

The State of South Carolina



Capitol 12

Office of the Attorney General

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October 2, 1985

C. D. Hopkins, III, Esquire
Staff Attorney, City of Charleston
Box 10100
North Charleston, South Carolina 29411

Dear Mr. Hopkins:

In a letter to this Office you referenced that each year a number of weapons are confiscated and forfeited to your city. After the legal proceedings regarding the weapons are concluded, those weapons deemed useable by the city police are issued for use within the department. You also referenced various state statutes, namely, Sections 16-23-50, 16-23-460, 16-23-500, 23-31-180 and 23-31-190 of the Code and questioned whether pursuant to such statutes the police department could permit a licensed firearms dealer to bid on these weapons or offer weapons and equipment in trade for use within the department.

As noted by you, certain code provisions specifically deal with the disposition of confiscated or forfeited weapons. Sections 16-23-10 et seq. of the Code, regulates offenses involving pistols. Section 16-23-20 prohibits the carrying of a pistol by an individual except in the twelve specified instances specifically authorized. Section 16-23-50 proscribes the sale of a pistol to various individuals, such as individuals convicted of a crime of violence. Pursuant to Section 16-23-50, any individual violating any provisions of the article containing the referenced statutes shall have the pistol involved in the violation confiscated. Such statute further provides that

"... such pistol shall 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 shall use them within their department, transfer them to another law enforcement agency or destroy them."

REQUEST LETTER

Continuation Sheet Number 2
To: C. D. Hopkins, III, Esquire
October 2, 1985

Section 16-23-460 provides that any person carrying a concealed deadly weapon described as in such provision "...shall be guilty of a misdemeanor, shall forfeit to the county or, if convicted in a municipal court, to the municipality the weapon so carried concealed...." Section 16-23-500 provides for the sale by clerks of court and mayors of those weapons forfeited to their custody. Noting the provisions specifically relating to pistols in Sections 16-23-10 et seq., in an opinion dated February 3, 1978, this Office construed Section 16-~~25~~-500 as being inapplicable to pistols.


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Article 3 of Title 23, Chapter 31 of the Code regulates the retail sale of pistols and handguns. Sections 23-31-180 and 23-31-190, which are contained in such article, specifically provide for the forfeiture and disposition of pistols confiscated for violation of such article. Pursuant to Section 23-31-180 any pistol "...which has a die-cast frame or receiver which melts at a temperature of less than eight hundred degrees..." shall be forfeited to the State and destroyed if ordered by a court. Section 23-31-190 closely parallels the provisions of Section 16-23-50 referenced above.

As is apparent, certain State statutes specifically provide for the manner of disposing of various weapons confiscated by or forfeited to the State. I would also note that the statutes and procedures identified in this opinion should not be interpreted as being a complete listing of statutes and procedures relevant to the disposal of weapons. However, it is apparent that the procedure described by you involving the firearms dealer is inconsistent with certain state statutes and, therefore, should not be followed where in conflict with State law.

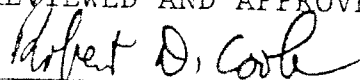
If there are any questions, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions