

The State of South Carolina



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Office of the Attorney General

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October 2, 1985

Thomas E. Lynn, Esquire
Deputy County Attorney
County of Charleston
3505 Pinehaven Drive
Charleston Heights, S. C. 29405

Dear Mr. Lynn:

In a letter to this Office you raised two questions of interest to the Charleston County Police Department. In your first question reference was made to a provision in Charleston County Ordinance No. 527 which deals with the disposal of personal property, including confiscated firearms, accumulated by the Police Department. You indicated that pursuant to the Ordinance the property would be sold at public auction in a manner consistent with the Charleston County Procurement Ordinance. You further stated that the Police Department is opposed to disposing of confiscated firearms by auction and questioned whether there is any authority which details the proper manner of disposing of these weapons...

Certain code provisions specifically deal with the disposition of confiscated or forfeited weapons and, therefore, conflict with the provision in the county ordinance which provides for auctioning off such 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 16-23-30 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

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"... 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."

Article 3 of Title 23, Chapter 31 of the Code regulates these retail sale of pistols and handguns. Section 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. Section 23-31-190 closely parallels the provisions of Section 16-23-50 referenced above.

In addition to the provisions cited above regulating the disposition of confiscated pistols, other provisions detail the manner of disposing of certain weapons. Section 16-23-500 of the Code provides for the sale by clerks of court and mayors of 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-~~23~~²³-500 as being inapplicable to pistols. As to the disposition of certain confiscated rifles and shotguns, I am enclosing copies of two prior opinions of this Office dated January 3, 1979 and August 12, 1981 which comment on means of disposing of such weapons in specific instances. Also, in certain situations, the forfeiture statutes pertaining to drug violations, Section 44-53-520 et seq. of the Code, may be applicable. 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.

As is apparent, specific State statutory provisions provide for the manner of disposing of certain weapons confiscated by or forfeited to the State. Generally, it is well settled that a municipal ordinance cannot conflict with a state law of general character and statewide application. 56 Am.Jur.2d, Municipal Corporations, Section 374. The Charleston County ordinance providing for an auction of certain personal property which you referenced in your letter conflicts with certain state statutory provisions and therefore would be inapplicable to situations where such state statutes specifically provide for the manner of

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disposal of these weapons. Inasmuch as you are in a better position to advise as to the relevance of certain state statutes and their applicability to specific weapons, this Office cannot comment further as to the manner of disposing of specific rifles, shotguns, or pistols.

In your second question you indicated that the Director of Security of the Charleston County School District is planning to have Charleston County police officers stationed at various schools for security purposes and to regulate traffic. You stated that a question has been raised as to whether school grounds are public or private property and, therefore, whether such grounds need to be posted as being under the jurisdiction of the county police.

As to your specific question of whether school property is public property or private property, such is generally considered to be public property. It has been stated:

"(t)he ownership of school property is generally in the local district or school board as trustee for the public at large. Such property occupies the status of public property and is not to be regarded as the private property of the school district by which it is held or wherein it is located."
68 Am.Jur.2d, Schools, Section 69 p. 418.
See also: 78 C.J.S., Schools and School Districts, Section 242 p. 1199.

The only State statutory provision of which I am aware dealing with the posting of property so as to specifically bring it within police jurisdiction is Section 23-1-15 of the Code. Such provision requires that parking lots open to use by the public for motor vehicle traffic "... be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to the unlawful operation of motor vehicles..." before law enforcement officers have jurisdiction in such parking lots. The legislative history of such provision shows that it was the legislature's intention to extend law enforcement jurisdiction "... to parking lots open to the public on private property upon request of the owner of such property." 1976 Senate Journal at p. 192 referencing H. 2583. Therefore, as a result of such provision, law enforcement's jurisdiction to cite for violations of law dealing with the unlawful operation of motor vehicles was expanded to include privately-owned parking lots accessible to the general public when such lots

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were posted as required by Section 23-1-15. However, it appears that such provision would be inapplicable to "public" parking lots.

Pursuant to Act No. 190 of 1937, the jurisdiction of Charleston County police officers is county-wide. Moreover, such Act further provides that:

(t)he general duties of the county policeman shall be to patrol the roads of the county when not otherwise engaged, quell all disorder, enforce all laws of the State, with special attention to the traffic laws, ... and generally to apprehend any violators of the law....

Obviously, the distinction as to whether property is private or public is irrelevant to the question of the authority of a law enforcement officer to make arrests or investigate crimes generally. The question of whether specific property is public or private is also irrelevant as to certain traffic offenses. As noted in an opinion of this Office dated May 31, 1983 the driving under the influence statute "... applies to driving any vehicle 'within this State' and not just public highways." In another opinion of this Office, 1969 Op. Atty. Gen. No. 2634, p. 39, it was recognized that an individual could violate Section 56-5-2920 of the Code by recklessly driving an automobile on private property.

An opinion of this Office dated May 26, 1981, dealt with the question as to whether in circumstances when signs directing the movement of traffic are posted on school property, are the mandates of such signs enforceable as if they were on the highway. The question was also asked as to whether in circumstances when an accident involving an automobile occurs on school property, is it treated as a violation on the highway. In the opinion, a copy of which is enclosed, it was determined that local law enforcement officers are empowered to enforce traffic laws on school property when such traffic laws are, as necessary, made known to the public by the use of traffic control devices, such as signs directing the movement of vehicular traffic. The opinion noted that pursuant to Section 56-5-950 of the Code, drivers are obligated to obey instructions of properly placed traffic control devices. It was further stated that local law enforcement officers are empowered to enforce mandates of all traffic control devices on any highway

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maintained by public funds. Such opinion particularly referenced the definition of "highways" which is defined in Section 56-5-430 of the Code as "... every way publicly maintained when any part thereof is open to the use of the public for the purpose of vehicular traffic." The opinion concluded that public school property could come within the definition of a highway.

Referencing the above, it appears that the Charleston County Police are authorized to provide security and enforce the type traffic offenses indicated above at the schools in Charleston County. I am unaware of any authority which should be construed as mandating that school property be posted as being under the jurisdiction of the police in order for the police to patrol such property. Also, I would further advise that nothing in this opinion should be construed as commenting on the obligation of such law enforcement officers to act as discussed.

With best wishes.

Sincerely,

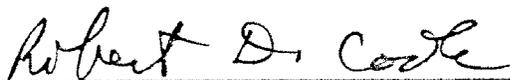


Charles H. Richardson
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CHR:djg

Enclosures

REVIEWED AND APPROVED BY:



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