-profit entity. The law enforcement officer takes possession of the firearm and, in an exercise of control, determines whether it is stolen. The law enforcement officer does not provide consideration for this transfer, but even if this transaction could be described as a sale by virtue of the individual receiving a gift card, law enforcement agencies are excluded from the background check requirement of Section 30-7-7.1 when acting as a buyer.

Although the law enforcement officer subsequently provides the firearm to a non-profit worker in order to be shredded, this transfer of possession is not a sale because the non-profit worker does not provide any consideration or thing of value to the law enforcement officer in exchange for the firearm. The gun buy-back involves two separate transfers of possession, neither of which requires a federal instant background check under Section 30-7-7.1. The law enforcement

agency, in effect, functions as an intermediary in a manner that does not trigger the background check requirement.

Further, even if the entire transaction were to be viewed as a whole, the transfer of possession at a buy-back event includes placing the firearm in a shredder that renders it “permanently inoperable” such that it is no longer a firearm as defined in Section 30-7-7.1. When an entity is a buyer, a background check is required for anyone the entity authorizes to possess the firearm “after the sale.” At a buy-back event, there is no firearm “after the sale.” It is also questionable whether the worker in charge of destroying firearms could be said to be in possession of the firearm. Possession includes the exercise of control. UJI 14-130 NMRA. The act of destroying a firearm in the presence of law enforcement cannot reasonably be viewed as an exercise of control over the firearm in its capacity as a weapon. For several reasons, Section 30-7-7.1 does not require a federal instant background check at a buy-back event.

This construction of Section 30-7-7.1 is consistent with the purpose of the statute, which is to prevent dangerous individuals such as felons from possessing and using firearms. The gun buy-back program advances this same goal. Because a firearm is rendered permanently inoperable in the presence of law enforcement as part of a buy-back transaction, the purpose of the statute indicates that the non-profit entity and its workers do not own, possess, or control a “firearm” within the meaning of Section 30-7-7.1.

We hope that our analysis of Section 30-7-7.1 is helpful to your office in its evaluation of the lawfulness of gun buy-back events. If you have any questions about this analysis, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Grayson', with a stylized flourish at the end.

James Grayson
Chief Deputy Attorney General

cc: R. Shane Ferrari, San Juan County Sheriff