

Opinion No. 55-6290

September 26, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

Receipt is acknowledged of your letter dated September 7, 1955, in which you request an opinion as to disposition of firearms which have been illegally carried or illegally handled within the City limits of Clovis.

In other words, does the City have to redeliver the firearms seized from a defendant, or is the City entitled to keep the firearms?

I fail to find any state statute providing for forfeiture. However, under the subject of property, which includes personal property, I find the following in 42 Am. Jur., page 225, Section 49, Governmental Control and Regulation of Use:

"The state may provide regulations as to the acquisition, enjoyment, and disposition of property. However, since the right of property is a fundamental right, its protection, as well as its use, is one of the most important objects of government, a limitation imposed under this power without reason or necessity cannot be enforced; and in the exercise of it, the state cannot prohibit altogether any person whatever from legally acquiring and possessing property generally, or any particular species or description of property. Nor can an owner be deprived, even by statute, of the legitimate use of his property, because it may cause a real damage to his neighbor. The state can, however, within constitutional limitations, not only regulate the acquisition, enjoyment, and disposition of property, but as all property is held subject to the lawful demand of the sovereign, it may also take private property for a public purpose, subject, of course, to the right of the individuals to just compensation therefor."

See also 56 Am. Jur., Section 21, under "Weapons and Forfeiture", where it is stated:

"The general subject of forfeitures is discussed under another title. Here it may be observed that, according to limited authority on the subject, a conviction of the offense of carrying concealed weapons is not necessary to work a forfeiture of them under a statute prescribing a punishment for such offense, and providing that all concealed weapons taken from persons violating the statute shall be forfeited to the county. On the other hand, it has been held that a statute providing for the forfeiture of a weapon unlawfully carried contravenes a constitutional provision that every citizen shall have the right to bear arms in the lawful defense of himself and the state."

See also 23 Am. Jur., Sections 1, 2, 3, 4, and 5, at pages 598 to 602 inclusive, under the heading of "Forfeiture."

I also find the following Constitutional provisions concerning personal property under the Bill of Rights, Article II, Sections 18 and 20:

"No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied the equal protection of the laws."

"Private property shall not be taken or damaged for public use without just compensation."

I find under "Forfeitures" in 37 C.J.S., at page 6, under Section 3, the following:

"There can be no forfeiture not authorized by law which in a number of jurisdictions must be found in the statutes."

For more specific explanation, see 68 Corpus Juris, at page 71, under the heading of "Weapons", sub-heading "Forfeitures", Section 85.

In view of the language of the above quoted authorities, it is the opinion of this office that in the absence of a state forfeiture statute, that the City of Clovis cannot confiscate firearms from defendants when they have been convicted of illegally carrying same, discharging or handling same within the City of Clovis. If the City of Clovis has a forfeiture ordinance, I do not give an opinion as to whether it is Constitutional or not in view of the language of the above authorities.

Trusting that this fully answers your inquiry, I remain

By Hilario Rubio

Assistant Attorney General