

1974 S.C. Op. Atty. Gen. 55 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3701, 1974 WL 21220

Office of the Attorney General

State of South Carolina

Opinion No. 3701

January 29, 1974

***1 A pistol involved in a violation of the State's pistol law is forfeit to the county in which the violation occurred or to the municipality in which it occurred.**

Attorney At Law
Columbia, South Carolina

With reference to your letter of January 28, 1974, regarding two pistols that were taken from a constituent, Joe Snead, of Great Falls, Section 16–129.7, 1962 Code of Laws of South Carolina, as amended, makes a pistol involved in a violation of the State's pistol law forfeit to the county in which the violation occurred or to the municipality in which it occurred. A reading of this Section convinces me that the forfeiture is mandatory and is accomplished by operation of law rather than being discretionary with the magistrate or recorder or the trial judge.

I cannot tell from your letter whether or not the pistol violation charges were handled by a magistrate. Inasmuch as the jurisdiction of this offense is not within a magistrate's court, such a proceeding before a magistrate would be nugatory. Even so, however, I am not sure that your client would be in a better position to make this claim, because the charge could then be prosecuted in general sessions court.

About the only suggestion I have is that if the matter has not been disposed of at all, but instead is still pending, the magistrate would have no right to deliver the pistols to the Clerk of Court for sale or destruction under the applicable statute. Again, this does not seem to be very helpful because even if the case has not yet been terminated, the two pistols may be held in custody by the arresting police officer as evidence.

Joseph C. Coleman
Deputy Attorney General

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