



JUL 9 2008

Washington, DC 20226

www.atf.gov903010:BK
5310

Mr. Nathaniel W. Schwickerath
2069 170th Street
New Hampton, Iowa 50659

Dear Mr. Schwickerath:

This is in response to your letter dated May 20, 2008, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In your letter, you asked three questions that related to laws provided by the Gun Control Act of 1968 (GCA), found under Title 18 of the United States Code, Chapter 44. The regulations implementing the GCA are provided in Title 27 of the Code of Federal Regulations, Part 478.

We will respond to each question that is applicable under Federal law; however, please keep in mind that our responses will be general in scope and may vary depending on specific factual patterns. Also, you may wish to contact your State attorney's office to inquire about issues related to Iowa State law.

In your first question, you inquired, "If a person is convicted of a crime labeled by a state as a misdemeanor, but which is punishable by more than one year in prison is that person prohibited from owning or possessing firearms even if the sentence actually received is less than one year in prison and no firearm was used in the commission of the offense?"

18 U.S.C. 921(a)(20) defines the term "crime punishable by imprisonment for a term exceeding 1 year." This definition reads in part, "crime punishable by imprisonment for a term exceeding one year does *not* include—...(B)any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." The actual sentence received has no bearing on whether a crime falls within the definition of "crime punishable by imprisonment for a term exceeding 1 year." Whether an offense qualifies under this definition depends on the maximum sentence that may be given.

-2-

Mr. Nathaniel W. Schwickerath

In your second question, you inquired, "Is an Iowa aggravated misdemeanor which is punishable by up to two years in prison always a bar to a person owning or possessing firearms in the future?"

Because Iowa classifies the conviction as a misdemeanor, one that is punishable by a term of imprisonment of 2 years or less, it is not considered a "crime punishable by imprisonment for a term exceeding one year." The person is not prohibited from possessing firearms based on this conviction under Federal law.

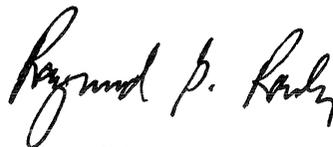
However, under Iowa Code § 724.26, the State prohibits certain persons from possessing firearms. Therefore, a person's possession of firearms might be illegal under State law.

In your third question, you inquired, "Does a deferred judgment without an admission of guilt by the defendant (i.e. a plea of nolo contendere or in Iowa an "Alford" plea) to a felony preclude the defendant from possessing firearms in the future?"

Deferred adjudications in Iowa are not prohibiting under the Federal firearms laws once probation is successfully completed. However, Iowa deferred adjudications are convictions until probation ends based on the decision in *United States v. Reth*, 2007 U.S. Dist.LEXIS 25667 (N.D. Iowa April 5, 2007), affirmed in *United States v. Reth*, 258 Fed.Appx. 68 (8th Cir. 2007) (unpublished opinion). The court in *Reth* held that while a person is on probation under a deferred judgment in Iowa they are convicted under Iowa law.

We trust this has been responsive to your inquiry. If you have any further questions, please contact the Firearms Programs Division at (202) 648-7090.

Sincerely yours,



Raymond G. Rowley
Chief, Firearms Program Division