

Secondhand sports equipment dealers

Number: INFORMAL

Date: August 18, 1997

The Honorable Rick Dantzler
Senator, District 17
Post Office Box 9225
Winter Haven, Florida 33883-9225

RE: SECONDHAND DEALERS--SPORTS EQUIPMENT--applicability of statutory provisions to secondhand sports equipment dealers. Part I, Ch. 538, Fla. Stat.

Dear Senator Dantzler:

Thank you for considering this office as a source for assistance in interpreting Chapter 538, Florida Statutes, regarding secondhand dealers and secondary metals recyclers. More specifically, you have asked about the applicability of the provisions of Part I, Chapter 538, Florida Statutes, to dealers in secondhand sports equipment.

Part I, Chapter 538, Florida Statutes, controls business activities of secondhand dealers. For purposes of the act, a "[s]econdhand dealer" is defined to include "pawnbrokers, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops." [1] Those goods in which secondhand dealers trade are designated "[s]econdhand goods" and are defined as:

"[P]ersonal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or pawned as used property. Such secondhand goods shall be limited to watches; diamonds, gems, and other precious stones; fishing rods, reels, and tackle; audio and video electronic equipment, including television sets, compact disc players, radios, amplifiers, receivers, turntables, tape recorders; video tape recorders; speakers and citizens' band radios; computer equipment; radar detectors; depth finders; trolling motors; outboard motors; sterling silver flatware and serving pieces; photographic equipment, including cameras, video and film cameras, lenses, electronic flashes, tripods, and developing equipment; microwave ovens; animal fur coats; marine equipment; video games and cartridges; power lawn and landscape equipment; office equipment such as copiers, fax machines, and postage machines but excluding furniture; *sports equipment*; weapons, including knives, swords, and air guns; telephones, including cellular and portable; firearms; tools; calculators; musical instruments, excluding pianos and organs; lawnmowers; bicycles; typewriters; motor vehicles; gold, silver, platinum, and other precious metals excluding coins; and jewelry, excluding costume jewelry." [2] (e.s.)

Thus, the statute is quite specific in designating those particular items and categories which the Legislature determined were appropriate for regulation by the terms of Part I, Chapter 538, Florida Statutes.

According to your letter you are concerned that the statute applies to all "sports equipment" but many items of lesser value, such as small appliances, are not covered by the statute. However, it is clear from the terms of the statute that many items of lesser value are included along with those of greater value: knives, telephones and microwave ovens are enumerated by the statute as well as precious metals and gems. Thus, I cannot say that the statute itself demonstrates any inconsistencies which appear fatal.

Further, this office has no authority to read or interpret a statute in a manner which may result in a construction that seems more equitable under the circumstances presented by a particular factual situation. Such a construction when the language of the statute is clear would, in effect, be an act which is exclusively the prerogative of the Legislature.[3]

I trust that these informal comments will be of assistance to you but must conclude that amendatory legislation limiting the scope of the statutory definition contained in section 538.03(1)(g), Florida Statutes, may be the solution which most closely addresses your concerns.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 538.03(1)(a), Fla. Stat.

[2] Section 538.03(1)(g), Fla. Stat.

[3] *Cf. Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974), and Op. Att'y Gen. Fla. 81-10 (1981).