

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

January 18, 2019

Thomas Reynolds, Esq.  
Attorney, City of Charleston  
Post Office Drawer 280  
Charleston, Mississippi 38921-0280

Re: Disposal of Abandoned or Otherwise Acquired Firearms

Dear Mr. Reynolds:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

### Background

Your request states:

The current City of Charleston Chief of Police conducted an inventory of guns on hand in the evidence room of the City of Charleston in August of 2018. The search of the evidence room disclosed that in said room were approximately 175 firearms. There was no documentation as to how said firearms came into possession of the City of Charleston, but the firearms have been in the possession of the City of Charleston for over one year in all instances, and no claim of any party for ownership or possession of said firearms has been made, nor has any individual informed the City of Charleston that such a claim would be made or contemplated in regard to the approximately one hundred seventy five (175) firearms referred to herein.

The City of Charleston seeks a lawful method to dispose of said firearms and seeks an opinion as to how this disposal may be made.

### Response

There are numerous statutes under which firearms may potentially be disposed. The method and procedure for disposal are largely dependent on the manner in which the

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firearms were acquired. Accordingly, a determination of whether the firearms were evidence, forfeited, abandoned, or otherwise acquired is necessary to ascertain the appropriate means for disposal. We note that your request indicates there is no documentation of how the firearms were obtained. In order to determine the appropriate means for disposal, the City must make a good faith attempt to determine how they came into possession of the firearms. This office previously opined in regard to firearms that where the municipality has "no realistic means of finding the lawful owner" we are unaware of any statutory authority that establishes a procedure on how to dispose of firearms. Further, we suggested that, in such an event, "the property [should] be made the subject of a legal action to have a court of competent jurisdiction declare the firearms the property of the [law enforcement agency]." See MS AG Op., Price (January 31, 1990). The potential methods of disposal<sup>1</sup> are as follows:

### **Disposal Under Section 97-37-3**

The first method of sale or disposal relates to firearms seized as a result of a crime. In a previous opinion to you on October 5, 2012, we stated that firearms seized as a result of criminal activity are to be disposed of in accordance with Section 97-37-3 of the Mississippi Code.<sup>2</sup> Section 97-37-3 states:

**OFFICIAL OPINION**

(1) Any weapon used in violation of Section 97-37-1, or used in the commission of any other crime, shall be seized by the arresting officer, may be introduced in evidence, and in the event of a conviction, shall be ordered to be forfeited, and shall be disposed of as ordered by the court having jurisdiction of such offense. In the event of dismissal or acquittal of charges, such weapon shall be returned to the accused from whom it was seized.

(2)(a) If the weapon to be forfeited is merchantable, the court may order the weapon forfeited to the seizing law enforcement agency.

(b) A weapon so forfeited to a law enforcement agency may

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<sup>1</sup> As noted in footnote 2, *infra*, we do not discuss disposal under the Uniform Controlled Substances Act since it is unlikely these weapons would have been seized pursuant to that law. Additionally, Sections 9-7-251 through 257 provide for civil forfeiture of firearms used in head lighting deer. Possession of these weapons pending forfeiture generally remains with the Mississippi Department of Wildlife, Fisheries and Parks. For this reason, we do not discuss disposal of weapons seized while illegally hunting deer with a light.

<sup>2</sup> Firearms seized pursuant to the Uniform Controlled Substances Law are disposed of pursuant to Section 41-29-177. Because of the record keeping requirements associated with such seizures, it is doubtful that the subject weapons were seized thereunder. Given that in all likelihood the subject firearms were not seized pursuant to the Uniformed Controlled Substances Law, we do not discuss disposal under this section.

be sold at auction as provided by Sections 19-3-85 and 21-39-21 to a federally-licensed firearms dealer, with the proceeds from such sale at auction to be used to buy bulletproof vests for the seizing law enforcement agency.

(Emphasis added.) Consistent with our previous opinions, once a defendant has been convicted, the court should order the weapon forfeited, and once the forfeiture has occurred, the weapon should be disposed of in accordance with a court order. See MS AG Op., Turnage (February 28, 2014) and MS AG Op., Manley (February 3, 2017).

In the event of a dismissal, acquittal, and/or a lack of conviction, the firearm must be returned to the defendant. In a previous opinion to Joe Price on January 31, 1990, we stated that "a judge may lawfully order those firearms [that were seized] not returned to the acquitted defendant disposed of at public auction, destroyed, or placed upon the property roles of the county for the benefit of a law enforcement unit." MS AG Op., Price (January 31, 1990). Inasmuch as the statute states the firearm "shall be returned to the [acquitted] accused" that statement is inconsistent with Section 97-37-3 both as it was written then and now. The Price opinion was later quoted in an opinion to Susan O. Carr on June 13, 2012 to the same effect. To the extent those opinions are inconsistent with this opinion, they are hereby modified.

In your letter, you state that no claim of any party for ownership or possession has been made. We note that the duty is on the agency holding the firearm to return it. Section 97-37-3 does not authorize a municipality to unilaterally deem a firearm abandoned. Therefore, situations in which the lawful owner of the gun is unknown or unable to be located would have to be dealt with on a case-by-case basis. As previously noted, in such situations this office has suggested filing a legal action. See MS AG Op., Price (January 31, 1990).

### **Disposal Under Section 21-39-21 (Abandoned Property)**

The second method of sale or disposal is for firearms that are abandoned. Abandoned personal property may be disposed of in accordance with Section 21-39-21 of the Mississippi Code. Section 21-39-21 sets out the parameters for a municipality to post notice of and potentially sell any lost or abandoned property. Section 21-39-21 states, in relevant part:

The governing authorities of any municipality, upon the receipt or recovery of any lost, stolen, abandoned or misplaced personal property by the marshal, police or other officers of such municipality, shall cause to be posted, in three (3) public places in the municipality, notice that such property has been received or recovered. Such notice shall contain an accurate and detailed description of such property and, if the governing authorities are advised as to who owns such property, a copy of such

notice shall be mailed to such person or persons in addition to being posted as herein required. The owner of such property may recover the same by filing a claim with the governing authorities of the municipality and establishing his right thereto. The governing authorities may require bond of the person claiming the property before delivering same to him. Parties having adverse claims to said property may proceed according to law as now provided by statutes.

If no person claims the property within one hundred twenty (120) days from the date the notice provided for above is given, the governing authorities of the municipality shall cause the same to be sold at public auction to the highest bidder for cash after first posting notice of such sale in three (3) public places in the municipality at least ten (10) days preceding the date of such sale. The notice shall contain a detailed and accurate description of the property to be sold and shall be addressed to the unknown owners or other persons interested in the property to be sold. The notice shall also set forth the date, time and place such sale is to be conducted and shall designate the person who is to make the sale, which person shall be some official designated by the governing authorities of the municipality.

## OFFICIAL OPINION

If, within ninety (90) days after date of the sale provided for above, any person claims to be the owner of the property sold, the governing authorities shall, upon satisfactory proof of ownership, pay to such person the amount for which such property was sold, and the governing authorities of the municipality may require of such person a bond in such cases as they may deem advisable. No action shall be maintained against a municipality or any of its officers or employees or the purchaser at the sale for any property sold hereunder or the proceeds therefrom after the expiration of ninety (90) days from the date of the sale as herein authorized.

Since you mentioned that the municipality does not know how it came into possession of the firearms, in all likelihood, a legal action would be needed to declare the firearms abandoned.

### **Disposal Under Section 17-25-25**

The third method of sale or disposal relates to firearms owned by the municipality. When a firearm is owned by the municipality, they may dispose of it in accordance with Section 17-25-25 of the Mississippi Code. Section 17-25-25 allows municipalities to sell or dispose of personal property, including guns, when the property is no longer used for

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public purposes, or the municipality determines the sale is in the best interest of the municipality. There are three methods of sale for firearms under Section 17-25-25 — public sale, private sale and public auction. Under this section, a municipality can publicly sell a firearm after it has been advertised for ten (10) days at three (3) public places in the municipality. One (1) of the three (3) required places is the governing authority's main office. The municipality is given the power to determine the type of bids that will be accepted, and any proceeds from the sale are to be placed in a properly approved depository for the proper fund. In order to have a private sale, the value of the firearm cannot exceed one thousand dollars (\$1,000.00). If the governing authority unanimously approves, they may then sell or dispose of the property at a private sale placing all proceeds in a properly approved depository for the proper fund. The municipality may sell or dispose of surplus personal property at a public auction that is conducted by an auctioneer or company that meets the standards established by the State Department of Audit who is hired by the municipality.

Section 17-25-25(5) also allows a municipality to determine that the property has a fair market value of zero on the minutes and deem it in the best interest of the municipality to dispose of the property in the manner it deems appropriate. If the firearm could be of use or benefit to any federal agency or other governing authority or state agency, the municipality may dispose of it as an intergovernmental sale or transfer pursuant to Section 31-7-13(m)(vi) of the Mississippi Code.

**Disposal of Weapons Obtained Under Section 45-9-53**

The fourth method of disposal deals with firearms that are surrendered to a governmental body. Section 45-9-53(6) of the Mississippi Code allows local governing authorities to adopt an ordinance that authorizes a program in which surrendered firearms may be sold at auction to licensed firearms dealers. If the county or municipality is unable to sell the firearm at auction, the statute allows the governing authority to determine the appropriate means for disposal.

Considering that the municipality will likely need a court order to determine ownership of the firearms, it might be beneficial to couple that request with a request as to the appropriate manner of disposal or sale.

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben  
Special Assistant Attorney General