

1976 WL 30617 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 20, 1976

\*1 Joseph H. Earle, Jr., Esquire  
County Attorney  
Greenville County  
Suite 400, First Federal Building  
Greenville, South Carolina 29601

Dear Mr. Earle:

May I apologize for the enormous delay in this reply. The draft of my return letter to you was somehow misplaced over the Christmas holidays.

In your letter to our Office you requested our opinion as to whether or not Section 57-245 of the South Carolina Code of Laws required a mandatory sale at public auction of stolen and abandoned goods in the possession of the sheriff.

It is our interpretation that the language of this Section is mandatory in part and permissive in part. It is mandatory that the sheriff 'make a diligent effort to ascertain the true owner of any abandoned or stolen property' and, further, that he 'advertise such property with the full description thereof in a newspaper having a general circulation in the county for at least twice prior to the sale.'

The mandatory intent of the statute is evident through the use of the word 'shall'. Section 25.04, Sutherland Statutory Construction, states that:

'Certain forms and types of statutes are generally considered mandatory. Unless the context otherwise indicates the use of word 'shall' (except in its future tense) indicates mandatory intent.'

Accepting this interpretation, we find Section 57-245 mandatory in that respect.

However, the provision for sale at public auction of stolen or abandoned property does not appear on its face to be mandatory because of the use of the permissive word 'may'.

Therefore, it is our opinion that the provision in regard to a sale is directive rather than mandatory, and the sheriff has the option available to him to sell the stolen or abandoned property at public auction provided first that the above-mentioned mandatory requirements are met.

This letter should answer your inquiry sufficiently. However, if you have further questions, please contact us.

Sincerely,

B. J. Hawkins  
Law Clerk

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