

1978 S.C. Op. Atty. Gen. 33 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-21, 1978 WL 22507

Office of the Attorney General

State of South Carolina

Opinion No. 78-21

February 3, 1978

**\*1 SUBJECT: Confiscated Pistols**

Pistols confiscated pursuant to violations of Article I of Title 16 or Article III of Title 23 may be turned over to the City Police for issue within that department.

To: Jack W. Erter, Jr., Esquire  
Attorney at Law

**QUESTION:**

Can the chief of a municipal police force issue confiscated pistols to police officers serving on his force?

**AUTHORITIES:**

36 Am. Jur. 2d, Forfeitures and Penalties Section 8 at 616, [Section 23-31-180, South Carolina Code](#) of Laws, 1976, Section 23-31-190, Section 16-23-460, Section 16-23-500, Section 16-23-20, Section 16-23-30, Section 16-23-40, and Section 16-23-50.

**DISCUSSION:**

You have asked whether the chief of a municipal police force may issue confiscated pistols to police officers serving on his force. It is the opinion of this office that in the instances hereafter outlined that confiscated pistols can be so issued.

However, the following remarks must be prefaced with the caveat that forfeitures are not favored in the law, and that statutes authorizing the forfeiture of property illegally used are to be strictly construed since they are drastic in their operation. 36 Am. Jur. 2d Forfeitures and Penalties, Section 8, at 615. With this in mind, the several sections speaking to confiscation of weapons will be examined.

It is true, as you are aware, that [Section 23-31-180 of the Code of Laws of South Carolina](#), 1976, sets forth three methods of disposition of certain pistols declared to be contraband. Article III of Title 23, encompassing the above-cited section, regulates the retail sale of pistols and handguns, and [Section 23-31-180](#) defines that class of pistols proscribed from retail sale. Section 23-31-190 provides for the manner of disposition of those illegal weapons upon forfeiture to the State. As you pointed out, pistols confiscated and forfeited under this article may be used within the law enforcement agency receiving them.

A second section of the code dealing with confiscation of certain weapons is 16-23-460. This section proscribes the carrying of '(a) dirk, slingshot, metal knuckles, razor or other deadly weapon usually used for the infliction of personal injury' in a manner concealed about the person. By authority of this section, upon conviction of an individual for so carrying one of the above-mentioned weapons, the individual shall forfeit the weapon to the prosecuting governmental body. Section 16-23-500 provides that the Clerk of each county, and the mayor of each town or city shall dispose of

those weapons forfeited to their custody by sale of destruction. Because pistols are not specifically listed in Section 16–23–460 and because of the existence of Article I of Title 16 specifically regulating offenses involving pistols, we have determined that confiscated pistols do not fall within the purview of the forfeiture provisions of Section 16–23–460. This result ensues after a strict construction of the above-cited sections.

\*2 Article I of Title 16 specifically regulates offenses involving pistols. For instance Section 16–23–20 provides that it be unlawful ‘for anyone to carry about the person, whether concealed or not, any pistol . . .’ with twelve specific exceptions (A discussion of these exceptions is not relevant to the present discussion). Section 16–23–30 proscribes the sale of any pistol to various individuals (convicted felons, etc.). Section 16–23–40 provides that any pistol possessed or sold in violation of the article shall be forfeited to the State. The Section further provides that these weapons may be destroyed under certain circumstances. However, Section 16–23–50 provides that any person convicted of violating any provision of the article shall, in addition to any penalty provided by law, have the pistol confiscated. Depending upon the jurisdiction, county or city, a confiscated pistol is to be delivered to the chief of the law enforcement agency, to be used within that agency, transferred to another agency, or destroyed.<sup>1</sup>

#### CONCLUSION:

It may be said that those pistols confiscated pursuant to violations of Article I or Title 16 or Article III of Title 23, may be turned over to the City Police for issue within that department.

Scott Elliott  
Staff Attorney

#### Footnotes

- 1 ‘A pistol of and by itself is not contraband and the owner may force its return when no longer required for the purposes of justice, unless such has been confiscated.’ [Long v. McMillan](#), 226 S.C. 598, 86 SE 2d 477. Research reveals no common law authority empowering the State to confiscate personalty in an effort to permanently deprive its owner of its use and possession. Rather the power is statutorily provided. There is some limited authority that the legislature may go further than ours has in the present case and provide for the confiscation of a weapon or pistol upon the arrest of its possessor for a weapons violation. [McConathy v. Deck](#), 34 Colo. 461, 83 P. 135. However, our legislature clearly intended that a conviction for a weapons violation trigger the forfeiture of the weapon involved.’

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