

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>January 2, 2015</p>	<p>No. I14-009 (R14-019)</p> <p>Re: Antique Firearms</p>
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To: Hon. Lydia Hernandez
Arizona House of Representatives

Questions Presented

You requested an opinion on the following question: Does Arizona law subject a person to criminal prosecution for firing an “antique firearm” as that term is defined under federal law?

Summary Answer

Yes. Arizona criminal statutes do not distinguish between an “antique firearm” as defined in 18 U.S.C. § 921(a)(3) and other types of firearms. Under Arizona law, it is a crime to fire an antique firearm under circumstances in which firing any other type of firearm would be a crime.

Analysis

Arizona statutes do not define or use the term “antique firearm.” Arizona’s criminal code defines a “firearm” as “any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other

weapon” that will expel, is designed to expel, or can readily be converted to expel a projectile by the action of expanding gases or an explosive. A.R.S. §§ 13-105(19); 13-3101(A)(4). These statutory definitions specifically exclude “a firearm in permanently inoperable condition,” but they do not exclude an operable antique firearm. *Id.*

The federal criminal code, however, does define an “antique firearm” and excludes it from the definition of a firearm for purposes of criminal liability under 18 U.S.C. § 922. *See* 18 U.S.C. § 921(a)(3) (“The term ‘firearm’ ... does not include an antique firearm.”). Under 18 U.S.C. § 921(a)(16), the term “antique firearm” means the following:

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica--

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

Arizona Revised Statutes section 13-1211 makes it a class 2 felony to knowingly discharge a firearm at a residential structure and a class 3 felony to discharge a firearm at a nonresidential structure. Section 13-1211 draws no distinction between antique firearms and other firearms. Similarly, Arizona Revised Statutes section 13-3107 classifies the criminally

negligent discharge of firearms within or into the limits of a municipality as a class 6 felony. *See* A.R.S. § 13-3107(A). Again, the statute draws no distinction between antique firearms and other firearms. Finally, the Legislature defined a “violent or aggravated felony” for sentencing purposes to include “[d]ischarging a firearm at a residential structure if the structure is occupied” without creating any exception for antique firearms. A.R.S. 13-706(F)(2)(g).

Under all of these Arizona laws, the discharge of an antique firearm (as defined under federal law) has the same criminal consequences as the discharge of any other firearm.¹

Conclusion

Firing an antique firearm subjects a person to criminal prosecution in Arizona to the same extent that firing any other type of firearm subjects that person to criminal prosecution.

Thomas C. Horne
Attorney General

¹ In 2013, Arizona lawmakers introduced HB 2234, which would have (1) amended the definition of a firearm under A.R.S. § 13-105(19) by, among other things, excluding weapons manufactured on or before January 1, 1899, and (2) deleted the definition of a firearm in A.R.S. § 13-3101(4). The amendment of A.R.S. § 13-105(19), had it been enacted into law, would have created a state statutory analog to the federal definition of an antique firearm under 18 U.S.C. § 921(a)(16)(A).

In 2014, Arizona lawmakers introduced SB 1064, which contained the same two provisions. Like HB 2234, SB 1064 was never enacted.