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STATE OF ALABAMA

OCT 26 1990

91-00036

Honorable Curtis Springer
Municipal Court Judge
P. O. Box 1111
Montgomery, AL 36101-1111

Weapons - Courts - Condemnation

The Municipal Court of the City of Montgomery does not have authority to condemn unclaimed weapons in the possession of the city's police department. The city must follow the procedure provided at Code of Alabama 1975, § 11-47-116 for disposing of such weapons.

Dear Judge Springer:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Does the Municipal Court of the City of Montgomery have authority to condemn unclaimed weapons in the possession of the city's police department?

FACTS AND ANALYSIS

You stated in your request that the Police Department of the City of Montgomery has approximately 257 unclaimed weapons in its possession. The weapons are all found property with unknown owners. No weapons violations are involved.

Code of Alabama 1975, § 13A-11-84 provides for the seizure and disposition of pistols involved in violations of certain laws involving the possession of pistols. The condemnation of such pistols is under the authority of the circuit court. In that the weapons in question were not involved in weapons violations, the procedure provided by § 13A-11-84 is not applicable. Furthermore, I cannot find any provision providing for the condemnation of weapons by a municipal court.

Municipal corporations and incorporated municipal boards of the state are exempt from the Uniform Disposition of Unclaimed Property Act found at § 35-12-20 through § 35-12-48. Code of Alabama 1975, § 11-40-15.

Code of Alabama 1975, § 11-47-116 provides for the taking up, storing and disposition by municipalities of stolen and abandoned personal property found in the corporate limits and police jurisdiction of the municipality. Section 11-47-116(b) states:

"At least every six months the chief officer of the law enforcement department of each such city and town adopting an ordinance under subsection (a) of this section shall sell at public auction to the highest bidder for cash the property which shall have then been taken up and stored for a period of three months or more, the sale to be made after notice of the time and place thereof shall have first been given by publication of notice once a week for two successive weeks in a newspaper of general circulation published in the city or town in question and, in cities and towns in which no newspaper is published, by posting such notice in a conspicuous place at the city hall or police station. The first publication or posting of notice, as the case may be, shall be at least 20 days before the sale. The owner of any of the property taken up and stored may redeem the same at any time prior to its sale by paying the reasonable expense of taking the property in charge, its maintenance and storage and a pro rata of the cost of publication. Each article shall be sold separately and a

notation in the storage record book shall be made of the amount received for each article. The person making the sale shall have the right to reject any and all bids if the amount bid be unreasonably low and shall have the right to continue the sales from time to time if no bidders are present. After deducting and paying all expenses incurred in the taking up, storing, maintaining and selling of the property, the balance, if any, shall be paid into the general fund of the municipality making the sale."

Thus, the procedure provided in § 11-47-116 must be used in the disposition of lost or abandoned weapons in the possession of the Montgomery Police Department. Any purchaser of a weapon must be legally qualified to own the weapon and all legal requirements regarding the ownership of the weapon must be observed.

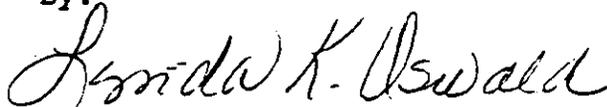
CONCLUSION

The Municipal Court of the City of Montgomery does not have authority to condemn unclaimed weapons in the possession of the city's police department. The city must follow the procedure provided at Code of Alabama 1975, § 11-47-116 for disposing of such weapons.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



LYNDA K. OSWALD
Assistant Attorney General

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