



April 16, 1969

Opinion Letter No. 125

Honorable James N. Foley
Prosecuting Attorney
Macon County Courthouse
Macon, Missouri 63552

Dear Mr. Foley:

This is in response to your opinion request as follows:

"I would appreciate your advising if there is an opinion concerning the disposition of guns that were used in felonious assault or murder cases. A defendant in our county shot and killed his brother and has now served his sentence and has now requested that the gun he used to kill his brother be returned to him. Do we have to give it to him?"

We assume the gun in question is the type of gun the owner may own and possess legally. We are unable to find any court decisions in this state or any statutes governing this matter.

In 79 C.J.S., Section 114:

"The property of accused in a criminal case, seized by officers and used as evidence, generally will be returned to him upon his proper application, and property taken under a search warrant is generally returned to its rightful owner when no longer needed in aid of a criminal prosecution if its ownership is undisputed * * * " .

In Lange vs. McMillium, 86 SE 2d 477, 226 S.C. 598, the court held a pistol used in a felonious assault case, of and by itself, was not contraband and the owner from whom it was taken by the police was entitled to its return.

Honorable James N. Foley

It is the opinion of this department that a gun belonging to the accused and used in a criminal act, seized by the officer and used as evidence, should be returned to him upon proper application, after the conclusion of the trial and after such person has served the sentence imposed on him as a result of such trial, if the gun is of the type he may legally own and possess.

Yours very truly,

JOHN C. DANFORTH
Attorney General