

7116 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 3, 2001

Jackie F. Brothers, Patrol Lieutenant
Police Department, City of West Columbia
P.O. Box 4044
West Columbia, South Carolina 29171

Re: Disposition of Seized/Abandoned Property

Dear Patrol Lieutenant Brothers:

In a letter to this Office, you have requested "an opinion...concerning the disposition of seized or abandoned property that is in the custody of our police department." By way of background, you indicate that:

We have a large quantity of items including weapons, jewelry, tools, and other property that has gone through the process required clearing the items for disposition. We are interested in trading these items for equipment to outfit our officers, particularly our Community Emergency Response Team.

Specifically, you pose two questions for response: "[t]he first is the legality of trading these items for departmental equipment ... [t]he second would be regular bidding requirements would apply requiring us to obtain multiple bids from vendors for such an exchange."

Unfortunately, your questions cannot be resolved with a simple yes or no response. Depending on the type of property and the way in which that property came into the custody of the West Columbia Police Department, a number of different statutes may apply. Those statutes include, but may not be limited to, S.C. Code Ann. §§16-23-10 et seq. (Offenses Involving Weapons), 23-31-190 (Regulation of Pistols), 27-21-10 et seq. (Disposition of Confiscated and Stolen Property), and 27-18-10 et seq. (Uniform Unclaimed Property Act). I will address the application of each in turn.

Disposition of Weapons

When a pistol has been confiscated as the result of a violation of Article 1, Chapter 23 of

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Title 16 (specifically §§16-23-20 and 30), that pistol must be delivered to the chief of police or sheriff, depending on the location of the violation. See S.C. Code Ann. §16-23-50(B). Subsection (B) further provides that:

The law enforcement agency that receives the confiscated pistol 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 pistols in this State for a pistol or any other equipment approved by the agency, or destroy it.

Additionally, when a weapon has been used in the commission of or in furtherance of a crime, §16-23-405 provides that the weapon must be confiscated. In that section of the Code, “‘weapon’ means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a knife with a blade over two inches long, a blackjack, a metal pipe or pole, or any other type of device or object which may be used to inflict bodily injury or death.” Similar to §16-23-50, §16-23-405(2) provides that the confiscated weapon:

...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 weapon 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 pistols in this State for a pistol or other equipment approved by the agency, or destroy it.

Therefore, when the West Columbia Police Department has come into possession of a pistol or other weapon pursuant to S.C. Code Ann. §§16-23-50 or 405, an exchange such as that contemplated would appear to be authorized, as long as the items are traded with a “retail dealer licensed to sell pistols in this State.”²³

When a pistol has been found by a citizen and turned into the police department, the procedure is somewhat different. Section 16-23-55 provides the “procedure for returning lost pistol[s]” and states that “upon request of the individual who found and turned over the pistol, the agency shall return the pistol to this person ...” unless the pistol is stolen, has been used in the commission of a crime or the true owner is located. Section 16-23-55 does not address the procedure to be employed when the individual who found the pistol does not request its return. However, as there is no statutory authority for the transfer of ownership or ownership rights (i.e. dominion and control) of the pistol to the law enforcement agency, it is likely that the pistol would be subjected to disposition in accordance with S.C. Code Ann. §27-21-20, discussed below.

Section 16-23-460 provides that, with some exceptions, any person carrying a concealed

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deadly weapon is guilty of a misdemeanor and that the person "must forfeit to the county, or, if convicted in a municipal court, to the municipality the concealed weapon ..." As a general matter, ownership of the weapon would pass to the municipality or county at the time of forfeiture. The governing body of the county or municipality would be able to exercise the rights of ownership over the pistol in accordance with the general law. Whether that body chose to use the weapon as suggested in your letter would be a policy decision.

Finally, Article 3, Chapter 31 of Title 23 regulates dealers and the purchase of pistols. Section 23-31-190 provides the consequences for a violation of Article 3 and states, in pertinent part, as follows:

In addition to the penalty provided in this section the pistol involved in the violation must be confiscated. The pistol 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 agencies that receive the confiscated pistols may use them within their department, transfer them to another law enforcement agency, or destroy them.

While §23-31-190 provides that the pistol confiscated as a result of a violation of Article 3 must be delivered to the chief of police or sheriff just as in §§16-23-50 & 405, there is no provision for the trading of the pistol for equipment. Accordingly, it is my opinion that such pistols should not be exchanged for other equipment for use within the police department.

I realize that the above opinions result in what appear to be inconsistent conclusions, however, this Office has previously opined that, where State statutes specifically address the manner in which certain weapons must be disposed of, procedures in conflict with those statutes should not be followed. See OP. ATTY. GEN. (Dated October 2, 1985). Further, statutes' words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Disposition of Confiscated and Stolen Property
(§27-21-10 et seq.)

S.C. Code Ann. §27-21-20 deals with the disposition of stolen or abandoned property which has been recovered by a sheriff of a county or chief of police of a municipality. In a prior opinion, this Office has also stated that §27-21-20 would probably be applicable to lost property turned into the law enforcement agency which is unclaimed by the true owner and abandoned by the finder. See OP. ATTY. GEN. (Dated September 9, 1997). After a series of steps designed to notify the owner of the location of the property, the sheriff or chief of police is given a few

options of disposal.

Section 27-21-20(B) provides that the sheriff or chief of police "may sell at public auction any recovered stolen or abandoned property... [and] shall turn over all proceeds of the sale to the county or municipal treasurer who shall pay any debts incurred in holding the sale and then shall place the final proceeds in a special fund." Further, Section 27-21-20(C) provides an alternative means of disposition if the property is not sold at auction or reclaimed and states as follows:

(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.

The above sections give the sheriff or chief of police four options for disposing of the abandoned property. Those four options are 1) public auction with proceeds to treasurer; 2) destruction; 3) use of the property; and 4) donating the property to certain tax exempt organizations. Nowhere does the statute allow the sheriff or chief of police to use the abandoned property essentially as currency to purchase other equipment. Again, this Office cannot interpret a statute in such a manner as would expand its scope. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Accordingly, it is my opinion that property covered by Section 27-21-10 et seq. may not be exchanged for other equipment.

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Uniform Unclaimed Property Act
(§27-18-10 et seq.)

The Uniform Unclaimed Property Act is intended to provide a comprehensive scheme regulating the disposition of various categories of "abandoned" intangible property. Under the Act, §27-18-20 defines "intangible property" as:

monies, checks, drafts, deposits, interest, dividends, and income; credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances; stocks and other intangible ownership interests in business associations; monies deposited to redeem stocks, bonds, coupons and other securities, or to make distributions; amounts due and payable under the terms of insurance policies; and amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

The Act, therefore, would most likely not be applicable to tangible property such as weapons, jewelry and tools. Further, this Office has previously opined that cash, in certain circumstances, recovered by a law enforcement agency should be disposed of pursuant to §27-21-20, rather than the Uniform Unclaimed Property Act. See OP. ATTY. GEN. (Dated January 6, 1998). In any event, should your department be in possession of intangible property covered by the Act, the disposition of that property would have to be accomplished pursuant to its requirements. Without addressing the specifics, the Act does not allow for the exchange contemplated in your letter.

Bidding Requirements

Whether the exchange contemplated would be subject to the "regular bidding requirements" depends on the local ordinances of the City of West Columbia. If the City has passed a procurement ordinance similar to the South Carolina Consolidated Procurement Code, it is likely that such an ordinance would apply. As, according to the Code, "'procurement' means buying, purchasing, renting, leasing, or otherwise acquiring any supplies," it is apparent that an exchange of one asset for another would fit the definition.

Conclusion

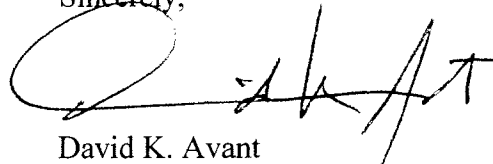
As you can see, this area of the law can be quite complicated. I have attempted to address your questions as thoroughly as possible, but I cannot say that the above represents an exhaustive list of applicable statutes and laws. As the answer to your question may depend on a number of factors surrounding the individual item which the Department wishes to exchange, I would

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suggest that you contact your City Attorney and seek his/her advice as to the proper course of action.

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', with a large, stylized initial 'D' and a long horizontal stroke extending to the right.

David K. Avant
Assistant Attorney General