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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Unclaimed Property – Municipalities –
Firearms – Condemnation – District
Attorneys – Sales

A police department must obtain a court order, through the district attorney, to use or destroy condemned guns seized under section 13A-11-84(b) of the Code of Alabama. The police department may not sell condemned guns seized under section 13A-11-84(b) or the parts thereof.

A police department must obtain a court order, through the district attorney, to forfeit property, including guns, seized in violation of the controlled substances law under section 20-2-93 of the Code of Alabama. Forfeited property may be used or sold by the department as provided in section 20-2-93.

A police department must obtain a court order, through the district attorney, to destroy property, including guns, seized under section 20-2-93.

All other property may be disposed of as provided in section 11-47-116 of the Code of Alabama.

Proceeds from sales under sections 11-47-116 and 20-2-93 must be deposited in the municipal general fund. Proceeds from

section 20-2-93 must be used as determined by the police department.

Dear Mr. Rushing:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Is a municipal police department allowed to seize property left in their custody after a certain amount of time under the abandoned property statute or under a condemnation forfeiture statute?

2. If so, what is the amount of time required before this can be done, what are the notice requirements, and for what purpose or use can said items be forfeited by that agency?

3. Are guns to be treated differently from other stored property?

4. If a civil action is required to be filed, should this be done by the city attorney or the district attorney?

FACTS AND ANALYSIS

Section 11-47-116(a) of the Code of Alabama authorizes municipalities to pass an ordinance to provide for the taking up, storing, and sale of abandoned and stolen personal property. ALA. CODE § 11-47-116(a) (2008). Section 11-47-116(b) of the Code of Alabama sets forth the time and notice requirements for the sale of such property and the purpose for which any sale proceeds may be used. According to section 11-47-116(b), the police chief of a city adopting an ordinance under section 11-47-116(a) must conduct a public auction every six months for the sale of abandoned items. The municipality must store the abandoned property for at least three months prior to sale at public auction, and notice of the sale must be published at least twenty days prior to the sale for two successive weeks. Any proceeds from the sale must be paid into the general fund of the municipality. ALA. CODE § 11-47-116(b) (2008).

This Office previously addressed this issue of abandoned guns in an opinion to Honorable Douglas Albert Valeska, District Attorney, Dothan, dated November 1, 1990, A.G. No. 91-00059. In the *Valeska* opinion, this Office opined that guns not involved in weapons violations must be disposed of as provided in section 11-47-116. Guns seized under section 13A-11-84(b) of the Code of Alabama, however, must be disposed of through a separate process involving the district attorney. ALA. CODE § 13A-11-84(b) (2006).

Section 13A-11-84(b) provides as follows for seizure and disposition of pistols involved in violations of certain violent offenses:

It shall be the duty of any sheriff, policeman, or other peace officer of the State of Alabama, arresting any person charged with violating Sections 13A-11-71 through 13A-11-73, or any one or more of said sections, to seize the pistol or pistols in the possession or under the control of the person or persons charged with violating said section or sections, and to deliver said pistol or pistols to one of the following named persons: if a municipal officer makes the arrest, to the city clerk or custodian of stolen property of the municipality employing the arresting officer; if a county, state or other peace officer makes the arrest, to the sheriff of the county where the arrest is made. The person receiving the pistol or pistols from the arresting officer shall keep it in a safe place in as good condition as received until disposed of as hereinafter provided. Within five days after the final conviction of any person arrested for violating any of the above-numbered sections, the person receiving possession of the pistol or pistols, seized as aforesaid, shall report the seizure and detention of said pistol or pistols to the district attorney within the county where the pistol or pistols are seized, giving a full description thereof, the number, make and model thereof, the name of the person in whose possession it was found when seized, the person making claim to same or any interest therein, if the name can be ascertained or is known, and the date of the seizure. Upon receipt of the report from the person receiving possession of the pistol or pistols as aforesaid, it shall be the duty of the district attorney within the county wherein the pistol or pistols were

seized to forthwith file a complaint in the circuit court of the proper county, praying that such seized pistol or pistols be declared contraband, be forfeited to the state and be destroyed. Any person, firm or corporation or association of persons in whose possession said pistol or pistols may be seized or who claim to own the same or any interest therein shall be made a party defendant to said complaint, and thereupon such matter shall proceed and be determined in the circuit court of the proper county in the same form and manner, as near as may be, as in the forfeiture and destruction of gaming devices, except as herein otherwise provided. When any judgment of condemnation and forfeiture is made in any case filed under the provisions of this section, ***the judge making such judgment shall direct therein the destruction of the pistol or pistols*** by the person receiving possession of said pistol or pistols from the arresting officer in the presence of the clerk or register of the court, ***unless the judge is of the opinion that the nondestruction thereof is necessary or proper in the ends of justice, in which event and upon recommendation by the district attorney, the judge shall award the pistol or pistols to the sheriff or the chief of police of the municipality to be used exclusively by the sheriff or the chief of police in the enforcement of law***, and the sheriff of the county and the chiefs of police of the municipalities shall keep a permanent record of all pistols awarded to them as provided for herein, to be accounted for as other public property, and said order, in the event that no appeal is taken within 15 days from the rendition thereof, shall be carried out and executed before the expiration of 20 days from the date of the judgment. The court, at its discretion, shall direct in said judgment that the costs of the proceedings be paid by the person in whose possession said pistol or pistols were found when seized, or by any party or parties who claim to own said pistol or pistols, or any interest therein, and who contested the condemnation and forfeiture thereof.

ALA. CODE § 13A-11-84(b) (emphasis added). The statute provides that seized guns must be delivered to the city clerk or custodian of stolen property of the municipality. Within five days after a final conviction, the clerk must notify the

district attorney, who will then file a complaint in the circuit court asking that the gun be declared contraband and destroyed.

Regarding disposition, this Office has explained that “[t]his section provides for the destruction of the firearm after condemnation or for the use of the firearm by the Sheriff or the Chief of Police in law enforcement.” Opinion to Honorable Van C. Gholston, District Attorney, Butler County, dated June 6, 1984, A.G. No. 84-00306, at 2. Thus, that opinion concluded that firearms condemned under section 13A-11-84 may not be sold. *See also*, opinion to Honorable Iva Nelson, City Clerk/Treasurer, City of Gadsden, dated May 24, 2002, A.G. No. 2002-241 (following *Gholston*). Under the principle of *expressio unius est exclusio alterius*, a rule of statutory construction, where a statute enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned. *Ex parte T.B.*, 698 So. 2d 127, 129 (Ala. 1997); *Ex parte Holladay*, 466 So. 2d 956, 960-61 (Ala. 1985); *City of Birmingham v. Brown*, 241 Ala. 203, 208, 2 So. 2d 305, 309 (1941); *Hall v. Blan*, 227 Ala. 64, 68, 148 So. 601, 603 (1933).

This Office has also opined, however, that the component parts of condemned guns may be sold provided that any parts bearing serial numbers are physically destroyed prior to sale. Opinions to Honorable Wallace Campbell, Chief of Police, City of Gardendale, dated July 8, 2003, A.G. No. 2003-182; Honorable Len D. Brooks, District Attorney, Cullman County, dated January 22, 1992, A.G. No. 92-00137. The *Brooks* opinion even acknowledged that “there is no statutory authorization for the sale of pistol parts,” but went on to reason that “we simply cannot disallow such a logical and fiscally sound policy.” *Id.* at 4. Both the *Campbell* opinion and the *Brooks* opinion reached its conclusion without consideration of *Gholston* or the rule of statutory construction above. The *Campbell* and *Brooks* opinions are overruled to the extent that they conflict with this opinion.

Section 20-2-93 of the Code of Alabama provides for the disposition of seized and forfeited property used or intended for use in violation of the state’s controlled substances law by state law enforcement agencies. Section 20-2-93(h) states that the procedures for forfeiture under the statute are governed by the procedures in sections 28-4-286 through 28-4-290 of the alcoholic beverage forfeiture statutes. ALA. CODE § 20-2-93(h) (2006). Section 28-4-286 authorizes the state to file a forfeiture complaint. ALA. CODE § 28-4-286 (2003). Therefore, a forfeiture proceeding under section 20-2-93 “is properly instituted in the name of the State on the relation of the district attorney.” *City of Gadsden v. Jordan*, 760 So. 2d 873, 874-75 (Ala. Civ. App. 1998), *rev’d on other grounds*, 760 So. 2d 877 (Ala. 1999). Section 20-2-93(c) requires that the complaint “be instituted promptly.” Opinion to Honorable Robert M. Field,

District Attorney, 7th Judicial Circuit, dated November 2, 1990, A.G. No. 91-00070, at 2. The drug forfeiture statute does not provide a separate procedure for guns.

This Office thoroughly addressed the purposes for which property may be forfeited in an opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated September 6, 1991, A.G. No. 91-00399. The *Stout* opinion concluded that, under section 20-2-93(e)(1), “the law enforcement agency may retain forfeited property for official use. . . . Furthermore, . . . under § 20-2-93(e)(2), forfeited property which is not required by law to be destroyed or which is not harmful to the public may be sold. . . .” *Id.* at 2. The *Stout* opinion explained further that “if the property is sold the proceeds are awarded and are to be used by the law enforcement agencies participating in the investigation resulting in the seizure of the property.” *Id.* The proceeds must be deposited in the municipal general fund and used as determined by the municipal law enforcement agency. Opinion to Honorable T. Dwight Reid, Attorney, City of Saraland, dated May 2, 2005, A.G. No. 2005-121.

The drug forfeiture statute does not specifically address the destruction of seized property. This Office has considered this issue, however, in the context of a proposed plan concerning the destruction of excess evidence. Opinion to Mr. Earl C. Morgan, District Attorney, Tenth Judicial Circuit, dated November 18, 1981, A.G. No. 82-00085. This opinion concluded that the statute leaves the procedure for the destruction of evidence to the court’s judgment. The *Morgan* opinion was based on section 20-2-93(d), which provides that “[p]roperty taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the *orders and judgment* of the court having jurisdiction over the forfeiture proceedings.” ALA. CODE § 20-2-93(d) (2006) (emphasis added). The opinion further stated that the district attorney may seek a pre-trial hearing on the destruction. Thus, although not directly stated, the *Morgan* opinion concluded that the district attorney is the proper party to obtain a court order to destroy property seized under the drug forfeiture statute.

CONCLUSION

A police department must obtain a court order, through the district attorney, to use or destroy condemned guns seized under section 13A-11-84(b) of the Code of Alabama. The police department may not sell condemned guns seized under section 13A-11-84(b) or the parts thereof.

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Proceeds from sales under sections 11-47-116 and 20-2-93 must be deposited in the municipal general fund. Proceeds from section 20-2-93 must be used as determined by the police department.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

TK/GWB/ac/rc

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