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OPINION COMMITTEE

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HOUSE COMMITTEE ON
HOMELAND SECURITY & PUBLIC SAFETY
TEXAS HOUSE OF REPRESENTATIVES

RQ-0161-KP

April 24, 2017

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorney General:

This letter is in regard to a product that O. F. Mossberg & Sons, Inc. ("Mossberg") introduced earlier this year. This product, known as the "Shockwave" is a pistol grip firearm that is assembled, tested and shipped from Mossberg's federally-licensed facility in Eagle Pass, Texas.

Mossberg petitioned the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) for an Opinion Letter concerning the proper classification of the Shockwave firearm. The BATFE responded that they determined that the Shockwave was a "firearm" as defined in the Gun Control Act of 1968 (GCA). (See GCA, 18 USC §921 (a) (3).) They further determined that the Shockwave was not a "firearm" or an "Any Other Weapon" as defined in the National Firearms Act of 1934 (NFA). (See NFA, 26 USC §§5845(a) (1) and (5), as well as §5845(e).) These determinations are important because under the GCA, a "firearm" can be transferred or sold in the same fashion as pistols and revolvers, while NFA "Firearms" or "Any Other Weapons" require extensive federal and local paperwork, as well as a special tax payment.

What is significant about their Opinion Letter is the fact that the BATFE's determination rests upon the definition of a "shotgun". As found in the GCA in 18 USC §921 (a) (5), a shotgun is defined as "a weapon designed, or redesigned, made or remade, and intended to be *fired from the shoulder*". Because the Shockwave was neither designed nor intended to be fired from the shoulder, and because the Shockwave was fitted at the factory without a shoulder stock, it cannot be a "shotgun" under the federal definition. Thus, according to the BATFE, provided the overall length of the Shockwave exceeds 26 inches, which it does, it remains under the authority of the GCA.

As Mossberg plans to launch the Shockwave in Texas, Mossberg found that many states follow the federal definitions as found in the GCA for "firearms," "shotguns" and "short-barreled shotguns," and as such the Shockwave would be available for sale legally in those states. What they found in Texas, however, is that Texas Penal Code §46.01(10) only defines a

Members:

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“short-barreled firearm”. There is no specific definition for a “shotgun” in the Texas statutes or regulations.

As chair of the Homeland Security and Public Safety Committee, I would like clarification as to whether Texas recognizes the federal definition of a “shotgun”. We would ask that an Opinion Letter be issued from the Attorney General’s office as to the ability of retailers in Texas to sell Shockwave firearms to consumers just as they would any other firearm under the GCA (e.g. with the successful completion of a Form 4473 plus a NCIS background check).

Should you need any additional information, please contact my Capitol office at (512) 463-0738.

Respectfully,

A handwritten signature in black ink that reads "Phil King".

Phil King
State Representative

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