

# The State of South Carolina



## Office of the Attorney General

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May 7, 1991

The Honorable James R. Metts, Ed.D.  
Sheriff, Lexington County  
P. O. Box 639  
Lexington, South Carolina 29072

Dear Jimmy:

In a letter to this Office you questioned whether a handgun may be returned to an individual charged with a violation of Section 23-31-140 of the Code. You indicated the individual had purchased two pistols within a thirty day period without disclosing such purchase or obtaining a special permit. The individual has successfully completed pretrial intervention and wishes to have the pistol returned. I am assuming you are not referencing a weapon declared to be contraband, such as that set forth in Section 23-31-180 of the Code.

A prior opinion of this Office dated October 13, 1988, a copy of which is enclosed, dealt with a similar question concerning the possible return of a pistol to an individual who had been arrested for violations of Sections 16-23-20, carrying a concealed weapon, and 16-23-430, carrying a weapon on school property. The opinion referenced that it was our interpretation that such provisions required confiscation of the weapons involved upon conviction. However the opinion noted,

Section 17-22-150 of the Code states that "(i)n the event an offender successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of the charge or charges pending against the offender." Therefore, if the individual in the situation you addressed has successfully completed his pretrial intervention program following his arrest for the referenced offenses, there would not be a conviction which would prevent the weapon involved in these violations from being returned.

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As to an offender charged with a violation of Section 23-31-140, it is questionable whether the rationale of the referenced 1988 opinion would be applicable. While Section 23-31-190 states "any person convicted of violating ... (Section 23-31-140) ... shall have the pistol involved in such violation confiscated" (which would be supportive of the conclusion of the 1988 opinion, where there is no conviction), Section 23-31-180 states

a pistol or other handgun possessed or sold by a dealer in violation of this article ... (which includes Section 23-31-140) ... is declared to be contraband and must be forfeited to the municipality where seized or to the county where seized if outside a municipality. The weapon must be disposed of as provided by Section 16-23-500.

Such provision as amended is later in time than Section 23-31-190 and therefore arguably could be construed as prevailing. As referenced, confiscation and disposal is not linked to a conviction.

In light of this ambiguity I cannot indicate without question whether the pistol involved in your situation may be returned. Because of the ambiguity consideration may be given to the individual wishing to have the pistol returned seeking a court order returning the pistol to him.

You next questioned whether a judge may direct a verdict of not guilty when a jury is unable to reach a verdict and where the judge had earlier denied a motion for a directed verdict. The opinion policy of this Office recognizes that state law does not authorize the Attorney General by issuing an opinion to attempt to supersede or reverse any order or finding of any court. Therefore, we are unable to respond to this question.

You also referenced the situation where the purchaser of an automobile signed a contract in association with financing the vehicle which included a clause advising the purchaser that criminal as well as civil action could be taken in case of default on the loan. The purchaser has now defaulted on the loan. The financier has requested a warrant for grand larceny.

I am in agreement with your conclusion that a case for grand larceny would probably not arise due to the lack of a trespassory taking. Moreover, in reviewing your situation, I am unaware of any criminal charge that would arise under the circumstances. A criminal charge which could possibly be considered in these circumstances

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is breach of trust. However, citing the State Supreme Court decision in State v. Butler, 21 S.C. 353 (1884), it has been stated

The mental element requisite to a breach of trust conviction is one of fraudulent intention in regard to the conversion. It would not be established by mere evidence of failure to repay a debt.

McAninch and Fairey, The Criminal Law of South Carolina (2d ed. 1989). Therefore, the element of fraudulent intent, essential to the offense of breach of trust, may be absent in the situation you described. Of course, if other circumstances or facts would become relevant, especially with regard to criminal intent, further review may be in order.

As to the final issue concerning parental consent pursuant to Section 20-7-610(A), I have not as yet resolved this question. However to avoid further delay, I am providing you the above and will respond to this last issue as soon as possible.

With kind regards, I am

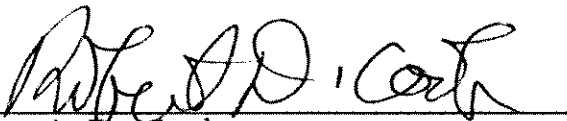
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

REVIEWED AND APPROVED BY:



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