

**LETTER OPINION**  
**97-L-78**

June 18, 1997

The Honorable Ray Holmberg  
State Senate, District 17  
621 High Plains Court  
Grand Forks, ND 58201-7717

Dear Senator Holmberg:

Thank you for your letter asking whether a pellet gun, possessed or used contrary to a school district weapons policy, falls with the definition of a firearm pursuant to N.D.C.C. § 15-49-12(1).

The above noted section of law cites 18 U.S.C. § 921 as being the definition of the term "firearm." That section of federal law defines firearm as:

. . . [A]ny weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. § 921(a)(3). The term destructive device is defined in 18 U.S.C. § 921(a)(4) to include items such as bombs, grenades, rockets, missiles, or mines or similar devices. However, the term "explosive" is not defined in the relevant federal law section for purposes of determining the source of the motive force that causes the projectile to be expelled.

Because N.D.C.C. § 15-49-12(1) imports the definition from federal law into North Dakota law, a definition of the term "explosive" must be found for purposes of North Dakota law.

"Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language. Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition." N.D.C.C. § 1-02-03.

In a prosecution for unlawful possession of explosives under N.D.C.C. § 62.1-02-11, the North Dakota Supreme Court noted that because the section violated did not itself define the term "explosives" that the

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definition must be found and interpreted by reference to similar statutes. State v. Johnson, 417 N.W.2d 365, 369 (N.D. 1987). In that case, the Supreme Court relied on N.D.C.C. § 12.1-01-04(8) for a definition of the term "explosive" and noted that the general definition of the term contained in Title 12.1 should be applied to ascertain the meaning of the term "explosives" in section 62.1-02-11 because title 62.1 contained no definition. State v. Johnson, 417 N.W.2d at 369.

As was true in Johnson, the statute here in question, N.D.C.C. § 15-49-12(1), and its federal statute reference, do not contain a definition for the term "explosive." Such a definition is critical to the determination of whether a "pellet gun" (or a BB gun, air gun, or CO<sub>2</sub> gun) constitutes a "firearm." Therefore, just as the court did in Johnson, it is appropriate to refer to N.D.C.C. § 12.1-01-04(8) which defines "explosive" to mean:

. . . gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

As I understand your question, the "pellet gun" to which you refer is a gun that is capable of expelling a projectile, possibly a BB or pellet, through the use of compressed air or compressed CO<sub>2</sub>. The exact nature of the gun to which you refer in your question is for the individual school district to determine on a case-by-case basis, however, unless the pellet gun (or BB gun, or air gun, or CO<sub>2</sub> gun) propels its projectile by one of the means stated in N.D.C.C. § 12.1-01-04(8), it is my opinion that the gun in question is not a firearm under N.D.C.C. § 15-49-12(1).

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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