



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86 -87

Ed E. Ritchie  
Shawnee County Sheriff  
Shawnee County Courthouse  
200 East 7th Street  
Topeka, Kansas 66603

Re: Crimes and Punishments -- Code; Crimes Against  
The Public Safety -- Confiscation and  
Disposition of Weapons

Synopsis: A county may keep weapons seized under K.S.A.  
21-4206 if they are usable in their current  
state to the law enforcement agency. If  
weapons are kept as county property, they may  
be traded only in limited circumstances.  
In all other circumstances the weapons must be  
destroyed or sold with the proceeds going  
to the state treasurer. Cited herein:  
K.S.A. 21-4206, 22-2512.

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Dear Mr. Ritchie:

As Sheriff for Shawnee County, Kansas, you request our  
opinion concerning the disposition of seized weapons.  
Specifically, you inquire as to when seized weapons can be  
traded after they are converted to county property.

K.S.A. 21-4206 states:

"(1) Upon conviction of a violation of  
sections 21-4201, 21-4202 or 21-4204 of this

article, any weapon seized in connection therewith shall remain in the custody of the trial court.

"(2) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court, be destroyed, preserved as county property, or sold and the proceeds of such sale shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and any amendments thereto."

The other pertinent statute is K.S.A. 22-2512, which reads in part:

"Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. . . . When property seized is no longer required as evidence, it shall be disposed of as follows:

. . .

"(5) Firearms, ammunition, explosives, bombs, and like devices, which have been used in the commission of crime, may be returned to the rightful owner, destroyed or sold in the discretion of the court having jurisdiction of the property. The sale and distribution of the proceeds shall be as provided in K.S.A. 21-4206.

Your question centers on the circumstances in which a county may trade weapons which it has converted to county property.

First of all, the option to convert weapons to county property exists only in very limited circumstances. These circumstances, listed in K.S.A. 21-4206, are solely violations of the weapons control laws. All other weapons

seized by a law enforcement agency would be governed by K.S.A. 22-2512. Under that statute, the weapons may only be returned to the rightful owner or destroyed or sold. If the weapons are sold, the proceeds are treated as a sale under K.S.A. 21-4206, and must be remitted to the state treasurer. Weapons seized under K.S.A. 22-2512 cannot be converted to county property.

If weapons are seized under K.S.A. 21-4206 and subsequently preserved as county property, we are of the opinion that they may be exchanged for other weapons under extremely limited circumstances. The options provided in the statute are destruction, preservation as county property, or sale, with the proceeds going to the state. The legislative intent appears to allow the county to benefit from the weapons only if they can be used. In 1978, the Legislature changed the provision which formerly allowed the proceeds of such a sale to go to the county general fund, to require such proceeds to go to the state treasurer. L. 1978, ch. 105, §6. Thus, legislative history indicates that the legislature intended for the county to get the benefit only when the weapons were preserved and could be used as county property.

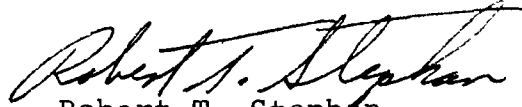
The statute specifically requires the weapons to be "preserved" as county property. Since the legislature has not defined "preserved", it must be defined according to its context and the approved usage of the term. A typical definition of preserved or preservation can be found in Black's Law Dictionary, p. 1348 (1951). "It is not creation, but the saving of that which already exists, and implies the continuance of what previously existed." (Emphasis added.)

We are of the opinion that the legislature intended to allow law enforcement agencies of the county to keep confiscated weapons if they were usable by the county in their original status. If the weapons are such that they cannot be used by the county, we do not believe that the legislature intended to allow the county to trade them. If the weapons are properly preserved as county property, the weapons may be traded under certain circumstances. If, in the regular course of business the law enforcement agency trades older weapons for other weapons, then the weapons kept under K.S.A. 21-4206 may be treated in the same manner. We are of the opinion, however, that the legislature did not intend to provide law enforcement

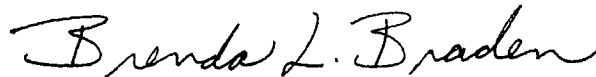
agencies carte blanche to clean out their evidence locker and trade for whatever weapons they desire.

In conclusion, only a limited number of weapons can be converted to county property under K.S.A. 21-4206 and K.S.A. 22-2512. Converting a weapon to county property, we believe, requires that the weapon be usable by the county in its present state. If a weapon is so preserved under K.S.A. 21-4206, then in the regular course of business a law enforcement agency can trade the weapon.

Very truly yours,



Robert T. Stephan  
Attorney General



Brenda L. Braden  
Deputy Attorney General

RTS:BLB:may