



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 29, 2024

Christopher D. Hemphill, Esq.
Attorney, Noxubee County Board of Supervisors
214 5th Street South
Columbus, Mississippi 39701

Re: Purchase of Sidearm by Constable

Dear Mr. Hemphill:

The Office of the Attorney General has received your request for an official opinion.

Background

You provide in your request that one of the Noxubee County (“County”) constables did not run for reelection. During his time as constable, he contributed to the Public Employees’ Retirement System (“PERS”), but he ultimately did not have sufficient years to be vested in PERS and was therefore unable to retire under the system. In a subsequent phone conversation with you, we learned that the constable did not work as a law enforcement officer for the county for ten continuous years. He has requested that the board of supervisors sell him his sidearm.

Questions Presented

1. Since the constable was not vested in PERS, does he qualify as a retired member of a county law enforcement agency under Mississippi Code Annotated Section 45-9-131?
2. May the County legally sell him the sidearm that he carried?
3. If the answer to question two is “yes,” is the fair market value of the sidearm solely in the discretion of the County pursuant to Section 45-9-131(4)?

Brief Response

1. Because the constable was not vested and did not retire under a state retirement system, he would not qualify as a retired law enforcement officer under Section 45-9-131.
2. Because the constable would not qualify as a retired law enforcement officer under Section

Christopher D. Hemphill, Esq.

May 29, 2024

Page 2

45-9-131 and did not serve ten continuous years, the County would not be authorized to sell him his sidearm. However, if the County determines and declares that the sidearm is surplus county personal property, the County may dispose of the sidearm in accordance with Section 17-25-25.

3. Because Section 45-9-131 does not allow the County to sell the constable his sidearm, your third question is rendered moot.

Applicable Law and Discussion

Section 45-9-131(1) provides that:

Upon approval of the governing authority of the municipality or county, a member of any municipal or county law enforcement agency *who retires under any state retirement system* or leaves such employment after being employed for ten (10) continuous years of service may be allowed to purchase, as his or her personal property, one (1) sidearm which was issued to the law enforcement officer by the law enforcement agency *from which he or she retired* or by whom he or she was employed at the time of death.

(emphasis added). The statute clearly requires the member of the law enforcement agency to have retired under a state retirement system unless he or she has served ten continuous years. When previously asked whether Section 45-9-131 would allow a resigning police officer, rather than a retiring police officer, to purchase his sidearm, we said that the authority in Section 45-9-131 is limited to retiring law enforcement officers and does not apply to a resigning officer. *See MS AG Op., Hollingsworth* at *1 (Oct. 11, 2019). Under the now-amended language of Section 45-9-131(1), if the constable did not retire under any state retirement system, he would not qualify as a retired member of a county law enforcement agency, and since he did not serve ten continuous years, the board of supervisors would not be able to sell him his sidearm. Alternatively, however, if the County determines and declares that the sidearm is surplus county personal property, the County may dispose of the sidearm in accordance with Section 17-25-25. *See Hollingsworth, supra* (internal citations omitted). You may wish to consult the Ethics Commission pertaining to any potential ethical implications.

Because Section 45-9-131 does not allow the County to sell the constable his sidearm, your third question is rendered moot.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abigail C. Overby*

Abigail C. Overby
Special Assistant Attorney General