

Opinion No. 56-6357

January 18, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Victor C. Breen, District Attorney, Tenth Judicial District, Tucumcari, New Mexico

Receipt is acknowledged of your letter dated December 28, 1955, in which you request an opinion as to what the counties can do with abandoned personal property.

First you ask whether or not the counties have the same authority to sell unclaimed personal property as a municipality under Section 14-47-9, N.M.S.A., 1953. This section applies only to municipalities and does not apply to counties. Under Attorney General's Opinion No. 6290, this office found that we had no forfeiture statute in New Mexico. However, this opinion would not apply where the property has been abandoned. There is no statute on abandonment of personal property.

I find, however, that where articles of personal property including guns, which you mention in your letter, have been abandoned, the sheriff in this case, can dispose of same. The intention to abandon may be manifested by expressed acts of the owner or by acts or conduct implying abandonment which may be inferred from the circumstances. Therefore you must have the intention to abandon, and an act or omission by which such intention is carried into effect. These elements must concur in order that there may be an abandonment. See 1 C.J.S. "Abandonment" at page 8. Also see the same volume at page 13, subsection (b) Personal Property, which states specifically that it is well settled that personal property may be abandoned, and ownership of it thereby lost. See the cases of Enno-Sander Mineral Water Company vs. Fishman, 104 S.W. 1156; Collins vs. Lewis, 149 Atl. 668, 111 Conn. 299.

It is therefore, the opinion of this office that in view of the above cited authorities, if you are satisfied that the property, including the gun which is in possession of the sheriff has been abandoned, therefore becoming property of the county, that you may dispose of same to the highest and best bidder.

Trusting that the above fully answers your inquiry, we remain

By: Hilario Rubio

Assistant Attorney General