



Reference 1/2/2
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**THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
LIMPOPO PROVINCE**

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- C All Provincial Heads
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South African Police Service
LIMPOPO PROVINCE

**THE TRANSPORTATION, USE OR POSSESSION OF A FIREARM FOR A
PURPOSE OTHER THAN ACCORDING TO THE TYPE OF LICENCE
ISSUED FOR THE FIREARM**

1 INTRODUCTION

- 1.1 It has come to the attention of this office that there may be a misperception with police members that it is an offence to be in possession of a firearm for a purpose not according to the type of licence issued for the firearm. It further seems that there were incidents where members advised persons transporting firearms for which they hold licences for sport shooting or hunting, to only transport or to use them for purposes of sport shooting or hunting, whichever applicable to the type of licence.
- 2 Some police members may reason that although not clearly stipulated in the **Fire Arms Control Act** of 2000 (Act No. 60 of 2000) (**FCA**) it was the intention of the legislature that a firearm for which a license was issued, must

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be possessed, transported or used for purposes for which the licence was issued. The argument may be that the legislature would not have created different types of licences if the intention was otherwise. The argument then follows that a person having a firearm, licenced to hunt for example, may not possess, transport or use it for another purpose for example, self-defence. The mentioned police officers may further argue that if the licence holder of a firearm possesses or uses it for a different purpose as mentioned, he or she commits an offence in terms of the **FCA**.

2 PROVISIONS OF THE FIRE ARMS CONTROL ACT AND INTERPRETATION

- 2.1 Section 3 of the **FCA** provides that one may not possess a firearm unless he or she holds a licence, permit or authorisation issued in terms of the Act.
- 2.2 The act specifically provides in section 20(4) read with section 120(1)(a) that the holder of a firearm license for business purposes, for example to render a security service, commits an offence if he or she uses it for a different purpose as stipulated in the licence issued.
- 2.3 There is however no similar provision in the act, as mentioned in paragraph 2.2 above, applicable to the other types of firearm licences which may be issued in terms of the act. The act for example does not provide that a firearm licenced to hunt or to do sport shooting, may only be used for that purpose, and not for another purpose, for example self-defence. It is therefore an indication that with the exception of licences issued for business purposes, the legislature did not intent to restrict the possession, transportation or use of firearms for a different purpose for which the licence was issued.

3 THE PRINCIPLE OF LEGALITY

- 3.1 The principal of legality is applicable to our law known as the "*nullum crimen sine lege*" principle. It means, if literally translated, "no crime without a law".
- 3.2 The principle is explained by **Snyman: Criminal Law**; Sixth edition, pg. 36 that "an accused may not be found guilty of a crime unless the type of conduct with which he or she is charged:
 - (a) has been recognised by the law as a crime;
 - (b) in clear terms;
 - (c) before the conduct took place;
 - (d) without the court having to stretch the meaning of the words and concepts in the definition to bring the particular conduct of the accused within the compass of the definition"

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3.3 **Snyman** explained further that "after conviction an accused may not be sentenced unless the punishment also complies with the four principles set out above."

4 CONCLUSION

4.1 It is therefore the opinion that, with the exception of licenses issued for business purposes, an offence is not committed if a person transport, use or have in his or her possession a firearm for an additional purpose than the purpose for which the firearm licence were issued.

4.2 Therefore a person holding a licence to possess a firearm for hunting or sport shooting for example, may possess, transport and use that firearm also for another purpose, for example self-defence.



**LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: LIMPOPO PROVINCE
MT HADEBE**

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