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September 20, 2013

Dear :

You have contacted me regarding the opportunity to purchase a firearm known as an ITHACA AUTO & BURGLAR MODEL B – 20 GA. SHOT PISTOL which has the appearance as a sawed off double barrel shotgun with pistol type grip. The seller desires to sell same to someone such as yourself that possesses a current Federal Firearms License for Curio or Relics and so on considering an offer on this firearm you are concerned if the NYS SAFE ACT would prohibit your possession into your private collection in NYS.

As you already know the National Firearms Act (NFA) 26 U.S.C. Section 5845 (e) given this weapons design falls in the category "any other weapon," and unlawful to possess, however, Section 5845 (a) (3) states the term shall not include a weapon the Attorney General "finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and it not likely to be used as a weapon." The seller has an official letter from the ATF Firearms Technology Branch that due to the age of this firearms production 1922 – 1934 that it indeed determines it to be a "curio or relic" as defined in 27 CFR Section 478.11 and this determination would authorize a licensed collector to acquire, hold, or dispose of it as a curio or relic subject to the provisions of the federal law. However, it remains a "firearm" as defined in 18 U.S.C. Section 921 (a) (3).

I have been in contact with NYS Sheriffs' Association attorney whom Sheriffs' rely on for legal opinions concerning NYS SAFE ACT issues. He counsels that indeed the gun in question is a "curio or relic" as defined by the ATF (see pg. 48, <http://www.atf.gov/sites/default/files/assets/pdf-files/p-5300-11-firearms-curios-or-relics-list.pdf>). **The fact that you have a FFL collector's license for curio or relic you are able to purchase and possess the gun in NYS.** As to any potential SAFE Act implications, they would only arise if the gun in question qualified as an assault weapon, which this does not appear to be. Assault weapons are generally defined in the SAFE Act as semiautomatic weapons capable of accepting a detachable magazine, and possessing one or more listed features (pistol grip, telescoping stock, etc.). Also,

even if it were an assault weapon, if it is a curio or relic, it could still be transferred to a NYS resident and possessed here, so long as it was then registered (see antique guns and magazines, <http://www.governor.ny.gov/nysafeact/gun-owners>).

That said, it would appear that the weapon does certainly qualify as a "firearm" both under NYS and Federal law due to the length, i.e. conceal ability, of the weapon. Therefore, the weapon given that a part of its name is "pistol" likely may want to be added to your carry license. If you would not normally add an antique pistol to your license then this concern is mute. Given the strange nature of the weapon, it may be that it is not something that would be carried outside the home and collection anyway. I am thinking on the safe side that the adding of this might be something you should consider as it is indeed still a "firearm." I trust I have been helpful to you with this firearm issue and the fact that you can purchase.

Sincerely


Ronald G. Spike,
Sheriff of Yates County, NY



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

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3311/300850

August 13, 2013

Dear _____,

This refers to a submitted Ithaca, Auto & Burglar Model B, 20 GA shot pistol, serial number 436667, that was received by the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), May 2, 2013, as well as to all recent correspondence in connection with this item. You submitted the Ithaca on behalf of a consignor for consideration for removal from the provisions of the National Firearms Act (NFA).

As you are aware, the term "any other weapon," as defined in the NFA, 26 U.S.C. Section 5845(e), includes a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell. It is unlawful for anyone to possess an NF A firearm that is not registered in accordance with the provisions of the NF A.

However, Section 5845(a)(3) also states that this term shall not include a weapon which the Attorney General "finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon."

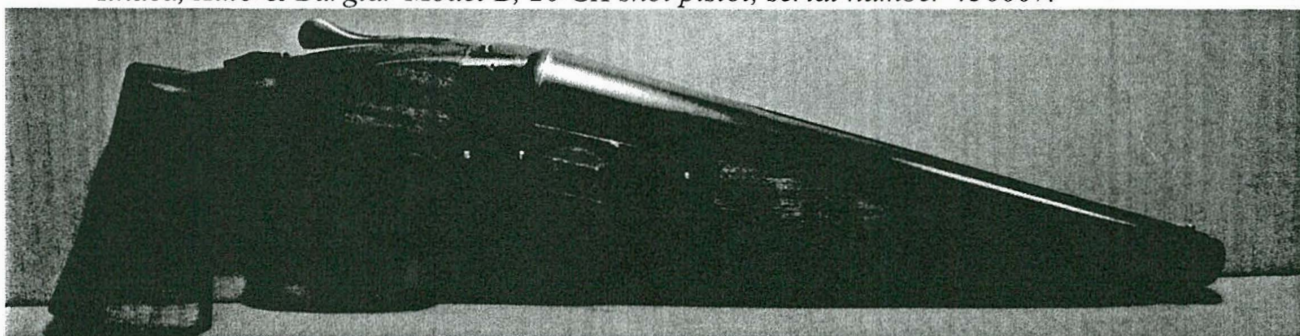
You have indicated that, should this item be removed from NF A controls, your firm would offer it for sale at a starting price of between \$4,000 and \$6,000. Our research, however, indicates that the value of similar firearms (including the original holster) is closer to \$2,000. Our research also indicates that the production of these firearms is estimated at approximately 2,000 units.

These shot pistols have long been classified by ATF as NFA firearms, and previous requests for removal from NFA provisions have been denied. These denials have been based on our awareness of current levels of collector interest, which (historically) have been insufficient to establish that Ithaca Auto & Burglar shot pistols are primarily collector's items and are not likely to be used as weapons.

At the current time, FTB is aware that collector interest in original Ithaca Auto & Burglar shot pistols has increased. This increased level of collector interest, combined with the relatively low production numbers of original Ithaca, Auto & Burglar shot pistols, establishes that these firearms have a significant level of legitimate collector interest.

Based on the information you provided, as well as on our research and examination, FTB has determined that the following firearm is primarily a collector's item and is not likely to be used as a weapon, and it is hereby removed from the provisions of the NFA:

Ithaca, Auto & Burglar Model B, 20 GA shot pistol, serial number 436667.



Due to the age of this firearm (production of the Auto & Burglar ran from 1922 to 1934) it is a "curio or relic" as defined in 27 CFR Section 478.11). This determination authorizes licensed collectors to acquire, hold, or dispose of it as a curio or relic subject to the provisions of 18 U.S.C. Chapter 44 and 27 CFR Part 478. It remains a "firearm" as defined in 18 U.S.C. Section 921(a)(3).

We thank you for your inquiry and trust that the foregoing has been responsive to your request. Please contact our Branch to arrange the return of this item.

Sincerely yours,


Earl Griffith
Chief, Firearms Technology Branch