

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION ROOM TWELVE
CAUSE NUMBER 49D12 0603 PL 8381

JONATHAN C. HOUGHTON,)
)
Plaintiff,)
)
v.)
)
CITY OF INDIANAPOLIS, MARION COUNTY,)
INDIANAPOLIS POLICE DEPARTMENT,)
MARION COUNTY SHERIFF'S DEPARTMENT,)
INDIANAPOLIS METROPOLITAN POLICE)
DEPARTMENT, MICHAEL T. SPEARS, and)
FRANK ANDERSON,)
)
Defendants.)

FILED
JUN 23 2006
Clerk of the
MARION CIRCUIT COURT

ORDER GRANTING MOTION TO DISMISS

On June 22, 2006, the Court heard argument on Defendant's *Motion to Dismiss*. After hearing the arguments of counsel and reviewing the briefs filed by counsel, the court **grants** the motion.

The Complaint alleges that the firearm that is the subject of this litigation came into the possession of the Indianapolis Police Department because it was removed from the person who stole it from the Plaintiff. The issue presented is whether the Indianapolis Police Department has the power to adopt regulations for the return of firearms to the lawful owner and, if so, whether IPD's policy for the return of firearms violates Indiana Code § 35-47-3-3.

Under Indiana Code § 36-1-3-4(b):

(b) A unit has:

(1) all powers granted it by statute; and

(2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)(1) are listed in various

statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power.

Indiana Code § 35-43-3-3 provides:

(b) Firearms shall be returned to the rightful owner at once following final disposition of the cause, if such return has not already occurred under the terms of IC 35-33-5, and if such owner remains lawfully entitled to possess such firearms according to applicable United States and Indiana statutes. If rightful ownership is not known, the law enforcement agency holding the firearm shall make a reasonable and diligent effort to ascertain the rightful ownership and cause the return of the firearm being held, providing the owner remains lawfully entitled to possess such firearms.

Therefore, the issue is whether the policies for the return of firearms adopted by the IPD violate the “at once” language of Indiana Code § 35-43-3-3.

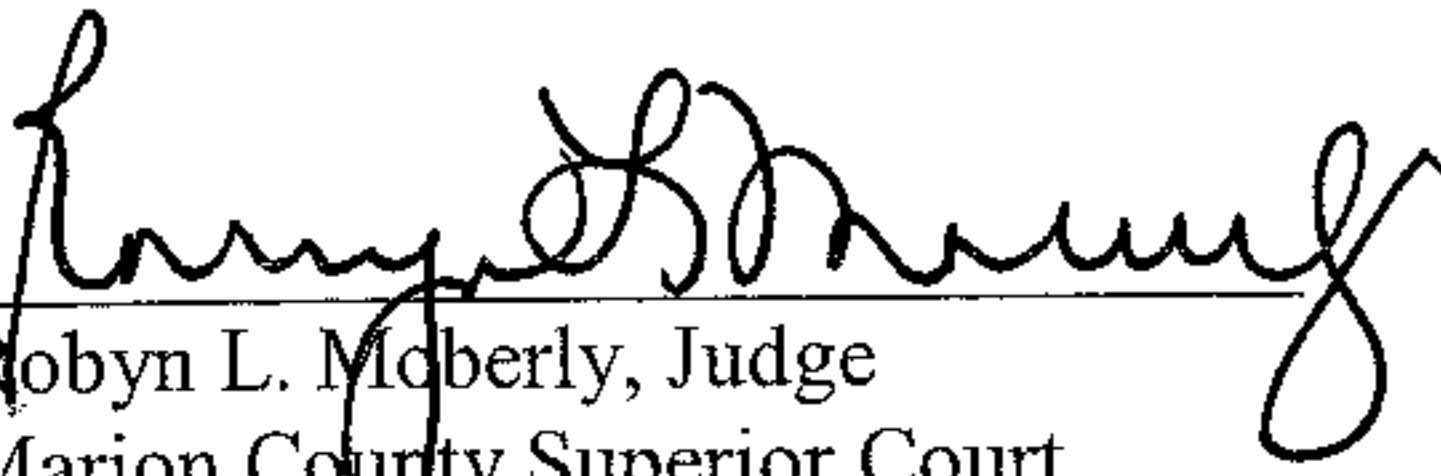
The regulations are not in dispute. Plaintiff argues that “at once” means upon request without inquiry or delay. However, as stated in Black’s Law dictionary, “the use of [the term at once] does not ordinarily call for instantaneous action, but rather that notice shall be given with such time as is reasonable in view of the circumstances. ...[S]tatutes requiring the performance of a particular act 'at once' are usually held to mean simply within a reasonable time.”

Thus, the question is whether a “matter of weeks” is reasonable given the circumstances and therefore within the parameters of “at once”. A review of the IPD procedure for the return of firearms leads one to the clear conclusion that the procedures are in place to assure public safety. The procedures assure that a firearm is released to the rightful owner and that the recipient of the firearm may lawfully possess the firearm. The burden on the owner is minimal. The threat to public safety of releasing firearms to persons who may not lawfully possess a firearm is quite obvious and cannot be denied.

Therefore, the Court finds that the IPD has the authority to determine procedures for the operation of its public safety duties. Further the procedures

challenged herein are compliant with Indiana Code § 35-43-3-3. The *Motion to Dismiss* is granted.

Date: JUN 23 2008


Robyn L. Moberly, Judge
Marion County Superior Court
Civil Division, Room Twelve

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