



ALAN WILSON
ATTORNEY GENERAL

May 1, 2024

Veronica Swain Kunz
Crime Victim Ombudsman
Department of Crime Victim Ombudsman
1205 Pendleton Street
Columbia, SC 29201

Dear Ombudsman Kunz:

We received your letter requesting an Attorney General's opinion on behalf of the South Carolina Crime Victim Ombudsman regarding the interpretation of section 16-23-50 of the South Carolina Code (2015 & Act No. 111, 2024 S.C. Acts __).¹

By way of background, you informed us:

A victim of a crime contacted our office after his stolen gun was identified as having been used during the commission of a crime. Law enforcement arrested an individual and charged them with a violation of section 16-23-20 of the South Carolina Code (Act No. 111, 2024 S.C. Acts __).² After the guilty verdict, law enforcement officials have expressed confusion about interpreting the statutes and are relying on section 16-23-50 to keep the gun.

Section 16-23-50, titled "Penalties; disposition of fines; forfeiture and disposition of handguns," provides:

(A)(1) A person, including a dealer, who violates the provisions of this article, except Section 16-23-20, is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(2) A person violating the provisions of Section 16-23-20 is guilty of:

¹ The South Carolina Constitutional Carry/Second Amendment Preservation Act of 2024 amended section 16-23-50(A)(2) to provide for graduated penalties for violation of section 16-23-20. Act No. 111, 2024 S.C. Acts __.

² Section 16-23-20 was amended by the South Carolina Constitutional Carry/Second Amendment Preservation Act of 2024, revising the places where and circumstances upon which handguns and firearms may be carried and persons who may carry handguns and firearms.

(1) a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both, for a first offense;

(2) a misdemeanor and, upon conviction, must be imprisoned not more than three years for a second offense; or

(3) a felony and, upon conviction, must be imprisoned not more than five years for a third or subsequent offense.

(B) In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun 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 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. 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. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handguns received by the law enforcement agencies under the provisions of this article.

You also reference sections 16-3-1535(E) and 16-3-1545(E) of the South Carolina Code (2015), which provide as follows:

A law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible.

S.C. Code Ann. § 16-3-1535(E)

A law enforcement agency, the prosecuting agency, and the circuit and family courts must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics to use as evidence when possible.

S.C. Code Ann. § 16-3-1545(E).

Veronica Swain Kunz

Page 3

May 1, 2024

We understand your question is whether the confiscation provision under section 16-23-50(B) prevents law enforcement from returning a stolen handgun to the owner when it was used in the commission of a violation of section 16-23-20?

Law/Analysis

Section 16-23-20 sets forth an enumerated list of places where it is unlawful to carry a handgun, whether concealed or not, unless an exception applies. The penalties for violating section 16-23-20 are set forth under section 16-23-50(A)(2)-(B), including the automatic forfeiture upon conviction of the handgun used in violation of 16-23-20.

In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun 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 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. 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. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handguns received by the law enforcement agencies under the provisions of this article.

S.C. Code Ann. § 16-23-50(B).

South Carolina courts have held that when a statute provides for an automatic forfeiture conditioned upon a prior conviction, the rights of due process of law under the Fourteenth Amendment of the United States Constitution and Article 1, section 3 of the South Carolina Constitution require a post-seizure hearing for an innocent owner to show why the property should not be forfeited. In Shipman v. Du Pre, the Supreme Court of South Carolina held a criminal statute conditioning forfeiture of property upon a prior conviction did not violate due process when it afforded the parties charged a hearing and postponed the sale of the property until determination of the criminal case. 222 S.C. 475, 480-81, 73 S.E.2d 716, 718 (1952). Subsequently, in Moore v. Timmerman our State supreme court considered the forfeiture of a shotgun, owned by an innocent third party, used while hunting deer at night in violation of State law. 276 S.C. 104, 108-09, 276 S.E.2d 290, 293 (1981). The Court held “property used in the commission of crimes and which is therefore otherwise subject to forfeiture is not necessarily protected merely because it is owned by an innocent third party;” however, “the parties claiming an interest in the property must be afforded the basic due process notice and hearing rights.” Our State supreme court reiterated its holding in Moore in State v. 192 Coin-Operated Video Game Machines, providing that “[t]he most due process requires is a post-seizure opportunity for an innocent owner ‘to come forward

Veronica Swain Kunz

Page 4

May 1, 2024

and show, if he can, why the *res* should not be forfeited and disposed of as provided for by law.” 338 S.C. 176, 196, 525 S.E.2d 872, 883 (2000) (quoting Moore, 276 S.C. at 109, 276 S.E.2d at 293).

In a 2013 opinion, this Office applied our State supreme court’s holdings in Shipman and Moore to section 16-23-50, determining:

Like the statutes considered in Shipman and Moore, § 16-23-50(B) provides for the automatic forfeiture of a handgun involved in a violation of § 16-23-20 as a punishment contingent upon a conviction. Like the statute in Shipman, § 16-23-50(B) provides for confiscation of the handgun “[i]n addition to the penalty” provided for in § 16-23-50(A)(2). Therefore, a conviction under § 16-23-20 is necessary before the handgun involved in the violation may [be] confiscated by the appropriate law enforcement agency and subject to forfeiture. As indicated in Moore, since the Legislature elected to make forfeiture under § 16-23-50(B) a punishment contingent upon a conviction under § 16-23-20, the confiscated handgun is subject to automatic forfeiture without a separate civil forfeiture proceeding if it is owned by the individual convicted. This is because an individual convicted of violating § 16-23-20 receives the requisite notice and opportunity for a hearing under due process at trial. A separate hearing with regards to forfeiture is only required if an innocent third party claims an interest in the confiscated property.

As for the disposition of a handgun confiscated for a violation of § 16-23-20, § 16-23-50(B) goes further than those provisions in Shipman and Moore to provide that the “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*.” (Emphasis added). In light of the broad language used in this provision, we are unable to advise as to any and all legal proceedings which may involve a weapon seized pursuant to § 16-23-50(B). However, in situations where the individual convicted is the owner of the confiscated handgun, we believe this language should be interpreted to mean disposition must wait until after the defendant has, at the very least, exhausted his right to an appeal or allowed the time period in which an appeal may be filed to expire. In the event a separate forfeiture proceeding is held to address a third party’s claim of an interest in the confiscated handgun, we believe disposition must wait until any such claim is ultimately resolved. Thus, we suggest you notify and consult your circuit solicitor before disposing of any handgun pursuant to § 16-23-50(B) to ensure that all legal proceedings in which it may be involved have been finally determined.

Op. S.C. Att’y Gen., 2013 WL 2732900 (S.C.A.G. June 3, 2013) (first alteration in original) (footnote omitted). As the applicable law has not changed, we reaffirm our conclusion that due process requires an innocent third party be given notice and afforded a separate, post-seizure

hearing to present his or her claim of interest in a handgun confiscated pursuant to section 16-23-50(B) prior to the disposition of the handgun. Op. S.C. Att’y Gen., 1986 WL 289899 (S.C.A.G. October 3, 1986) (providing it is the policy of this Office that we will not reverse a prior opinion unless such prior opinion is clearly erroneous, or the applicable law has changed).

In our research, we were unable to find any South Carolina case law specifically addressing whether the forfeiture provision under section 16-23-50(B) is applicable when the handgun used in the commission of a violation of section 16-23-20 constitutes stolen property. As such, we must rely on the rules of statutory interpretation to discern the intent of the General Assembly. *See 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 intent of the legislature.”). “[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” *In re Hosp. Pricing Litig., King v. AnMed Health*, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). As recognized by this Office in our 2013 opinion, the forfeiture provision under section 16-23-50(B) is a punishment contingent upon a conviction. We believe it would be contrary to the general purpose of section 16-23-50—punishment for a violation of section 16-23-20—to enforce the forfeiture provision of subsection (B) when the confiscated handgun constitutes stolen property without affording the handgun’s owner the same due process protections as an innocent third party owner. *See Allen v. S.C. Pub. Emp. Ben. Auth.*, 411 S.C. 611, 616, 769 S.E.2d 666, 669 (2015) (“When interpreting a statute, the Court must read the language in a sense which harmonizes with its subject matter and accords with its general purpose.”). Accordingly, we believe that at minimum, the owner of a stolen handgun confiscated pursuant to section 16-23-50(B) should be given notice and the opportunity to be heard at a post-seizure hearing.

In addition to these due process considerations, we believe a court may find section 27-21-20 of the South Carolina Code (Supp. 2023), titled “Property recovered by sheriff or police chief; ascertaining and notifying owner; disposition where owner not found; records,” prevails over the general provisions of section 16-23-50 in controlling the seizure and disposition of stolen property recovered by law enforcement. *See James v. S.C. Dep’t of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) (“Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each.”); *id.* (“Generally, when a general statute and a specific statute conflict, the specific statute prevails.”). Chapter 21 of Title 27 of the South Carolina Code (2007 & Supp. 2023) is titled “Disposition of Confiscated and Stolen Property.” Section 27-21-20 provides:

(A) If property has been recovered by a sheriff of a county or chief of police of a municipality and ownership is ascertained, the sheriff or chief of police must notify its owner as provided by subsection (B).

(B) A sheriff or chief of police must provide notice:

- (1) within fifteen days;
- (2) by registered mail, return receipt requested;
- (3) describing the property and including an identifying serial number if available; and
- (4) advising the owner that the property may be sold at auction pursuant to Section 27-21-22 if not reclaimed within sixty days of mailing of the notice.

(C) If after diligent efforts the owner of the property cannot be ascertained or if the property is not reclaimed or sold at public auction, the sheriff of a county or chief of police of a municipality may dispose of any recovered stolen or abandoned property as provided in this subsection.

(1) Property that is not suitable for sale, including, but not limited to, clothing, food, prescription drugs, weapons, household cleaning products, chemicals, or items that appear nonusable, including, but not limited to:

(a) electric components that appear to have been skeletonized, where parts have been removed and are no longer in working order; or

(b) items that have been broken up and only pieces exist may be destroyed by the jurisdiction holding the property.

(2) The sheriff or chief of police may use any property recovered by his jurisdiction if the property is placed on the jurisdiction's inventory as property of the jurisdiction.

(3) The sheriff or chief of police, with the consent of the appropriate governing body, may turn over to any organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, items of abandoned or recovered property that may be used for the betterment of that organization. However, the accrued value of the items given to an individual organization as provided above by a sheriff or chief of police shall not exceed a value of one thousand dollars in the respective government entity's fiscal year.

(D) A jurisdiction recovering property pursuant to the provisions of this section shall maintain a permanent record of all property recovered and its disposition.

Under this section, if ownership is ascertained, a sheriff or police chief is required to notify the owner of the stolen property within fifteen days of its recovery. If, after diligent efforts, ownership

Veronica Swain Kunz
Page 7
May 1, 2024

cannot be ascertained, subsection (C) provides for the disposition of the stolen property, including use of the property by the sheriff or chief of police. We note, however, weapons are deemed unsuitable for sale.

Moreover, section 16-23-50 was enacted in 1965, subsequent to section 27-21-20's enactment in 1959. Both statutes have been amended several times, with section 16-23-50 having been most recently amended in 2024. Therefore, we must presume the General Assembly had knowledge of the specific provisions governing stolen property recovered by law enforcement under section 27-21-20 when enacting section 16-23-50 and amending both statutes thereafter. *See State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”). Based on the foregoing, we believe a court may find section 27-21-20 controls the seizure and disposition of a stolen handgun confiscated pursuant to section 16-23-50(B).

Conclusion

Our courts have yet to address the application of section 16-23-50 when the handgun confiscated constitutes stolen property. However, we reaffirm this Office's 2013 opinion that concluded due process requires an innocent third party to be given notice and afforded a separate, post-seizure hearing to present his or her claim of interest in a handgun confiscated pursuant to section 16-23-50(B). As recognized by this Office in our 2013 opinion, the forfeiture provision under section 16-23-50(B) is a punishment contingent upon a conviction. Accordingly, we believe it would be contrary to the general purpose of section 16-23-50—punishment for violation of section 16-23-20—to enforce the forfeiture provision of subsection (B) when the confiscated handgun constitutes stolen property without affording the handgun's owner the same due process protections as an innocent third party owner. Accordingly, we believe that at minimum, the owner of a stolen handgun confiscated pursuant to section 16-23-50(B) should be given notice and the opportunity to be heard at a post-seizure hearing. A court may also find section 27-21-20, relating to stolen property recovered by a sheriff or police chief, prevails over the general provisions of section 16-23-50 in controlling the seizure and disposition of a stolen handgun confiscated pursuant to section 16-23-50(B).

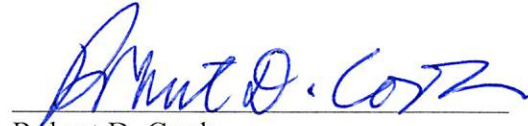
Sincerely,



Elizabeth McCann
Assistant Attorney General

Veronica Swain Kunz
Page 8
May 1, 2024

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General