



August 13, 2007

Donald J. Kilmer
Attorney at Law
1645 Willow Street, Suite 150
San Jose, CA 95125

Re: Eugene Hoffman - Request for Release of Firearms

Dear Mr. Kilmer:

I am writing in response to your letter dated July 20, 2007, regarding the request of Eugene Hoffman, Jr., your client, for the California Department of Justice (DOJ) to release two firearms in its custody to Mr. Hoffman.

A person who claims title to a firearm that is in the custody or control of a law enforcement agency and who wishes to have the firearm returned to him or her must submit an application for a determination of his or her eligibility to possess firearms to the Department of Justice. (Pen. Code § 12021.3(a).) A law enforcement agency that has taken custody of a firearm is prohibited from returning the firearm "to any individual unless the following requirements are satisfied," including:

- (1) That individual presents to the agency or court notification of a determination by the department pursuant to subdivision (e) that the person is eligible to possess firearms.
- (2) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return. (Pen. Code § 12021.3(b).)

In this case, Mr. Hoffman is not eligible to seek the return of a firearm that is in the custody of law enforcement. Although Mr. Hoffman presented a Law Enforcement Gun Release (LEGR) application approved by DOJ that indicates he is eligible to possess firearms, he has not presented any evidence that he owned a firearm taken into custody by a law enforcement agency at the time the firearm was seized by the law enforcement agency. Furthermore, the Automated Firearms System does not indicate that the firearms Mr. Hoffman wishes to obtain are recorded in his name. Because all of the requirements of Penal Code section 12021.3(b)(2) have not been satisfied, DOJ is legally prohibited from releasing the firearms to Mr. Hoffman.

Mr. Kilmer
August 13, 2007
Page 2

You enclosed several documents that purport to transfer ownership of the firearms in question to Mr. Hoffman. However, those documents do not indicate that the firearms were lawfully sold to Mr. Hoffman, and therefore that he is the lawful owner of the firearms. California law requires all firearms sales to be conducted through firearms dealers who are licensed by the state and by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives and criminalizes the sale of a firearm by unlicensed persons. (Pen. Code § 12070(a).) The licensing requirement in California law applies to sales of firearms between private parties. (Pen. Code §§ 12072(d); 12082(a).) The documents that you provided merely indicate that two individuals (who apparently were not licensed firearms dealers) attempted to sell two firearms to Mr. Hoffman.

Licensed firearms dealers are subject to numerous state and federal laws and regulations when selling firearms, from filling out and retaining special firearms sales forms and initiating background checks, to enforcing the state's ten day waiting period for the delivery of firearms. (See, e.g., Pen. Code §§ 12071, 12072.) When selling a firearm owned by one private individual to another private individual, the dealer must take possession of the firearm and retain it until the requirements of Penal Code section 12072(c) are met. According to the documents you provided, none of these requirements were satisfied in the case of the attempted sale of the firearms in question to Mr. Hoffman.

For the reasons set forth above, we are unable to release the firearms to Mr. Hoffman. I have enclosed his approved LEGR application. Please feel free to contact me if you have any questions.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

Enclosure - Approved LEGR application of Eugene Hoffman (original with gold seal)

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 227-3763
Phone: (916) 263-4887

July 9, 2007
(date check was completed)

EUGENE E. HOFFMAN
751 SYLVAN WY
EMERALD HILLS, CA 94062

**NOTIFICATION OF RESULTS FOR LAW ENFORCEMENT GUN
RELEASE (LEGR) APPLICATION FOR RIFLE OR SHOTGUN**

A firearms eligibility check has been completed confirming your eligibility to possess firearms. The agency may release your firearm(s) to you only if you present this letter to the agency within 30 days of the date on this notice. If you have any questions concerning this information, please contact the Firearms Division at (916) 263-4887.



Sincerely,

STEVE BUFORD, Program Manager
Firearms Division

For EDMUND G. BROWN, JR.
Attorney General

DOJ SACRAMENTO

NO CASE NUMBER GIVEN.

LEGR CONTROL #: 8568