

UNOFFICIAL OPINION U2012-4

Senator, District 47

November 29, 2012

Re: Disposition of surplus proceeds from the sale of forfeited or abandoned weapons pursuant to O.C.G.A. § 17-5-52.1 should be made to the general fund of the political subdivision that disposed of such weapons.

You have requested my opinion in regard to the disposition of funds generated by the sale of forfeited and abandoned firearms pursuant to O.C.G.A. §17-5-52.1. You have specifically asked whether counties may retain any surplus funds remaining from such disposition of these weapons.

O.C.G.A. § 17-5-52.1 provides as follows:

- (a) As used in this Code section, the terms "firearm" and "innocent owner" shall have the same meaning as set forth in Code Section 17-5-51.
- (b) Notwithstanding any other provision of law to the contrary and subject to the duty to return firearms to innocent owners pursuant to subsection (c) of Code Section 17-5-51 and this Code section, all firearms that are forfeited or abandoned to any law enforcement agency of this state or a political subdivision of this state, including the Department of Natural Resources, or that are otherwise acquired by the state or a political subdivision and are no longer needed, shall be disposed of as provided in this Code section.
- (c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state or a political subdivision of the state, the political subdivision or state custodial agency with possession of the firearm shall use its best efforts to determine if the firearm has been lost by, stolen from, or otherwise illegally obtained from an innocent owner and, if so, shall return the firearm to its innocent owner in accordance with Code Section 17-5-51.
- (d) If an innocent owner of a firearm cannot be located or after proper notification he or she fails to pay for the return of his or her firearm, if the political subdivision is:
 - (1) A municipal corporation, it shall dispose of its firearms as provided for in Code Section 36-37-6; provided, however, that municipal corporations

shall not have the right to reject any and all bids or to cancel any proposed sale of such firearms, and all sales shall be to persons who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and Chapter 16 of Title 43 and who are authorized to receive such firearms under the terms of such license. Any political subdivision which disposes of firearms shall use proceeds from the sale of a firearm as are necessary to cover the costs of administering this Code section, with any surplus to be transferred to the general fund of the political subdivision; or

(2) Not a municipal corporation, the state custodial agency or the political subdivision shall dispose of its firearms by sale at public auction to persons who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and Chapter 16 of Title 43 and who are authorized to receive such firearms under the terms of such license. A state custodial agency shall retain only such proceeds as are necessary to cover the costs of administering this Code section, with any surplus to be transferred to the general fund of the state, provided that a state custodial agency may be reimbursed for any firearms formerly in use by the state custodial agency that are sold under this Code section.

This Code section does not expressly provide that counties should retain funds generated by county sales of abandoned and forfeited weapons. Nevertheless, given the overall scheme contemplated in this and the other sections of Article 3 of this Chapter, that appears to be the intent of the General Assembly. For example, O.C.G.A. § 17-5-52, the preceding Code section, provides that proceeds derived from sales of weapons used in the commission of a crime “shall be turned in to the treasury of the county or the municipal corporation that sold the weapon or device.” The statute in question, O.C.G.A. § 17-5-52.1, provides for the transfer of surplus funds to the general fund of the municipal corporation when it disposes of a weapon and for transfer of such funds to the general fund of the state when a state custodial agency disposes of the weapon. *See* O.C.G.A. § 17-5-52.1(d).

When interpreting statutes one “must look for the intent of the legislature and construe statutes to effectuate that intent.” *City of Roswell v. City of Atlanta*, 261 Ga. 657 (1991). Read in the overall context, it is reasonable to assume that the General Assembly intended for surplus proceeds from such weapon sales by counties to be transferred to the general treasury of the county, thus treating the disposition of proceeds similarly for cities, counties, and the State. Therefore, it is my unofficial opinion that surplus proceeds generated by a county in selling forfeited or abandoned firearms should be transferred to the general fund of the political subdivision that disposed of those firearms, which in this case would be the county.

Prepared by:

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