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# The State of South Carolina



## Office of the Attorney General

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July 19, 1993

The Honorable John P. Gardner, Sr.  
Judge, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, South Carolina 29211

Dear Judge Gardner:

You have asked the opinion of this Office whether you can take with you upon your retirement certain law books, owned by you personally;<sup>1</sup> these law books were used by you during your tenure upon the Court of Appeals. You advise that it is your understanding that those law books owned by the State or the Judicial Department would remain with the office.

There are several general statutes that may relate to your inquiry.<sup>2</sup> S. C. Code Ann. § 14-8-50 (1992 Cum. Supp.) provides in

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<sup>1</sup> In the issuance of its quasi-judicial opinion upon disputed questions of law, the Office of Attorney General is not authorized to engage in fact-finding. Accordingly, I assume for the purposes of this opinion that the subject law books were given to you as a personal gift and were not donated to the Judicial Department or to your office.

<sup>2</sup> I caution that it is not the province of this Office to construe by opinion the State Ethics Act [S.C. Code Ann. § 8-13-100, et seq. (1992 Cum. Supp.)] or the Code of Judicial Conduct [S.C.A.C.R. 501]. Thus, to the extent that your question relates to these provisions, I refer you to the State Ethics Commission and the Advisory Committee on Standards of Judicial Conduct, respectively, for advisory opinions related to these standards. As you know, the General Assembly has determined that the State Ethics Act does not generally govern members of the judiciary except in very limited areas; nonetheless, the reporting requirements of the State Ethics Act, which include, among other things, the reporting of gifts, could be applicable.

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its relevant part that judges of the Court of Appeals "shall not be allowed any fees or perquisites of office. . . ." [emphasis added] This proscription is consistent with the temporary provision found in the Annual Appropriations Act:

That salaries paid to officers and employees of the State including its several boards, commissions, and institutions, shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or affect of increasing the compensation of said officer or employee.

1993 Act No. 164, Part I, Section 129.31. I also reference S. C. Code Ann. § 8-9-10 (Rev. 1986) which provides in pertinent part:

Whenever any person shall be removed from office or the term for which he shall have been elected or appointed shall expire he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer or in any way appertaining to his office.

I do not believe that these general statutory provisions would alter the conclusion that law books that belong personally to you and not to the government remain your personal property, although they may have been used by you during your service upon the Court of Appeals. Of course, this conclusion may differ if the documents in question contained official records or proceedings of the Court.

I note that there are a few special provisions providing that certain officers may retain specific public property upon termination of their public service in a particular office. Generally, these provisions require some payment.<sup>3</sup> I do not believe that any of these special provisions are applicable to your question.

Reference is additionally made to the Budget and Control Board policy adopted October 21, 1986, relative to the disposition of surplus personal property. The Board policy provides a process for

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<sup>3</sup> For example, 1993 Act No. 164, Part I, Section 129.36 provides that upon retirement a law enforcement officer is authorized to purchase his weapons at nominal cost. See also S. C. Code Ann. § 2-1-160 (Rev. 1986).

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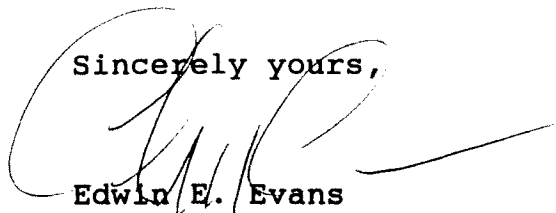
the sale of surplus personal property to a retiring employee provided the property was assigned to and used by the employee.

I conclude that there is no general statutory law that would dispute the conclusion you reached. Law books that belong to the State, the Judicial Department or the Court of Appeals remain the property of the government and law books that you personally own remain your personal property. Of course, should you continue to hold judicial office pursuant to appointment of the Chief Justice in accordance with S. C. Code Ann. § 14-1-215 (1992 Cum. Supp.), the Court may assign publicly owned law books to you for use in your official service.

I offer two caveats to my conclusions. Some departments and agencies of government prescribe by internal policy that gifts received by a public employee because of the employee's position or duties are deemed to be donations to the particular department or office. I refer you to the administrative head of the Judicial Department to resolve whether a policy of this type is or was in effect in the Judicial Department or whether any internal policy of the Judicial Department would govern your question. Second, because of the time constraint imposed with your request, I have not reviewed all of the recently enacted legislation. Some part of these extensive enactments could relate to your question, although a review of the index to the Legislative Digest does not identify any pertinent statute.

With best regards, I am

Sincerely yours,



Edwin E. Evans  
Chief Deputy Attorney General

EEE/shb

REVIEWED AND APPROVED:



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