



ALAN WILSON
ATTORNEY GENERAL

August 27, 2015

Sheriff Rick Clark
Pickens County Sheriff's Office
216 C. David Stone Rd.
Pickens, SC 29671

Dear Sheriff Clark:

We are in receipt of your opinion request regarding the interpretation of Section 16-23-50 of the South Carolina Code. Specifically, you ask whether handguns confiscated pursuant to the terms of Section 16-23-50(B), may “be auctioned and sold by a [South Carolina] licensed auctioneer that also holds a federal firearm license to sell handguns within the state of South Carolina for the purpose of taking those proceeds to buy law enforcement equipment[.]” Our response follows.¹

I. Law

As noted in your letter, Section 16-23-50 of the South Carolina Code deals with, among other things, the “forfeiture and disposition of handguns.” In particular, Section 16-23-50(B) explains that “handguns involved in the violation of this article must be confiscated” adding that a handgun subject to confiscation, “must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a

¹ As an initial matter, we assume for purposes of this opinion that the handguns mentioned in your request letter are not subject to Section 16-23-50(B)'s retention requirement, nor are they subject to retention under Section 17-28-320. See S.C. Code Ann. § 16-23-50(B) (2014 Supp.) (“A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined.”); S.C. Code Ann. § 17-28-320(A) (2014) (requiring a custodian of evidence to “preserve all physical evidence . . . related to the conviction or adjudication” for any one of 24 different crimes); S.C. Code Ann. § 17-28-320(C) (2014) (“The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.”). Likewise, we assume for purposes of this opinion that retention of the confiscated handguns is no longer constitutionally required. See e.g., *District Attorney's Office for the Third Judicial Circuit v. Osborne*, 557 U.S. 52, 67-68 (2009) (explaining a criminal defendant convicted after a fair trial does not possess the same liberty interest as a free man and thus once legal proceedings regarding a criminal defendant's conviction become final, the Fourteenth Amendment's Due Process Clause does not include a freestanding, substantive due process right to test evidence).

Sheriff Rick Clark
Page 2
August 27, 2015

municipality.” S.C. Code Ann. § 16-23-50(B) (2014 Supp.). Addressing the means of disposing of confiscated handguns, Section 16-23-50(B) states, in relevant part:

The law enforcement agency that receives the confiscated handgun may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell handguns in this State for a handgun or any other equipment approved by the agency, or destroy it.

S.C. Code Ann. § 16-23-50(B) (emphasis added). As explained in your request letter, it is the interpretation of this provision that serves as the basis for your request.

II. Analysis

In order to determine whether Section 16-25-50(B) authorizes a law enforcement agency to dispose of a confiscated handgun via auction, we must first look to the statute’s legislative intent. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.”). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002).

When determining the effect of words utilized in a statute, a court looks to the “plain meaning” of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute’s language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (“In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”). This is because “[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.” 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

Understanding these concepts, we believe Section 16-23-50(B) does not permit a law enforcement agency to auction confiscated handguns, or transfer confiscated handguns to a third party for purposes of auction, regardless of how the proceeds of the auction are spent. This is because Section 16-23-50(B) plainly states that a law enforcement agency must dispose of handguns confiscated in violation of Title 16, Chapter 23, Article 1 in one of four different ways: (1) internal use; (2) transferring to another law enforcement agency; (3) trading with a properly licensed retail dealer; or (4) destruction. In fact, we have previously explained as much stating, “[t]he clear intent of Section 16-23-50 is the use of confiscated weapons only pursuant to the purposes authorized therein.” Op. S.C. Att’y Gen., 1997 WL 208045 (March 31, 1997).

In the above-cited 1997 opinion we addressed a similar question—whether the Sheriff’s Department, Clerk of Court and County Administrator could enter into an agreement whereby the Sheriff’s Department would sell weapons confiscated pursuant to Section 16-23-50 to “a retail gun dealer with the proceeds being used to purchase equipment and supplies for the Sheriff’s Department.” Op. S.C. Att’y Gen., 1997 WL 208045 (March 31, 1997). There we said that under the then-existing version of Section 16-23-50(B), a confiscated handgun could be transferred to the clerk of court, who could then auction the confiscated handgun to the highest bidder pursuant to the then-existing terms of Section 16-23-500. However, even there we explained that Section 16-23-50 does not authorize a law enforcement agency to “sell . . . the confiscated weapons” itself. Op. S.C. Att’y Gen., 1997 WL 208045 (March 31, 1997). In fact, our 1997 opinion ultimately concluded that while the prior version of the statute permitted transfer and auction, they did not permit the sheriff who transferred the confiscated handguns to receive the proceeds of the auction regardless of the existence of an agreement. Op. S.C. Att’y Gen., 1997 WL 208045 (March 31, 1997).

We reiterate the ultimate conclusion of our 1997 opinion today. Specifically, we reaffirm our conclusion that Section 16-23-50(B) does not authorize a law enforcement agency to sell confiscated handguns. The statute now, like the statute then, simply does not allow a law enforcement agency to dispose of confiscated handguns in this manner. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”).

We further add that because the Legislature subsequently amended Section 16-23-50 by deleting language previously permitting the transfer of confiscated handguns to the clerk of court or mayor, and repealed Section 16-23-500,² which permitted a clerk of court or mayor to sell confiscated weapons at auction, Section 16-23-50(B) can no longer be understood as permitting a law enforcement agency to transfer confiscated handguns for purposes of auction, regardless of how the agency utilizes the proceeds of such an auction. See 1998, S.C. Acts No. 297 (effective May 27, 1998) (summarizing Act No. 297 as “an act to amend Section 16-23-50 . . . so as not to allow a confiscated pistol to be transferred to a clerk of court or a mayor for disposal . . . [and] to repeal Section 16-23-500 relating to the authority of clerks of court and mayors to sell

² We acknowledge that Section 16-23-500 was subsequently re-enacted in 2010 as part of the “Omnibus Crime Reduction and Sentencing Reform Act of 2010.” However, the statute no longer addresses the auction of confiscated handguns by a clerk of court or mayor, but instead deals with the confiscation and disposition of firearms and ammunition possessed by an individual who has been convicted of a violent crime. Notably, Section 16-23-500’s methods of disposition largely mirror those of Section 16-23-50. See S.C. Code Ann. § 16-23-500(C) (2014 Supp.) (“In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. *The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it.*”) (emphasis added).

Sheriff Rick Clark
Page 4
August 27, 2015

confiscated of forfeited weapons[.]”). Indeed, if the Legislature intended to permit a law enforcement agency to do so, it would not have amended Section 16-23-50(B) in the way that it did, nor would it have repealed the then-existing version of Section 16-23-500. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”).

Similarly, if the Legislature had intended to permit a law enforcement agency to transfer firearms to a licensed retail dealer for purposes of sale or auction on a consignment basis it could have said this as well. However, the only provision of Section 16-23-50(B) that permits the transfer of confiscated handguns on any basis, is a transfer to another “law enforcement agency” and only then “for the lawful use of that agency.” Id. In fact, Section 16-23-50(B) is clear that when it comes to the disposition of confiscated handguns, the only means of doing so with a retail dealer is via trade. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that “to express or include one thing implies the exclusion of another or the alternative.”). Accordingly, we believe Section 16-23-50(B) of the South Carolina Code does not authorize a law enforcement agency to dispose of confiscated handguns by transferring them to a licensed auctioneer holding a federal firearm license to sell handguns regardless of how the proceeds of the auction are used.

III. Conclusion

To summarize, it is the opinion of this Office that Section 16-23-50(B) of the South Carolina Code does not authorize a law enforcement agency to dispose of confiscated handguns by transferring them to a licensed auctioneer holding a federal firearm license to sell handguns regardless of how the proceeds are used. Indeed, the current version of the statute plainly states that a law enforcement agency may only dispose of confiscated handguns by way of internal use, transfer to another law enforcement agency, trading with a properly licensed retail dealer, or destruction. Thus, it logically follows that, for purposes of Section 16-23-50(B), a law enforcement agency cannot sell or auction confiscated handguns, nor can it transfer confiscated handguns to a retail dealer for purposes of sale or auction, as doing so would be at odds with the express terms of the statute.

Sincerely,

Brendan McDonald
Assistant Attorney General

Sheriff Rick Clark
Page 5
August 27, 2015

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General