



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 10, 2022

William M. Beasley, Jr., Esq.
Attorney for Itawamba Community College
Post Office Box 1220
Tupelo, Mississippi 38802-1220

Re: Disposal of Firearms

Dear Mr. Beasley:

The Office of the Attorney General has received your request for an official opinion.

Background Facts

In your request, you provide:

Itawamba Community College (“ICC”) operates a campus police department in accordance with Mississippi Code Annotated Section 37-29-275. Over the years, the department has confiscated twenty-two firearms from students and other individuals who have brought them on campus in violation of Section 97-37-17. However, as time has passed, all information associated with the firearms, such as their owners and the status of the criminal or student disciplinary proceeding associated with them, has been lost. Therefore, ICC has no realistic means of finding the owners of the various firearms.

ICC would like to dispose of the firearms as contemplated by Section 97-37-3 but, as mentioned above, lacks any information concerning the court cases associated with the seizures and possesses no realistic way of acquiring such information.

Questions Presented

1. May ICC apply to the Circuit Court of Itawamba County for an order declaring the firearms forfeited to ICC’s campus police department and directing they be sold at auction as provided by Section 97-37-3(2)?

2. If the answer to Question 1 is “no,” can the Itawamba County Board of Supervisors have the firearms sold at public auction to the highest bidder in accordance with Section 19-3-85?
3. If the answer to question 2 is “yes,” is ICC entitled to the proceeds from the auction?
4. If the answers to questions 1 and 2 are both “no,” what procedure does authorize ICC to dispose of the firearms in its possession?

Brief Response

1. The manner in which a firearm was obtained dictates the procedure of disposal. Forfeiture of a firearm is only allowed under Section 97-37-3 where there was a conviction that would require or allow forfeiture. As ownership of a firearm should be dealt with on a case-by-case basis, ICC may wish to file legal action to determine the lawful owner of a firearm and request a judicial determination of the appropriate manner of disposal or sale. The appropriate court of competent jurisdiction is a fact-specific inquiry on which this office will not opine.
2. ICC does not have the authority to unilaterally declare firearms that were confiscated, as lost, stolen, abandoned, or misplaced.
3. Our response to Question 2 renders this question inapplicable.
4. See Response 1.

Applicable Law and Discussion

The manner in which a firearm should be disposed of depends upon the manner in which the firearm was acquired. MS AG Op., *Reynolds* (Jan. 18, 2019). In MS AG Op., *Turnage* (Feb. 28, 2014), this office was asked about a situation in which numerous firearms were seized over the years by local police; however, there was no conviction or an order that the weapons be forfeited. We opined that Section 97-37-3 expressly requires that the firearm must be returned to the accused where there is no conviction. *Id.* We further stated:

Depending on the number of weapons and cases involved there could be a multitude of differing factual situations that potentially could lead to different legal conclusions. Thus, any effort by the court to deal with the guns that have been seized but not forfeited would, in our estimation, have to be dealt with on a case-by-case basis. Where there has been no conviction, the statute unequivocally requires the weapon or weapons to be returned. With regard to other situations where convictions were obtained, we can only advise that the court should consider each case based on the specific factual circumstances and attempt to apply the seizure laws to each individual case. See *Mississippi Com'n on Judicial Performance v. Lewis*, 830 So.2d 1138, 1142 (Miss. 2002) (Holding that a judge

William M. Beasley, Jr., Esq.

May 10, 2022

Page 3

was “clearly required ... to return the handgun” and imposing sanctions where the judge “did not follow the proper procedure to forfeit the handgun.”) *Id.*

MS AG Op., *Turnage* at *2 (Feb. 28, 2014). In MS AG Op., *Reynolds* (Jan. 18, 2019), this office addressed multiple methods for a municipality to dispose of firearms. Your request specifically refers to Section 97-37-3, which applies to firearms seized as result of a crime. We noted in *Reynolds* that Section 97-37-3 does not authorize a public entity to unilaterally deem a firearm abandoned. As in *Turnage*, we stated in *Reynolds* that situations in which the lawful owner of the firearm is unknown should be dealt with on a case-by-case basis. We further suggested in *Reynolds* that the public entity file legal action to determine ownership of the firearm coupled with request for a judicial determination of the appropriate manner of disposal or sale. *Id.*

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION