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STATE OF ALABAMA

SEP 25 1989

89-00436

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Weapons - Crimes and Offenses -
Pardons and Paroles

A person who has been convicted of incest is not prohibited by Code of Alabama 1975, § 13A-11-72 from owning or possessing a pistol. However, a sheriff in his sound judgment may refuse to issue a pistol permit to such person if there are circumstances which lead the sheriff to believe that the person should not possess or own a pistol.

Dear Mr. Phillips:

This opinion is issued in response to your request on behalf of Sheriff Roy C. Snead of Calhoun County for an opinion from the Attorney General.

QUESTION

Can a sheriff refuse to issue a pistol permit under Code of Alabama 1975, § 13A-11-72 to an individual who has been convicted of incest?

FACTS AND ANALYSIS

It is stated in your request that the individual was convicted of incest. The applicant received a pardon with the restoration of his civil and political rights on July 5, 1989.

Code of Alabama 1975, § 13A-11-72(a) states:

"No person who has been convicted in this state or elsewhere of committing or attempting to commit a crime of violence shall own a pistol or have one in his possession or under his control."

A "crime of violence" for purposes of the division in which the above statute is found is defined at Code of Alabama 1975, § 13A-11-70(2) as follows:

"CRIME OF VIOLENCE. Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny."

Incest is not included within this definition.

Incest is a Class C felony as stated at Code of Alabama 1975, § 13A-13-3. However, not all felonies are crimes of violence. Moseley v. State, 398 So.2d 357 (Ala.Cr.App. 1981).

While incest may not be a crime of violence included in § 13A-11-72(a), a sheriff is to use caution and sound judgment in determining whether a person is to be issued a pistol permit. If there was violence associated with the crime of incest committed by the individual in question, or if there are other circumstances which caused the sheriff to believe that this individual should not be issued a pistol permit, the sheriff in his sound judgment and caution may refuse to issue a pistol permit to the individual.

CONCLUSION


A person who has been convicted of incest is not prohibited by Code of Alabama 1975, § 13A-11-72 from owning or possessing a pistol. However, a sheriff in his sound judgment may refuse to issue a pistol permit to such person if there are circumstances which lead the sheriff to believe that the person should not possess or own a pistol.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:


LYNDA K. OSWALD
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