



Date: May 7, 2015
To: Jeff Harley Bryant, City Attorney
From: Rickey J. Knighton II, Assistant City Attorney
Subject: Possession or Sale of Drug Paraphernalia

Background:

A question has been raised regarding the sale of "glass pipes, bongs, ect." in Norman.

Short Answer:

There are Oklahoma statutes that address the sale and possession of glass pipes, bongs, etc. If a glass pipe, bong, etc. meets the definition of a "glass tube" under 63 O.S. § 2-101.2(A), it is unlawful to offer it for sale. Even if a glass pipe, bong, etc. does not meet the definition of a "glass tube" under § 2-101.2(A), it may still be unlawful to possess it. See 63 O.S. § 2-405(C). Whether it is unlawful to possess a particular items is a question of fact that is beyond the scope of this memo.

Discussion:

A. Sale of Glass Tubes

The sale of "glass pipes, bongs, etc." within Oklahoma may be prohibited by 63 O.S. § 2-101.2. This provision states:

A. As used in this section:

1. "Glass tube" means an object which meets all of the following requirements:
 - a. a hollow glass cylinder, either open or closed at either end,
 - b. not less than two (2) nor more than seven (7) inches in length,
 - c. not less than one-eighth (1/8) inch nor more than three-fourths (3/4) inch in diameter,
 - d. may be used to facilitate, or intended or designed to facilitate, violations of the Uniform Controlled Dangerous Substances Act including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body, and

- e. sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive;
 - 2. "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper, merchandise offered for sale at the business; and
 - 3. "Retailer" means a person, corporation, or partnership primarily engaged in the sale of consumable goods and services including, but not limited to, food and gasoline, at retail to the general public. A retailer shall not include any person, corporation, or partnership that sells specialized laboratory equipment for research or educational purposes.
- B. *It shall be unlawful for a retailer within the State of Oklahoma to offer for retail sale to any patron a glass tube, as defined in subsection A of this section.*
- C. A retailer, or an employee of the retailer, who willfully and knowingly violates the provisions of subsection B of this section shall, upon conviction, be guilty of a misdemeanor punishable by incarceration in the county jail for not more than one (1) year, or by a fine of not less than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
- D. The provisions of this section shall not be construed to prohibit the sale of cigars packaged by the manufacturer in containers or tubes made of glass to facilitate the sale of the item and not for another purpose prohibited by law.

If a glass pipe, bong, etc. meets the definition of a glass tube under 63 O.S. § 2-101.2(A), it is unlawful for a retailer within the State of Oklahoma to offer it for retail sale to any patron.

B. Possession of Drug Paraphernalia

Even if a glass pipe, bong, etc. does not meet the definition of a glass tube under 63 O.S. § 2-101.2(A), its possession may still be unlawful. See 63 O.S. § 2-405(C) ("[n]o person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act."); 63 O.S. § 2-101(36) (defining the term "drug paraphernalia" to include, "glass, stone, plastic or ceramic pipes with or without screens," "water pipes," and "bongs."). To determine whether a glass pipe,

bong, etc. that does not meet the definition of a glass tube under 63 O.S. § 2-101.2(A) is “drug paraphernalia”, a court or jury shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Act;
3. The proximity of the object to controlled dangerous substances;
4. The existence of any residue of controlled dangerous substances on the object;
5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person who intends to use the object to facilitate a violation of the Uniform Controlled Dangerous Substances Act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or fashioned specifically for use, as drug paraphernalia;
6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances;
7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances;
8. *The manner in which the object is displayed for sale;*
9. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
10. *Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;*
11. The existence and scope of legitimate uses for the object in the community; and
12. Expert testimony concerning its use.

Conclusion:

It is unlawful for a retailer within the State of Oklahoma to offer for retail sale to any patron a glass tube, as defined in 63 O.S. § 2-101.2(A). Possession of a glass pipe, bong, etc. that does not meet the definition of a glass tube under 63 O.S. § 2-101.2(A) may be unlawful if it meets the definition of "drug paraphernalia under 63 O.S. § 2-101(36) and the factors set forth in 63 O.S. § 2-101.1. Whether a particular glass pipe, bong, etc. meets the definition of "drug paraphernalia under 63 O.S. § 2-101(36) is a question of fact that is beyond the scope of this memo.