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ELTON R. MATHIS
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Waller County

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September 30, 2021

VIA CMRRR
The Honorable Ken Paxton
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0434-KP
FILE# ML-49039-21
I.D.# 49039

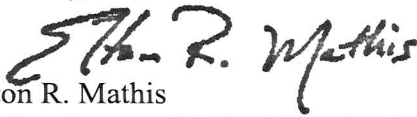
Re: Request for Opinion regarding HB 957

Dear Attorney General Paxton:

My office received a list of questions from Mr. Denny Hair regarding House Bill 957, the recently-enacted Texas law concerning firearm suppressors. By this letter I am requesting an Opinion on Mr. Hair's questions, which are included in the attached letter.

Please let me know if you have any questions about this Opinion request.

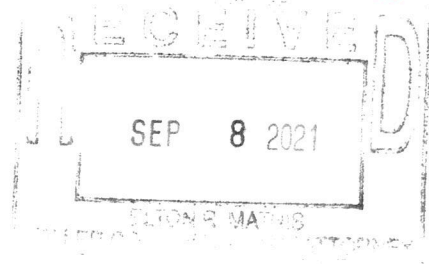
Sincerely,


Elton R. Mathis
Waller County Criminal District Attorney

COPY

September 2, 2021

To: Elton Mathis
Waller County District Attorney
645 12th Street
Hempstead, TX 77445



From: Denny Hair
30446 Joseph Road
Hockley, Texas 77447

Question(s) on Texas HB 957

District Attorney Mathis,

Before I ask my questions, let me introduce myself. I am a Honorably Retired Senior Houston Police Officer, with 31 years of service, before I retired. I am used to reading the Texas Penal Code but this House Bill 957 dealing with firearm suppressor or silencers has me left with a host of questions.

What I am hearing is that it is now legal to own a non federally registered silencer in the State of Texas as long as it states on it that it is Made in Texas.

However, in reading the law passed and in effect as of September 1, 2021, it leads me to believe the law is far more complicated and I must admit I simple do not understand it, as it is written.

Here is a part of the law that has me questioning it's meaning:

Sec. 2.051. MEANING OF "MANUFACTURED IN THIS STATE." (a)

For the purposes of this subchapter, a firearm suppressor is manufactured in this state if the item is manufactured:

- (1) in this state from basic materials; and
- (2) without the inclusion of any part imported from another state other than a generic and insignificant part.

(b) For the purposes of this subchapter, a firearm suppressor is manufactured in this state if it is manufactured as described by Subsection (a) without regard to whether a firearm imported into this state from another state is attached to or used in conjunction with the suppressor.

Questions:

Since making a firearm suppressor by anyone with the tools to do so, Can a Texas citizen make his own suppressor, not for sale to the public, for his own use with in the State of Texas? The definition of "manufactured in the state" suggest to me business that would sell them for a profit and not for personal use.

1. Can a Citizen of Texas make his own firearm suppressor(s) if it is marked made in Texas?

2. What is the definition of manufactured?

3. What percentage has to be made to be called manufactured. In simple terms, can an existing set of parts, not manufactured originally as a suppressor be converted to a suppressor legally in the State of Texas?

Sec. 2.052. NOT SUBJECT TO FEDERAL REGULATION. (a) A firearm suppressor that is manufactured in this state and remains in this state is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce.

This to me is a very grey part of the law. The law states that no law enforcement body can press charges for position of a suppressor. Assuming that to be true, what is to stop them from alerting the ATF or some other federal law enforcement body that a citizen of the state of Texas possesses an unregistered suppressor or "silencer."

When I.C.E. was prohibited from arresting wanted felons, under the Trump administration, they were often tip off when the suspect was released by law abiding law enforcement from some of the so called "sanctuary" cities.

Questions continue:

4. What is to stop the tip off that a Texas Citizen has a federally unregistered suppressor, even though he is perfectly legal in the State of Texas?

5. Would the Texas citizen then face Federal Laws and fines if convicted?

Sec. 2.053. MARKETING OF FIREARM SUPPRESSOR. A firearm suppressor manufactured and sold in this state must have the words "Made in Texas" clearly stamped on it.

6. If it is not being sold, but made for personal use only, does section 2.053 apply?

Sec. 2.054. ATTORNEY GENERAL. On written notification to the attorney general by a United States citizen who resides in this state of the citizen's intent to manufacture a firearm suppressor to which Section 2.052 applies, the attorney general shall seek a declaratory judgment from a federal district court in this state that Section 2.052 is consistent with the United States Constitution.

This brings up the intent of the law, in my mind, to challenge the interstate commerce laws and see it go to the United State Supreme court for a ruling. This could take years.

7. If an individual wanted to make a suppressor for himself, not for sale, would Sec. 2.054 apply?

The next part of the law I understand to a point. I put it in the body below so the complete HB 957 would be in my list of questions

I am not trusting any of this below to happen in counties like Harris county, Dallas County, or Travis County, as they are run by very liberal administrations, for the most part.

SUBCHAPTER C. ENFORCEMENT OF CERTAIN FEDERAL FIREARMS LAWS PROHIBITED

Sec. 2.101. **APPLICABILITY.** This subchapter applies to:

- (1) the State of Texas, including an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or a system of higher education;
- (2) the governing body of a municipality, county, or special district or authority;
- (3) an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- (4) a district attorney or criminal district attorney.

Sec. 2.102. **STATE AND LOCAL GOVERNMENT POLICY REGARDING ENFORCEMENT OF FEDERAL FIREARM LAWS.** (a) An entity described by Section 2.101 may not adopt a rule, order, ordinance, or policy under which the entity enforces, or by consistent action allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.

(b) No entity described by Section 2.101 and no person employed by or otherwise under the direction or control of the entity may enforce or attempt to enforce any federal statute, order, rule, or regulation described by Subsection (a).

Sec. 2.103. **STATE GRANT FUNDS.** (a) An entity described by Section 2.101 may not receive state grant funds if the entity adopts a rule, order, ordinance, or policy under which the entity enforces a federal law described by Section 2.102(a) or, by consistent action, allows the enforcement of a federal law described by Section 2.102(a).

(b) State grant funds for the entity shall be denied for the fiscal year following the year in which a final judicial determination in an action brought under this subchapter is made that the entity has violated Section 2.102(a).

Sec. 2.104. ENFORCEMENT. (a) Any citizen residing in the jurisdiction of an entity described by Section 2.101 may file a complaint with the attorney general if the citizen offers evidence to support an allegation that the entity has adopted a rule, order, ordinance, or policy under which the entity enforces a federal law described by Section 2.102(a) or that the entity, by consistent action, allows the enforcement of a federal law described by Section 2.102(a). The citizen must include with the complaint any evidence the citizen has in support of the complaint.

(b) If the attorney general determines that a complaint filed under Subsection (a) against an entity described by Section 2.101 is valid, to compel the entity's compliance with this subchapter the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the entity is located. The attorney general may recover reasonable expenses incurred obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(c) An appeal of a suit brought under Subsection (b) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

SECTION 2. Section 46.05(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice:

- (A) an explosive weapon;
 - (B) a machine gun; or
 - (C) a short-barrel firearm;
- (2) armor-piercing ammunition;
- (3) a chemical dispensing device;
- (4) a zip gun;
- (5) a tire deflation device; or
- (6)

(6) ~~[a firearm silencer, unless the firearm silencer~~

~~is classified as a curio or relic by the United States Department of
Justice or the actor otherwise possesses, manufactures,
transports, repairs, or sells the firearm silencer in compliance
with federal law; or~~

[(7)] an improvised explosive device.

SECTION 3. Section 46.01(4), Penal Code, is repealed.

SECTION 4. Subchapter B, Chapter 2, Government Code, as added by this Act, applies only to a firearm suppressor, as that term is defined by Section 2.001, Government Code, as added by this Act, that is manufactured on or after the effective date of this Act.

SECTION 5. An offense under Section 46.05(a)(6), Penal Code, as it existed immediately before the effective date of this Act, may not be prosecuted after the effective date of this Act. If on the effective date of this Act a criminal action is pending for an offense described by that subdivision, the action is dismissed on that date. However, a final conviction for an offense described by that subdivision that exists on the effective date of this Act is unaffected by this Act.

SECTION 6. This Act takes effect September 1, 2021.

Now after reading the HB 957 and asking the question I have all ready asked I have one more.

8. Can a Citizen in Texas really carry a home made or purchased suppressor in Texas with our fear of arrest?

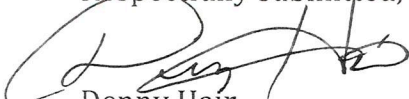
This seems to be only about the constitutionality of Texas and states rights verses the Federal Law regulating firearm suppressors.

Final Question:

9. If I have asks questions that cause you to asks questions, would you ask the Attorney General for a written option as to my questions?'

Thank you for your service as our District Attorney of Waller County.

Respectfully submitted,


Denny Hair

Only those requestors authorized by law may seek the Attorney General's written advice through a formal opinion.

The Government Code lists the officials authorized to request formal attorney general opinions. The attorney general is prohibited by statute from giving a written opinion to anyone other than an authorized requestor.

Authorized requestors include:

- the governor
- the head of a department of state government
- the head or board of a penal institution
- the head or board of an eleemosynary institution
- the head of a state board
- a regent or trustee of a state educational institution
- a committee of a house of the Texas Legislature
- a county auditor authorized by law
- the chairman of the governing board of a river authority
- a district or county attorney

A person other than an authorized requestor who would like to request an attorney general opinion may ask an authorized requestor to submit the question to the attorney general. The authorized requestor has the discretion to decide whether to ask for an attorney general opinion in any given instance.