

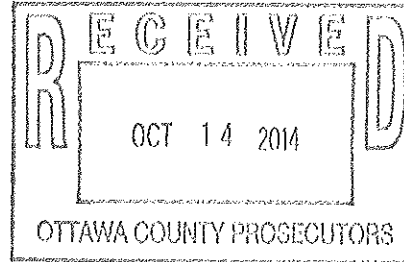


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October 10, 2014



Mark E. Mulligan, Esquire
Ottawa County Prosecutor
315 Madison Street, Suite 205
Port Clinton, OH 43452

Dear Mr. Mulligan:

I have reviewed the complaint lodged by Attorney Adrienne Hines regarding the firearm formerly possessed by Judge Bruce Winters. I have spoken with the principal parties involved in this matter and reviewed the applicable Ohio Revised Code statutes.

The facts demonstrate that after the disposition of a felony criminal case (07CR011), an application for forfeiture was filed by the Ottawa County Prosecutors Office (07CR170). The list included property seized from 11 separately identified cases.* Included in that list was the LAR-15 which is the subject of this review.

Ohio forfeiture law is governed by Chapter 2981 of the Revised Code. Property that is: (1) "contraband" (2) "proceeds derived from or acquired through the commission of an offense;" or (3) "an instrumentality" used to commit the criminal offense is subject to forfeiture under 2981.02(A). The State or political subdivision acquires provisional title to the property with the commission of the criminal offense under section 2981.03(A). Section 2981.04(C) "vests" title to the forfeited property "with the state or political subdivision subject to the claims of third parties" upon the entry of the forfeiture order by the trial court. Section 2981.11(A)(1) directs the law enforcement agency to dispose of the forfeited property "pursuant to sections 2981.12 and 2981.13 of the Revised Code."

Section 2981.11(A) (2) concerns forfeited firearms and this section states "firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collector's items may be sold at public auction pursuant to division (B) of this section. The agency may sell other firearms and dangerous ordnance to a federally licensed firearms dealer in a manner that the court considers proper. The agency shall destroy any firearms or dangerous ordnance not given to a law enforcement agency or sold or send them to the bureau of criminal identification and investigation for destruction by the bureau." Under section 2981.01(B)(7), the phrase "law enforcement agency" includes "the state board of pharmacy, the enforcement division of the


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department of taxation, the Ohio casino control commission, and the office of the prosecutor" but does not include a Common Pleas Court judge. Thus, under 2981.02(A)(2), once a firearm is forfeited, the law enforcement agency has title of the firearm and may keep it or give it to another law enforcement agency for police work, sell it (at auction or to a licensed gun dealer), or destroy it. There is no provision in the forfeiture section (Chapter 2981) of the Revised Code for a law enforcement agency to give, sell, or lend the forfeited firearm to a Common Pleas Court judge for business or personal use. There is no provision that likewise prohibits the law enforcement agency from engaging in that conduct. There also appears to be no criminal sanction in Chapter 2981 should a county sheriff or other law enforcement official dispose of a firearm in a manner other than that provided in section 2981.12(A) (2).

There is no evidence that Judge Winters "demanded", "commandeered", or otherwise inappropriately obtained the weapon. A written request was submitted to the Ottawa County Sheriff's Department and the weapon, now property of the department and no longer evidence, was voluntarily turned over to Winter's for his use. The receipt as well as other documentation was lost, however, this information was confirmed by Sheriff Levorchick. The weapon has since been returned to the Ottawa County Sheriff's Department.

I have completed my review as stated above, and it is my opinion that no violations of the Ohio Revised Code occurred, and the appointment of a special prosecutor is not necessary. The issue of liability as well as any ethical issues is best addressed by the agencies which review those questions. Please feel free to call if you require further information or having any questions regarding this review.

Sincerely,



Jeffrey D. Lingo, #0044028
Chief, Criminal Division
Lucas County Prosecutor's Office

cc: Adrienne Hines, Esquire

*The case number provided on the forfeiture attachment was incorrect and should have been 07-CR-011, not 05-CR-148