

N.D.A.G. Letter to Marion (April 1, 1985)

April 2, 1985

Mr. James L. Marion
Chief Parole Officer
State of North Dakota Department
of Parole and Probation
P.O. Box 1497
Bismarck, North Dakota 58505

RE: Confiscated Weapons

Dear Mr. Marion:

Thank you for your letter of March 8, 1985, concerning the disposition of firearms which were confiscated by one of your probation officers and eventually forfeited to your agency by a district court judge. Apparently the reason for the initial seizure of the weapons was a violation of the probationer's probation. You also state in your letter or in the record that you supplied our office that the parole agent was assisted by local law enforcement as well as the Federal Bureau of Alcohol, Tobacco and Firearms.

There is no specific provision in North Dakota law for the confiscation of weapons by a probation officer and their ultimate forfeiture. There is a general provision, however, that deals with forfeiture of weapons by a person arrested and convicted of a crime. N.D.C.C. § 62-04-04, provides as follows:

62-04-04. FORFEITURE OF WEAPONS BY PERSON ARRESTED AND CONVICTED OF CRIME. When any firearm or sharp or dangerous weapon which is usually used for attack is found on any person who is arrested and convicted of a felony or misdemeanor, such firearm or weapon shall be seized and, upon motion, forfeited to the jurisdiction in which the arrest was made, and said weapon may be, pursuant to court order, sold at public auction, retained for use, or destroyed by the agency which made the arrest.

As you can see from this provision, which was amended in 1983, the weapons shall be seized and upon proper motion forfeited "to the jurisdiction in which the arrest was made." I have enclosed for your information copies of motion papers that have been used in Cass County to comply with this provision.

The predecessor to N.D.C.C. § 62-04-04, provided that such firearms were forfeited "to the state," and did not provide for the options as outlined above. I would recommend that the state's attorney in Burke County make a motion to the district court seeking a court order forfeiting the weapons in question to the local law enforcement agency involved. Therefore, the agency would have the option of selling the weapons, retaining them for

official use, or their destruction. Although N.D.C.C. § 62-04-04, deals with firearms seized from any person "who is arrested and convicted of a felony or misdemeanor" and does not specifically refer to a probation violation situation, I believe the same statute would still apply.

If you have any additional questions or comments, please feel free to contact me.

Sincerely yours,

NICHOLAS J. SPAETH
Attorney General

BRUCE D. QUICK
Assistant Attorney General

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Enclosures