

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case *has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury*, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant. (Emphasis supplied.)

Also §948.01 (5), F. S., says:

(5) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said commission.

A defendant who has been adjudged not guilty, whether by reason of insanity or for some other reason, cannot be placed on probation because he does not meet any of the criteria of said §948.01(1), *supra*. Therefore, an order purporting to place him on probation is void and the Parole and Probation Commission has no duty or authority to supervise such defendant as a probationer even though the order of probation says that he shall be under the supervision of the commission.

073-391—October 16, 1973

#### FIREARMS

##### POSSESSION OF FIREARM AT PLACE OF BUSINESS

To: J. G. Littleton, Chief of Police, Tampa

Prepared by: Wallace E. Allbritton, Assistant Attorney General

#### QUESTION:

Is an owner or employee of a business place which is open to the public, such as a gas station, who wears a nonconcealed firearm during the normal course of business without a permit or license in violation of §790.05, F. S., or does he fall within the exception provided by §790.25 (3)(n), F. S.?

#### SUMMARY:

A person openly carrying a firearm at his place of business is not protected from violating §790.05, F. S., because of §790.25 (3) (n), F. S. It is permissible, however, to keep a weapon at one's home or place of business, without a permit or license, for the purpose of protection of person or property. In a place of business, the weapon could be properly kept, for example, in a desk drawer, under a counter, in the cash register, or in another similar location.

Section 790.05, F. S., provides:

**790.05** Penalty for carrying pistol or repeating rifle without first obtaining license.—Whoever shall carry around with him, or have in his *manual possession*, in any county in this state, any pistol, winchester rifle or other repeating rifle, without having a license from the county commissioners of the respective counties of this state shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083; provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, or United States marshals or

their deputies as to the carrying of concealed weapons. (Emphasis supplied.)

Section 790.25, F. S., provides in pertinent part as follows:

(3) EXCEPTIONS.—The provisions of §§790.05 and 790.06, shall not apply in the following instances, and despite said sections it shall be lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

\* \* \* \* \*

(n) A person *possessing* arms at his home or place of business. (Emphasis supplied.)

Your question calls for a determination of whether the word “possessing” in §790.25(3)(n), *supra*, is synonymous with the words “manual possession” in §790.05, *supra*. I do not believe that those words can reasonably be construed as being synonymous. To hold otherwise would result in the absurdity of permitting every employee while at his place of business to walk around with a pistol strapped on his hip.

To avoid the result of permitting persons to openly carry pistols at their place of business, the word possessing as used in §790.25(3)(n) must be given a broader construction than the words manual possession as found in §790.05. Obviously, §790.05 does not make unlawful any possession of a weapon without having a license from the county commissioners of the respective counties of this state. For example, our Supreme Court in *Watson v. Stone*, 4 So.2d 700 (Fla. 1941), held that a pistol carried in the dash drawer of an automobile was not within the manual possession of the person driving the automobile.

The type of possession permitted by §790.25(3)(n), F. S., was for the purpose of permitting a person to own and keep a weapon in his home or place of business for the purpose of protection of person and property. The type of possession thus permitted by this subsection would be a constructive possession as distinguished from an actual or manual possession. It simply does not accord with reason and logic to say that the words “possessing arms at his home or his place of business” permits a person to openly carry a holstered firearm on his hip in contravention of §790.05, F. S. I think to reach any other result would be to defeat the obvious intent of the legislature as expressed in the statutes. It is permissible, however, to keep a weapon at one's home or place of business, without a permit or license, for the purpose of protection of person or property. In a place of business, the weapon could be properly kept, for example, in a desk drawer, under a counter, in the cash register, or in another similar location.

073-392—October 22, 1973

#### STANDARDS OF CONDUCT

#### FIRM, OF WHICH LEGISLATOR IS MEMBER, CONTRACTING WITH MUNICIPALITY

To: *State Legislator*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

#### QUESTION:

May a public relations firm of which a legislator is a member enter into a contract with a municipality to handle its public relations and advertising matters, excluding lobbying?