

MEMORANDUM OF LAW

DATE: July 22, 1988

TO: Joseph M. Schilling, Head Code Enforcement
Deputy
FROM: City Attorney
SUBJECT: Golden Hills Pawnbrokers

Reference is made to your memorandum of July 6, 1988, attachment 1, with accompanying copy of a proposed stipulated judgment in the case of San Diego v. Golden Hills Pawnbrokers, attachment 2.

You ask whether Golden Hills Pawnbrokers is required to obtain permit as a firearm dealer in accordance with San Diego Municipal Code section 33.4201(a) when it accepts firearms as collateral for a loan and then resells them within the specified time period to a gun shop in Santee.

"Dealer" shall mean any person, association, partnership, or corporation who engages in the business of selling new or used firearms or ammunition at wholesale or retail. San Diego Municipal Code section 33.4202(b). Golden Hills Pawnbrokers is acting as a "dealer" within the meaning of San Diego Municipal Code section 33.4202(b) and is required to obtain a permit from the Chief of Police when it accepts firearms as collateral for a loan and then sells in The City of San Diego those firearms not claimed within the specified time limit.

The key issue is whether the sale of firearms actually takes place within The City of San Diego or in Santee when Golden Hills Pawnbrokers delivers firearms to Santee for sale to a Santee distributor. A firearm permit is required only if the sale takes place in San Diego. "The place of making (a contract) is the place where the last act necessary for its validity was done, usually the act constituting the acceptance (citations omitted)." 3 Witkin Cal. Procedure (3d Ed. 1985), section 596, page 616. Witkin continues on page 616 as follows:

In a contract for the sale of goods, where delivery to a particular place is required, title ordinarily does not pass until the goods are delivered or tendered there. (U.C.C. 2401(2)(b).) The 'last act' therefore occurs at the place of delivery, and this is where the contract was made for purposes of venue. (Citations omitted).

In summary, a firearm permit is not required by Golden Hills

Pawnbrokers for wholesale sales of firearms taking place in Santee but is required for sales taking place in The City of San Diego. Failure to obtain a firearm permit would subject Golden Hills Pawnbrokers to enforcement action for sales in The City of San Diego.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:lfs:503.3(x043.2)

Attachment

ML-88-71