

Hon. Walter B. Venters  
County Solicitor  
Lee County  
Opelika, Alabama

#### FIREARMS-UNIFORM FIREARMS ACT-LICENCES

1. Title 14, sections 175 and 177, Code of Alabama 1940, as last amended by Act 784, General and Local Acts 1951, page 1378, forbids a person without a license to carry a concealed pistol onto the land of another, in the dash compartment of a motor vehicle, on his person, on the highways or other publicly owned place. Conversely, a person with an unlimited license may carry the said pistol at any time and place. If the license is a qualified one, the pistol may be carried concealed in accord with the qualifications of the license.

2. No license is needed to carry a pistol openly and unconcealed in a motor vehicle or on the person on the highways or other publicly owned place, or on the premises of another person if the person carrying it is not one of those persons to whom the possession of a pistol is forbidden by Title 14, Section 174, Code of Alabama 1940, as last amended by Act No. 784, General and Local Acts 1951, page 1378.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of May, 11, 1955, is as follows:

"In a case here in Common Pleas Court last Monday, two Highway Patrolmen testified in substance that they saw the defendant leaving a beer joint at midnight in a drunken condition and get into a car as a passenger. That they stopped the car and saw a hand place a pistol on the running board. That the defendant was from Chambers County and admitted that he did not have a pistol license."

The Judge of said Court threw the case out because the State was not able to prove that the defendant has carried a concealed weapon, as charged in the warrant. It was held by the Court that Title 14, Section 175 of the Code of Alabama did not make it an offense to carry a pistol when same was not concealed. This being the Sec. 175 as amended."

"It would appear that Section 163 of the Code, Title 14, as amended is in conflict with 175."

"Your opinion as to the following question is respectfully requested.

"1. May a person in this State carry a pistol upon premises not his own without a license? Meaning concealed or not concealed."

"2. May a person in this State carry a pistol in a motor vehicle on the seat or in the dash compartment, on public property or on property not his own?"

"An early opinion would be appreciated as I have requested the Sheriff and the Justice of the Peace to hold any further charges pertaining to pistols as aforesaid, in abeyance pending your opinion."

The first question which you ask contains two questions. a) May a person carry a concealed pistol on premises not his own without a license, and, b) may a person carry an unconcealed pistol upon premises not his own without a license?

It is my opinion that a person may not carry a concealed pistol anywhere off his own property without a license. He may, however, carry an unconcealed pistol anywhere without obtaining a license.

Your second question contains four questions. The answer to them depends upon whether a license has been obtained and whether the pistol is concealed or unconcealed. First, a pistol, whether licensed or unlicensed,

may be carried on the seat of a motor vehicle. An unlicensed pistol may not be carried in the dash compartment because to do so is in fact concealing the pistol.

An unlicensed pistol may not be carried concealed on public property or onto another person's property. But a licensed pistol may be carried concealed at any time or place if the license is an unlimited one. If said license to carry a pistol is a qualified license, the pistol may be carried concealed only in accordance with the terms of the qualifications. See Title 14, Sections 175 and 177, Code of Alabama 1940, as last amended by Act No. 784, General and Local Acts 1951, page 1378.

Finally, an unlicensed and unconcealed pistol may be carried on public property or on the property of another person, as was pointed out in answer 1(b) above.

The status of pistols, either concealed or unconcealed, has varied considerably over the years from 1936 to the present. It is necessary to trace carefully the status of the law from the passage of the "Uniform Firearms Act" in 1936 to answer your questions and explain the reasons therefor.

Sections 163 of Title 14, Code of Alabama 1940, reads as follows:

"Carrying a pistol on premises not his own; who may carry pistol.---Except as otherwise provided in this chapter no person shall carry a pistol about his person on premises not his own or under his control; but this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office, or a United States Marshal or their deputies, rural free delivery mail carriers in the discharge of their duties as such, bonded constables in the discharge of their duties as such, conductors, railway mail clerks, and express messengers in the discharge of their duties."

In 1936, however, the phrase "except as otherwise provided in this chapter" was not a part of section 163, supra. In 1936, the "Uniform Firearms Act" was enacted by Act No. 82, General Acts 1936, Extra Session, page 51. Section 22 of this Act repealed all inconsistent acts. It was held that the "Uniform Firearms Act" was intended as an entire revision of the subject matter contained therein, and laws inconsistent therein were repealed." *Stinson v State*, 28 Ala. App. 559, 190 So. 303.

However, in the code of Alabama 1940, the present Section 163 of Title 14, supra, was codified along with sections 172 through 186 of Title 14 thereof.

In an official opinion dated July 31, 1941 (Quarterly Report of Attorney General, Vol. 24, page 126), it was held that this codification reenacted the present Section 163, supra, as well as the "Uniform Firearms Act" as embodied in Sections 172 through 186, supra. The wording of Section 175, supra, at the time was as follows:

Carrying pistol.--No person shall carry a pistol in any vehicle or concealed on or about his person, except in his place of abode or fixed place of business, without a license therefor as hereinafter provided."

This opinion of the Attorney General, supra, further held that both 175 and 163 had fields of operation; that Section 175 forbade a person to carry a pistol in a vehicle or concealed without a license; and that Section 163 permitted a person to carry an unconcealed pistol on not only his own premises but on the public highways and publicly owned property. The Supreme Court case of *Isaiah v. State*, 176 Ala. 27, 58 So. 53, clearly supports this holding.

In 1947, Section 175, supra, was amended by Section 3, Act No. 616, General Acts 1947, page 463, to read as follows:

"No person shall carry a pistol, EITHER OPENLY OR concealed, in any vehicle or on or about his person, except ON HIS LAND, in his own abode or fixed place of business, without a license therefor or hereinafter provided."

This amendment clearly prohibited the carrying of an unlicensed pistol either openly or concealed except on the land, place of abode, or fixed place of business of the person carrying it. Thus, it is apparent that section 175, as amended, supra, preempted the entire field regulating the carrying of pistols and served impliedly as a pro tanto repeal of Section 163, supra. See, *Steele v State*, 61 Ala. 213.

In 1951 the Legislature again amended Section 175 of Title 14, supra, relaxing its prohibition considerably. Act

No. 784, supra, revised and reanacted Sections 172 through 186, supra. section 175, the section crucial to the decision of these questions, was amended to read as follows:

Carrying pistol.---No person shall carry a pistol, concealed, in any vehicle or on or about his person, except on his land, in his abode or fixed place of business without a license therefor as hereinafter provided."

Obviously, this section prohibits only the carrying of concealed pistols away from a person's land, abode or fixed place of business, without a license. No reference is made to unconcealed pistols. Accordingly, the entire field of regulation of pistols having been preempted by Act No. 636, supra, and section 163 having thus been impliedly repealed, the operation of Section 163, supra, was not revived by the later relaxing of this strict control by virtue of the 1951 amendment of Section 175, supra.

To recapitulate, for the above reasons it is my opinion that a person may carry an unconcealed and unlicensed pistol anywhere, either on his own property, openly in a vehicle, on the public highways, public property or the land of another person without violating either Section 163, supra, or Section 175 as amended, supra. Section 175, as amended, supra, prohibits the carrying of a concealed and unlicensed pistol off the land or place of abode or fixed place of business of the bearer. Therefore, such pistol may not be carried concealed to the premises of another, in a motor vehicle, or on public property. Lastly, a licensed pistol may be carried concealed anywhere if the license is be an unlimited one, but if the license be a qualified one, the pistol may be carried only in accordance with the terms of the qualifications of the license. See Sections 177, as amended, supra.

It should be pointed out, however, that the right to carry an unlicensed and unconcealed pistol, or any pistol licensed or unlicensed, concealed or unconcealed, is expressly denied to a person who has been convicted in this State, or elsewhere, of committing or attempting to commit a crime of violence, to a drug addict, or to an habitual drunkard. See Title 14, Section 174, Code of Alabama, 1940, as last amended by Act No. 734. General and Local Acts 1951, page 1378.

Yours very truly,

JOHN PATTERSON

Attorney General