

**Office of the Attorney General of the State of Georgia.**

**U84-37\***

**Opinion No. U84-37 - 1984 Op. Atty Gen. Ga. 261**

September 7, 1984

Honorable Wesley Dunn  
State Representative  
73rd District  
House of Representatives  
Post Office Box 1014  
McDonough, Georgia 30253

RE: A person who has properly obtained a license to carry a pistol or revolver under O.C.G.A. § 16-11-129 may legally carry a pistol or revolver at a shopping mall without violating O.C.G.A. § 16-11-127, which prohibits the carriage of firearms to or while at a public gathering.

**OPINION**

In your recent letter you requested an unofficial opinion as to whether a person who has properly obtained a license to carry a pistol or revolver may legally carry a pistol or revolver at a shopping mall.

The fundamental issue your inquiry raises is whether a shopping mall is a “public gathering” within the meaning of O.C.G.A. § 16-11-127(a), which provides that it is a misdemeanor for a person to carry to or while at a public gathering a firearm designed for the purpose of offense and defense. “Public gathering” is defined at O.C.G.A. § 16-11-127(b) as follows:

“ . . . [P]ublic gathering” shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises.“

Since “shopping mall” is not specifically enumerated in this statutory definition, we turn next to an examination of the nature of the statute, rules of statutory construction and interpretations of this statute by our courts. Official Code of Georgia § 16-11-127(a) is clearly criminal in nature. Criminal statutes are strictly construed against the State and liberally in favor of human liberty. **Knight v. State**, 243 Ga. 770, 257 S.E.2d 182 (1979); **Gibson v. State**, 38 Ga. 571, (1869). Moreover, when terms in a criminal statute are ambiguous, such terms are construed in a manner most favorable to the accused. **U. S. v. Slater**, 524 F.2d 987 (5th Cir. 1975).

The Supreme Court of Georgia has recognized that the purpose of this statute is to protect the public against the danger arising from allowing persons to carry deadly weapons to any public gathering. **Wynne v. State**, 123 Ga. 566, 51 S.E. 636 (1905) (construing an earlier version of O.C.G.A. § 16-11-127 which appears at 1870 Ga. Laws 421 (amended 1878-79, 1895) (Penal Code 1895, § 342)). However, the Georgia courts have repeatedly recognized that this criminal

statute should be strictly construed. **See generally Byrdsong v. State**, 245 Ga. 336, 265 S.E.2d 15 (1980); **Culberson V. State**, 119 Ga. 805, 47 S.E. 175 (1904); **Modesette v. State**, 115 Ga. 582, 41 S.E. 992 (1902); **Farmer v. State**, 112 Ga. App. 438, 145 S.E.2d 594. (1965). But **cf. Jordan v. State**, 166 Ga. App. 417, 304 S.E.2d 522 (1983). For example, in **Modesette**, 115 Ga. at 583, the court found that coming into possession of a pistol at a public gathering was not carrying a pistol to a public gathering.

Therefore, it is my unofficial opinion, based on the foregoing, that a person who has properly obtained a license to carry a pistol or revolver under O.C.G.A. § 16-11-129 may carry a pistol or revolver at a shopping mall without violating O.C.G.A. § 16-11-127, which prohibits the carriage of firearms to or while at a public gathering. Please be advised that this opinion does not address the legality of carrying a firearm with a license to a shopping mall at which at least one of the activities enumerated in the statute as a "public gathering" occurs.

MICHAEL J. BOWERS, ATTORNEY GENERAL

Prepared by: JENNIFER L. HACKEMEYER, Attorney

#### GENERAL FOOTNOTES

\* The views expressed herein are the completely unofficial views of the writer only, and should be considered as information only.