



7133 Liberty

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 31, 2001
(Mailed August 3, 2001)

Det. Sgt. Robert F. Rockholt
Senior Firearms Instructor
Lancaster Police Department
P.O. Box 1008
Lancaster, South Carolina 29721

Re: Your Letter of March 26, 2001
Disposition of Firearms

Dear Det. Sgt. Rockholt:

In your above referenced letter, you request an opinion from this Office regarding firearms which are accumulating in your Department's "Evidence Room." Specifically, you state that:

"We need an opinion on how to properly dispose of the following firearms.

1. Firearms taken at time of arrest where the charges were later dropped by the solicitor in a plea bargain or another case, but the suspect is a convicted felon, unable own or possess firearms.
2. Stolen firearms that have been recovered, but the owner has since become a convicted felon since the theft."

Unfortunately, your requests cannot be resolved in a simple fashion. Depending on the type of firearm and the way in which the Lancaster Police Department came into possession of the firearm, a number of different statutes may apply. I will address each question in turn.

Question 1

Under certain circumstances, it appears possible that a firearm seized as the result of a criminal charge may be forfeited despite the lack of conviction on the underlying charge. Whether

Request Letter

Det. Sgt. Robert F. Rockholt
August 3, 2001
Page 2

the firearm can be forfeited without conviction may depend on the type of firearm involved and the violation charged.

This Office has previously opined that S.C. Code Ann. §16-23-50 (penalty for violations of §§16-23-20 & 30) and S.C. Code Ann. §23-31-190 (penalty for violations of §23-31-110 et seq.) do not expressly require a conviction before the pistol involved can be confiscated and disposed of. See OP. ATTY. GEN. (Dated June 13, 1995)(Copy enclosed). In that opinion, we stated that “ ... a conviction is probably no longer necessary in order to authorize [the Sheriff] to dispose of the [pistols] in the manner set forth in [§§16-23-50(B) & 23-31-190]...” We cautioned, however, that “[o]wing to the uncertainty surrounding these guns, in that there has been no conviction ... the safer course would be to obtain judicial guidance and [this] would protect law enforcement agencies and officials.” Accordingly, pistols which your Department has come into possession of as a result of a violation of §§16-23-20, 16-23-30 or 23-31-110 et seq. may be capable of forfeiture and disposal even though no conviction for the specific violation has been had. I would suggest that you discuss specific cases with your City Attorney.

Firearms, including rifles, shotguns, pistols, etc., which have been seized by law enforcement due to involvement in the commission of a crime other than the above violations may also be subject to confiscation. Section 16-23-405 provides that: “[a] person convicted of a crime, in addition to a penalty, shall have a weapon used in the commission or in furtherance of the crime confiscated. (Emphasis added).” Accordingly, a conviction would be a prerequisite to confiscation and disposal of a firearm pursuant to §16-23-405. Without such a conviction, the firearm should be returned to the rightful owner.

To “own” something, like a firearm, is “to have good legal title ... to have a legal or rightful title to ...” Black’s Law Dictionary 996 (5th ed.). Accordingly, it is doubtful that someone who is prevented by law from possessing a firearm could be considered the rightful owner and be entitled to the return of the firearm. In such a case, the disposal of the firearm should probably be done pursuant to S.C. Code Ann. §§27-21-10 et seq. (Disposition of Confiscated and Stolen Property).

Question 2

Generally, when a police department comes into possession of stolen property, the owner should be notified and the property returned. If the owner cannot be located, the property should be disposed of pursuant to S.C. Code Ann. §27-21-20. As discussed above, where a person is forbidden by law from possessing a firearm, such person would probably not be considered the rightful owner of the firearm. While not specifically addressed by statute, it would appear that §27-21-20(B) or (C) would provide the appropriate procedures for disposing of the firearm. See OP. ATTY. GEN. (Dated January 3, 1979)(absent statutory provision, §27-21-20 provides best method of disposition of stolen firearms where owners are unable to be located.)(Copy enclosed).

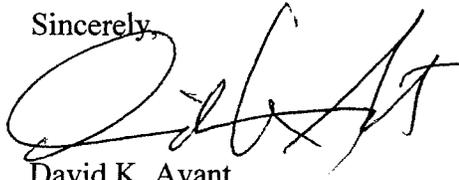
Det. Sgt. Robert F. Rockholt
August 3, 2001
Page 3

Conclusion

As you can see, there is no clear statutory guidance with regard to your questions. I would suggest that you consult with your City Attorney or Circuit Solicitor concerning the disposition of firearms in specific cases.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. K. Avant". The signature is written in a cursive, somewhat stylized font.

David K. Avant
Assistant Attorney General