



2011-070

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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June 14, 2011

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Honorable David Cofield
Randolph County Sheriff's Office
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Weapons – Sheriffs – Sales – Firearms

A sheriff may not sell or trade condemned guns seized under section 13A-11-84(b) of the Code of Alabama.

A sheriff may sell or trade forfeited guns seized in violation of the Alabama Uniform Controlled Substances Act under section 20-2-93 of the Code of Alabama. Proceeds from sales must be deposited in the county general fund and be used as determined by the sheriff.

The Sheriff of Randolph County may sell or trade all other guns as provided in Act 97-505. Proceeds from sales must be deposited in the county general fund.

Dear Sheriff Cofield:

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

QUESTION

Can the Sheriff of Randolph County trade or sell, to a gun dealer, seized, confiscated, condemned, and abandoned guns, and guns that have been ordered by the court to the sheriff, to obtain equipment for the office?

FACTS AND ANALYSIS

The leading opinion on the disposition of guns in the possession of a law enforcement agency was issued to Honorable Joseph S. Rushing, III, Franklin County District Attorney, dated July 9, 2009, A.G. No. 2009-090. That opinion addressed guns seized for involvement in weapons violations under section 13A-11-84(b) of the Code of Alabama. ALA. CODE § 13A-11-84(b) (2006). The *Rushing* opinion opined as follows:

“[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.

Rushing at 5. Based on the same reasoning, such guns may not be traded.

The *Rushing* opinion further addressed guns seized under section 20-2-93 of the Code of Alabama. ALA. CODE § 20-2-93 (2006). Section 20-2-93 provides for the seizure and forfeiture of property used or intended for use in violation of the Alabama Uniform Controlled Substances Act by state law enforcement agencies. The *Rushing* opinion stated as follows:

“[U]nder § 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. . . .” [Opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated September 6, 1991, A.G. No. 91-00399] at 2. . . . “[I]f 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.*

Rushing at 6.

Regarding the use of proceeds from the sale of forfeited property, the proceeds received by “a county or municipal law enforcement agency or department shall be deposited into the respective *county* or municipal *general fund* and made available to the affected law enforcement agency or department.” ALA. CODE § 20-2-93(e)(2) (2006) (emphasis added). The proceeds “shall be

used as determined by the agency.” Opinion to Honorable T. Dwight Reid, Attorney, City of Saraland, dated May 2, 2005, A.G. No. 2005-121 at 3.

This Office addressed trading guns seized under the drug forfeiture statute in an opinion issued to Honorable Wallace Campbell, Chief of Police, City of Gardendale, dated July 8, 2003, A.G. No. 2003-182 (overruled on other grounds). That opinion opined as follows:

Trading property for items of equal value has the same effect as selling and purchasing items; therefore, it is the opinion of this Office that trading the firearms to a licensed gun dealer in exchange for credit is compatible with the intent of section 20-2-93(e) and is not prohibited by this statute.

Id. at 2.

Regarding abandoned and other guns, 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). That statute, however, “applies only to municipalities and does not apply to the county sheriff’s department.” Opinion to Honorable Len D. Brooks, District Attorney, Cullman County, dated January 22, 1992, A.G. No. 92-00137 at 4. Absent a local act, a sheriff may not dispose of abandoned guns. *Id.* at 5.

Act 97-505, enacted in the 1997 Regular Legislative Session, is a local act applicable to Randolph County authorizing the sheriff to sell abandoned, stolen, and unclaimed property at public auction. 1997 Ala. Acts No. 97-505, 894. Section 3 of Act 97-505 applies to guns. The *Rushing* opinion stated that guns obtained other than through sections 13A-11-84(b) and 20-2-93 “must be disposed of as provided in section 11-47-116.” *Rushing* at 3. Consistent with that opinion, all other guns in the possession of the Sheriff of Randolph County must be disposed of as provided in Act 97-505.

Section 3(a) of Act 97-505 requires the sheriff to “keep and maintain a separate permanent record of all abandoned and stolen firearms not subject to disposition by general law.” 1997 Ala. Acts No. 97-505, 894, 895. Section 3(b) provides that “the sheriff may sell or destroy the firearm if the owner does not claim the firearm within six months.” *Id.* Section 4(a) specifically exempts guns from the public-auction requirements. *Id.* Because a trade is the equivalent of a sale, guns subject to Act 97-505 may be traded.

Section 7 of Act 97-505 states that proceeds from the sale of property at auction "shall be paid to the Office of the Sheriff of Randolph County." *Id.* at 896. Act 97-505 is silent, however, regarding proceeds from gun sales. Nonetheless, the disposition of monies received by the sheriff is provided for by general law at section 36-22-17 of the Code. It provides as follows:

All fees, commissions, percentages, allowances, charges and court costs heretofore collectible for the use of the sheriff and his deputies, excluding the allowances and amounts received for feeding prisoners, which the various sheriffs of the various counties shall be entitled to keep and retain, except in those instances where the county commission directs such allowances and amounts to be paid into the general fund of the county by proper resolution passed by said county commission of said county, shall be collected and paid into the general fund of the county.

ALA. CODE § 36-22-17 (2001) (emphasis added).

This Office recently stated that this section requires that monies collected under a contract to house federal prisoners in the county jail, to which the sheriff is a party, must be paid into the county general fund. Opinion to Honorable Charles E. Mauney, Attorney for DeKalb County, dated December 8, 2010, A.G. No. 2011-020. This Office reached the same conclusion for fees collected by the sheriff for providing copies of Uniform Incident/Offense Reports as public records. Opinion to Honorable Lucius D. Amerson, Sheriff, Macon County, dated August 14, 1981, A.G. No. 81-00517. Proceeds from gun sales under Act 97-505 should be similarly deposited.

CONCLUSION

A sheriff may not sell or trade condemned guns seized under section 13A-11-84(b) of the Code of Alabama.

A sheriff may sell or trade guns seized in violation of the Alabama Uniform Controlled Substances Act under section 20-2-93 of the Code of Alabama. Proceeds from sales must be deposited in the county general fund and used as determined by the sheriff.

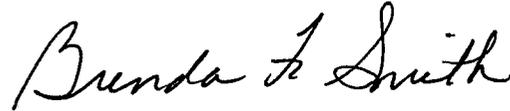
Honorable David Cofield
Page 5

The Sheriff of Randolph County may sell or trade all other guns as provided in Act 97-505. Proceeds from sales must be deposited in the county general fund.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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