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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 31, 1997

Captain Al Eargle
Richland County Sheriff's Department
5623 Two Notch Road
Columbia, South Carolina 29223

Re: Informal Opinion

Dear Captain Eargle:

You have asked for an opinion concerning the disposition of weapons. You wish to know whether the Sheriff's Department, Clerk of Court and County Administrator can enter into an agreement whereby the Sheriff's Department sells these weapons to a retail gun dealer with the proceeds being used to purchase equipment and supplies for the Sheriff's Department? You reference Sections 16-23-50, 16-23-405 and 16-23-500 of the Code.

LAW / ANALYSIS

S.C.Code Ann. Section 16-23-405 (1) defines the term "weapon" as a "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." Subsection (2) of Section 16-23-405 further provides that

(2) [a]ny person convicted of a crime, in addition to any penalty, shall have any weapon used in the commission or in furtherance of the crime confiscated. Each such 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 agencies that received the confiscated weapons shall use them

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within their departments, transfer them to another law enforcement agency for their lawful use, or transfer them to the clerk of court or mayor who shall dispose of them as provided by Section 16-23-500. Firearms seized by the State Law Enforcement Division may be kept by the division for use by its forensic laboratory.

Section 16-23-50 also provides for certain penalties for violation of the weapons law. See Op. Atty. Gen., June 13, 1995 (Informal Opinion). Subsection (B) provides that

[i]n addition to the penalty provided in this section, the pistol involved in the violation of this article 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 for their lawful use, transfer them to the clerk of court or mayor who shall dispose of them as provided by Section 16-23-500, or trade them with a retail dealer licensed to sell pistols in this State for a pistol or any other equipment approved by the agency. If the State Law Enforcement Division seized the pistol, it may keep it for use by its forensic laboratory. Records must be kept of all confiscated pistols received by the law enforcement agencies under the provisions of this article.

Section 16-23-500 is also relevant to your question as well. Such Section in pertinent part states that

[t]he clerk of court in each county and the mayor of each town and city or his designee shall keep a written record of all weapons, as defined by Section 16-23-405, confiscated or forfeited to the custody of the clerk of court, mayor, or other municipal official. The record shall include the make, caliber, and serial number of the weapon and a notation of the legal proceeding which resulted in the confiscation or forfeiture.

At the end of each quarter the clerk of court and the mayor or his designee shall sell at public sale or by sealed bids to a

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dealer licensed under the provisions of Article 3 of Chapter 31 of Title 23 who is the highest bidder

All public sales provided for in this section are subject to the provisions of Section 16-23-30. Proceeds of sales by clerks of court must be deposited in the general fund of the county and proceeds of sales by city or town officials must be deposited in the city or town treasury.

A number of statutory provisions are applicable here. First and foremost is the time-honored tenet of construction that the intent of the General Assembly must prevail in the interpretation of any statute. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed therein. Jones v. S.C. State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). Moreover, exceptions made in a statute give rise to a strong inference that no other exceptions were intended. Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. App.1984). Statutes in pari materia should be construed together in order to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

In an Opinion dated January 11, 1985, this Office analyzed the role of the county administrator and county council in the budget process. We emphasized in that Opinion the broad discretion which county council has in the spending and appropriation of county funds. We summarized the process this way:

Article X, Section 7(b) of the Constitution of the State of South Carolina mandates that a county, as a political subdivision, 'prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. ... Section 4-9-140, Code of Laws of South Carolina (1983 Cum.Supp.) provides additionally, in part:

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial

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requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources. ...

In the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the county.

Clearly, the ultimate responsibility for adopting and maintaining the annual budgets and insuring that adequate revenue is generated to meet expenses lies with Greenville County Council.

Greenville County operates under the council-administrator form of government and therefore employs a county administrator pursuant to Section 4-9-620 of the Code. Among the administrator's powers and duties specified in Section 4-9-630 are the duties

(4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies; [and] ...

(7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;

Further duties of the administrator relative to the budgetary process are specified by Section 4-9-640 of the Code:

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The county administrator shall prepare the proposed operating and capital budgets and submit them to the council at such time as the council determines. At the time of submitting the proposed budget, the county administrator shall submit to the council a statement describing the important features of the proposed budgets including all sources of anticipated revenue of the county government and the amount of tax revenue required to meet the financial requirements of the county.

Thus, the county administrator is the first step in the county's budgetary process, though the council is thereafter free to exercise its discretion in the adoption of the operating and capital budgets.

The clear intent of Section 16-23-50 is the use of confiscated weapons only pursuant to the purposes authorized therein. Plainly, a sheriff is authorized only to "trade" such weapons "with a retail dealer licensed to sell pistols in the State for a pistol or any other equipment approved by the agency." Typically, a "trade" is an "exchange of one thing for another." American Heritage College Dictionary (3d. ed.).

You have inquired, however, as to whether an agreement between the sheriff, clerk of court and county administrator might provide a basis for allowing the sheriff to sell (as opposed to trade) the confiscated weapons to a licensed retail dealer through a providing of such weapons to the clerk of court who could then dispose of them pursuant to Section 16-23-500.

Clearly, the Sheriff is authorized, pursuant to Section 16-23-50, to "transfer" confiscated pistols to the "clerk of court or mayor who shall dispose of them as provided by Section 16-23-500." Likewise, pursuant to Section 16-23-405 (2), the sheriff may transfer a confiscated weapon to the clerk of court for such disposition. As noted above, the clerk of court upon each transfer then auctions such weapons to the highest bidder among licensed retail dealers.

However, Section 16-23-500 further provides that "[p]roceeds of sales by clerks of court must be deposited in the general fund of the county" Thus, while the county administrator may be a party to the kind of agreement which your letter contemplates, and the administrator does possess important powers related to the county budget, the ultimate

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disposition of such funds would rest in the hands of county council. Council, in my judgment, could not be bound by the contemplated agreement, but could spend the funds as it sees fit. See, Focus on Beaufort County v. Beaufort County, 318 S.C. 227, 456 S.E.2d 910 (1995) [proposed ordinance limiting county spending violated statute proscribing electorate of county from proposing ordinance which appropriates money.] County council has "general authority over the county treasury." Id.

I am not familiar with any internal rules or procedures which Richland County may have governing the use of the funds contained in the county general fund. However, based upon the existing statutes, in order for such funds obtained from the sale of such weapons by the clerk of court to be used or set aside for disposition to the Sheriff, I believe such would require the approval of County Council. Clearly, Council could devote such funds to the Sheriff's Department in the manner which you contemplate, but to simply rely upon an agreement among the officials you name for such disposition would not, in my opinion, be effective to bind County Council. In short, it would require County Council's approval ultimately for such disposition.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph