



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 111

Robert J. Watson
Overland Park City Attorney
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Constitution of the United States--Amendment
Fourteen--Due Process Clause

Synopsis: Property seized from a pawnbroker and held by law enforcement officials for use as evidence in a criminal proceeding is regarded as being in custodia legis and subject to the court's order as to the disposition thereof in the same proceeding. If the property is identified as being stolen, it is the duty of the court and the state to see that the property is restored to its rightful owner at the earliest opportunity. However, the due process rights of the pawnbroker must be respected, Wolfenbarger v. Williams, 774 F.2d 358 (10th Cir. 1985), and the Court should provide the pawnbroker with notice and opportunity to be heard before releasing property to the apparent owner. Cited herein: K.S.A. 1988 Supp. 22-2512.

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Dear Mr. Watson:

You request an opinion as to what extent a city must provide due process to a pawnbroker once the city's police department has legally seized stolen property from the pawnbroker. You

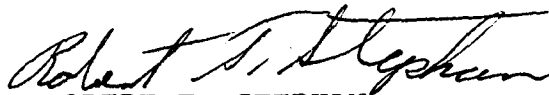
ask that we assume, in responding to your question, that the seized property is identified as stolen property; used as evidence to convict the thief; and is no longer needed for evidentiary purposes.

While K.S.A. 1988 Supp. 22-2512 controls the disposition of property seized from an accused, State v. Winter, 238 Kan. 530, 532 (1986), there is no statute which relates to disposition of property seized from a pawnbroker. Under such circumstances, the following rule set forth in State v. Gunzelman, 200 Kan. 12, 13 (1967), appears to be applicable:

"While the matter of disposing of property taken or detained as evidence in a criminal case is governed by statute in most states, there is authority that even where there is no statute, the court before which the action was brought, or is pending, has inherent power to direct that such property be returned to the owner, delivered up to his order, or otherwise disposed of when it is no longer required for the purposes of justice. It has been held that property or money lawfully in the hands of law enforcement officials for use as evidence in a criminal proceeding is regarded as being in custodia legis and subject to the court's order as to disposition thereof in the same proceeding, rather than in a separate action."

Under the above-quoted rule, the Court before which the criminal action is heard should return stolen property used as evidence to the apparent owner as soon as possible. However, in our judgment the due process rights of the pawnbroker must be respected, Wolfenbarger v. Williams, 774 F.2d 385 (10th Cir. 1985), and the Court should provide the pawnbroker with notice and an opportunity to be heard before releasing property to the apparent owner.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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