

December 22, 2023

Dark Storm Industries LLC  
Ed Newman  
Managing Member  
4116 Sunrise Highway  
Oakdale, NY 11769  
[via e-mail only]

**Re: Opinion Letter on Illinois Law**

Mr. Newman:

**1. Introduction**

This memorandum responds to your request for legal review of whether producing and selling a series of fixed magazine rifles would comply with Illinois legal requirements. Per information provided by e-mail, you described your desire to produce and sell fixed magazine rifles that accept 10 rounds or less. Once installed, the fixed magazine cannot be removed from the receiver.

Your described process of producing and selling a fixed magazine rifle limited to accepting 10 rounds should not qualify it to be what Illinois otherwise terms a prohibited “assault weapon.” This is because Illinois law specifically requires fixed magazine, semiautomatic rifles to accept more than 10 rounds to be deemed an assault weapon.<sup>1</sup>

**2. Illinois Law**

Relevant Illinois law prohibits the manufacture, possession, delivery, sale, and purchase of assault weapons at both 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1. Illinois law defines what constitutes an “assault weapon” capaciously to mean a semiautomatic rifle with the capacity to accept a detachable magazine where certain traits are present.<sup>2</sup> Other features may transform an otherwise ordinary semiautomatic rifle into an “assault weapon” as well. However, consistent with the statutory language are exceptions to the prohibitions covering these prohibitions. Among other things, an assault weapon does not include: a semiautomatic rifle with a fixed magazine with the capacity to accept 10 rounds or less.<sup>3</sup>

Notably, there are no reported cases interpreting the fixed magazine exception to the definition of an assault weapon in Illinois. To determine whether your sale of a fixed magazine rifle comports with this statutory exemption, we must examine rules of statutory construction.

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<sup>1</sup> 720 ILCS 5/24-19(a)(1)(B).

<sup>2</sup> See, e.g. 720 ILCS 5/24-19(a)(1)(A)(i)-(vi).

<sup>3</sup> 720 ILCS 5/24-19(a)(1)(B).

### 3. Rules of Statutory Construction

In Illinois, exceptions to a statute are to be strictly construed.<sup>4</sup> This means an exacting meaning must be given to the exception, not a searching interpretation or alternative reasonable interpretation not directly supported by the text. Second, the “maxim of construction *inclusio unius est exclusio alterius* means that the inclusion of one thing implies the exclusion of another; in other words, where a statute lists the thing or things to which it refers, the inference is that all omissions are exclusions, even in the absence of limiting language.”<sup>5</sup> These rules work in your favor.

Questions could arise as to the enforcement position of the State of Illinois in this consideration. For example, the State of Illinois might posit that a fixed magazine must be “permanently installed” in some particular manner or never modifiable to accept more than 10 rounds to qualify for this exception. It might similarly argue that a weapon must be “incapable of further modification” to qualify. I find these arguments unpersuasive given the rules of statutory construction noted above.

Under controlling Illinois caselaw, you are entitled to rely on a strict interpretation of a statutory exception to give meaning to its reach. Here, the Illinois legislature elected to limit its definition of “assault weapon” in part to not reach semiautomatic rifles featuring fixed magazines that accept 10 rounds or less. Dark Storm Industries is entitled to rely on the State of Illinois’ representation in that purposeful phrasing just as it is written.<sup>6</sup>

The Illinois legislature could have written its bold attempt at firearm regulation in a different way. It could have included any number of more stringent requirements to make the fixed magazine exception attach, but it did not. Under the doctrine of *inclusio unius est exclusio alterius*, anything Illinois omitted to include in the statutory language is excluded from the reach of the law. Any imaginary requirements of an item being “permanently installed” or used “exclusively” are excluded from the law. You enjoy the right to rely on the reasonable and ordinary understanding of the law.

### 4. Disclaimer Language

Clients sometimes favor the use of disclaimer language for products. If needed, Dark Storm Industries might use something like the following.

Dark Storm Industries is not responsible to any purchaser or end user concerning their understanding or interpretation of current Illinois gun-related laws and regulations, nor is it responsible or liable in any way for any personal injury, death, or property damage from any use of this product including but not limited to the inaccurate assembly, misuse, illegal use, or

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<sup>4</sup> *Thoman v. Village of Northbrook*, 148 Ill.App.3d 356, 358 (Ill.App. 1986).

<sup>5</sup> *City of St. Charles v. Illinois Labor Relations Bd.*, 395 Ill.App.3d 507, 509-10 (Ill. App. 2009) (internal quotations and citations omitted).

<sup>6</sup> This memo notes in the disclaimer in Section 4 that care should be taken about keeping parts that might readily modify a weapon into a prohibited assault weapon under the law.

modification of such product. Each purchaser and end user assumes the risk associated with the use or misuse of such product; and further assumes the responsibility to abide by all federal, state, and local laws. All such products are sold on the condition that Dark Storm Industries shall not be liable in any action for the arrest, accident, death, or injury in connection with the transportation, handling, storage, sale, or use of such product. Please consult your federal, state, and local laws and regulations before purchasing such product. By purchasing, any purchaser or end user represents and warrants that such product will be used in a lawful manner and that he or she is of legal age and capacity.

Care should be taken to note that Illinois prohibits “[a]ny part or combination of parts designed or intended to convert a firearm into an assault weapon, including any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.” 720 ILCS 5/24-1.9(a)(1). Illinois law also prohibits “any firearm that has been modified to be operable as an assault weapon. 720 ILCS 5/24-1.9(a)(1)(H)). Therefore, firearms owners should take care not to possess parts that could convert any firearm into a prohibited “assault weapon” firearm.

Dark Storm Industries cannot guarantee that every law enforcement official will be as knowledgeable about firearms as you. Dark Storm Industries is not responsible for any resulting legal or law enforcement interactions, especially given the uncertainty and newness of changes to Illinois law and resulting litigation.

## 5. Conclusion

This constitutes my professional assessment of 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1. Under existing law, the production and sale of your fixed magazine rifle should be lawful in Illinois and otherwise not being deemed a prohibited “assault weapon.” Even with such protection in place, governments sometimes test the reach of laws or push their reasonable interpretation beyond the pale of the written text. No legal opinion letter or assurance can stop that, but aggressive legal defense can be had to protect against this should it arise.<sup>7</sup>

Respectfully,

/s/ Benjamin Barr  
Benjamin Barr  
Barr & Klein PLLC

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<sup>7</sup> In this sense, any sale of such a product includes an assumption of risk on the part of Dark Storm Industries for potential litigation. Under the standards discussed in this memo in the law as it is written, your product should be excluded from the definition of a prohibited “assault weapon.”