



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives
230 West Street, Suite 400
Columbus, Ohio 43215

www.atf.gov

November 3, 2014

COPY

Lt. Peter B. Wood
Indiana State Police
Indiana Government Center North
100 North Senate Ave.
Indianapolis, IN 46204-2259

Re: Effect of Indiana Expungement Statute on Federal Firearms Prohibition

Dear Lt. Wood:

You asked if recent changes in Indiana state law pertaining to expungements would have any effect on ATF's current determination that Indiana expungement law is insufficient to remove the Federal firearms prohibition provided for in the Gun Control Act [hereinafter GCA], 18 U.S.C. §§ 92,1 *et. seq.* Upon review of these statutes, it is clear that neither version qualifies as an expungement for purposes of the GCA.

Federal law provides that a conviction that has been expunged will not be considered a conviction for purposes of the GCA and as a result, that person would once again be lawfully able to possess firearms under Federal law. However, while we look to *state* law to determine what constitutes a conviction, it is *Federal* law that determines whether or not the expungement itself is sufficient to remove the Federal firearms disability.

The Indiana expungement law is insufficient because, among other things, it allows "expunged" convictions to be taken into account and used in subsequent proceedings. Indeed, IC 35-38-9-10(e) states the "expunged" offense may be admitted as evidence in the proceeding for a new offense "*as if the conviction had not been expunged.*" [emphasis added]. As such, this Indiana statute clearly does not "expunge" the conviction, and thus, the individual remains Federally prohibited from lawfully possessing firearms in accordance with the GCA.

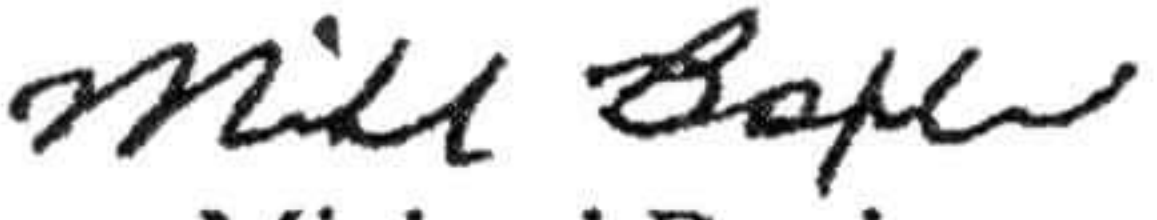
Lastly, the removal of the italicized language from IC 35-38-9-10(b), [now (c)] does not change our analysis. The statute previously had provided that "the civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, *and, to the extent not prohibited by federal law, to own or possess a firearm.*" IC 35-38-9-10(b). Because the expungement itself is insufficient, restoration is not at issue. As

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a result, Indiana state expungements granted both pre-March 2014 and post-March 2014 are insufficient to remove Federal firearms prohibitions.

Please let me know if you have additional questions.

Sincerely,


Michael Boxler
Special Agent in Charge
Columbus Field Division