

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 3, 2005

The Honorable Alton McCollum
Mayor, City of Bamberg
P. O. Box 300
Bamberg, South Carolina 29003

Dear Mayor McCollum:

In a letter to this office you referenced forfeiture funds that are seized pursuant to S.C. Code Ann. §§ 44-53-520 and 44-53-530 dealing with controlled substances. You questioned whether all of the monies seized and held by a police department before the final judgment of forfeiture are considered public trust funds which must be audited. You also questioned whether the one thousand dollars that may remain with a police department after final judgment of forfeiture are considered public trust funds that must be audited.

In your letter you referred to an order by former Chief Justice George Gregory dated November 14, 1990 which provided for the handling and disposition of drug forfeiture monies. However, please be advised that such order is no longer effective since the enactment of the statutory provisions referenced above which provide for such handling and disposition. I would also note that pursuant to an order dated September 15, 2005 Chief Justice Jean Toal specifically ordered that the November 14, 1990 order is rescinded. As a result, reference must be made to present statutory provisions in responding to your questions.

Pursuant to Section 44-53-520

(j) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(1) The report shall provide the following information with respect to the property seized:

(a) description;

Request Letter

- (b) circumstances of seizure;
- (c) present custodian and where the property is being stored or its location;
- (d) name of owner;
- (e) name of lienholder, if any;
- (f) seizing agency; and
- (g) the type and quantity of the controlled substance involved.

(2) If the property is a conveyance, the report shall include the:

- (a) make, model, serial number, and year of the conveyance;
- (b) person in whose name the conveyance is registered; and
- (c) name of any lienholders.

(3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

- (a) a description of the quantity and nature of the property and money seized;
- (b) the seizing agency;
- (c) the type and quantity of the controlled substance involved;
- (d) the make, model, and year of a conveyance; and
- (e) the law enforcement agency responsible for the property or conveyance seized.

(k) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes. (emphasis added).

As to your question of whether all of the monies seized and held by a police department before the final judgment of forfeiture are considered public trust funds which must be audited, the law is silent in such regard. As set forth above, "[i]n addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information: (a) a description of the quantity and nature of the property and money seized." Therefore, while a report regarding the money is to be made, there is no specific requirement by Section 44-53-520 for an audit of these funds.

However, pursuant to Section 44-53-530

e) All real or personal property, conveyances, and equipment of any value defined in Section 44-53-520, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

- (1) seventy-five percent to the law enforcement agency or agencies;

- (2) twenty percent to the prosecuting agency; and
- (3) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

(f) The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

(g) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities and for prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4 of Title 30, the Freedom of Information Act.

As set forth, there is a distinction between the first one thousand dollars of any cash seized and forfeited (subsection f) and any remaining funds. This first one thousand dollars "...remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency." There is no specific reference to an audit of these funds. However, pursuant to subsection (g), "[a]ll forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency." As further provided by subsection (g), "[a]ll expenditures from these accounts must be documented, and the documentation made available for

The Honorable Alton McCollum

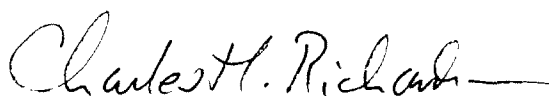
Page 4

October 3, 2005

audit purposes." Therefore, there is the specific statutory requirement of an audit of these other funds.

If there are any further questions, please advise.

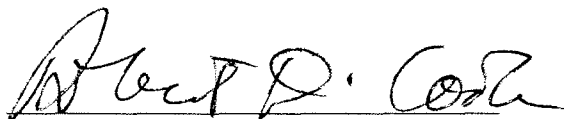
Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General