

The State of South Carolina



Office of the Attorney General

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October 13, 1988

Chief Jim Cleveland  
108 S. Depot Street  
Pendleton, South Carolina 29670

Dear Chief Cleveland:

In a telephone call to this Office you questioned whether a pistol could be returned to an individual upon successful completion of a pretrial intervention program. You indicated that the individual had originally been arrested for the offense of carrying a concealed weapon (Section 16-23-20), carrying a weapon on school property (Section 16-23-430) and impersonating a law enforcement officer (Section 16-17-720).

Pursuant to Section 16-23-50 of the Code any person convicted of carrying a concealed pistol shall have the pistol confiscated. Also, Section 16-23-430 of the Code provides for the confiscation of the weapon involved in such violation. Such weapons are not returned to defendants convicted of such violations.

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.

I understand that no provision was made for the forfeiture of the weapon involved when the individual entered the pretrial intervention program. Section 17-22-90(3) of the Code states that an individual who enters such a program shall "...agree, in writing, to the conditions of the intervention program established by the solicitor." Also, pursuant to Section 17-22-80 of the Code, the law enforcement agency involved in an arrest is authorized to make recommendations concerning an individual entering a pretrial intervention program.

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A prior response from this Office dated November 20, 1987 commented that the statutes creating the pretrial intervention program do not provide for the payment of funds by a defendant enrolled in the program to a particular law enforcement agency to be used in the enforcement of drug laws. The letter noted that such statutes are quite specific regarding the fees and other funds authorized for such program. However, the letter further recognized that Section 17-22-90(3) of the Code in requiring an offender to agree to conditions of a program gives "broad authority to impose conditions." Therefore, in the future, consideration may be given to requiring a defendant entering a pretrial intervention program to agree to having any weapon involved in a violation confiscated as a condition to the defendant entering a program. Of course, this is a matter in the discretion of the parties involved.

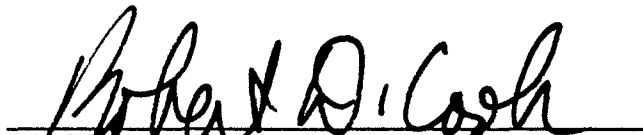
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:

  
ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS