

6042 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 9, 1996

Lieutenant Keith Lewis
Fairfield County Multijurisdictional
Drug Task Force
P. O. Drawer 1115
Winnsboro, South Carolina 29180

Re: Informal Opinion

Dear Lieutenant Lewis:

You have asked the following question:

I would like an opinion as to how the Fairfield County Multijurisdictional Drug Task Force can dispose of two (2) vehicles which were purchased with drug proceeds. One of the said vehicles was wrecked and has been determined totalled. The second vehicle was damaged due to fire and also has been determined totalled. Both of these vehicles have been parked in the Fairfield County Sheriff's Office impoundment lot for approximately two (2) years. I would like to take seal bids at a public auction and deposit any funds derived from a sale into the Drug Enforcement Fund.

These vehicles are merely taking up space and need to be disposed of but I would like to have an official opinion to insure such disposal is done in a proper manner.

In an Informal Opinion, dated May 1, 1995, we addressed the situation concerning the procedures involving the sale of a vehicle previously purchased with drug proceeds. There we stated:

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[p]rior opinions of this Office have recognized that monies transferred to a law enforcement agency through forfeiture proceedings are "public monies" and therefore "should be maintained and spent in accordance with the laws and ordinances governing the custody and the use of public monies." Opin. of the Atty. Gen. dated July 31, 1991. Therefore such monies could not be expended in a manner inconsistent with the use of public funds generally. Moreover, pursuant to subsection (i) of the referenced statute, "[a]n expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established."

As you indicated, pursuant to Section 44-53-530(g), these funds may only be used for "drug enforcement activities." Moreover, pursuant to other provisions of that section, such funds

... 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....

That provision further states that any expenditures must be documented with such documentation available for audit purposes and subject to review pursuant to the Freedom of Information Act. The statute makes no specific reference to the matter of handling any funds generated by the sale of an item purchased with forfeiture funds.

Subject to the limitations set forth above regarding the use of forfeiture funds generally, I am in agreement with your conclusion that funds generated by the sale of a vehicle purchased with drug fund assets would be placed back into the account established for the law enforcement agency pursuant to Section 44-53-530(g).

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In another opinion, Op. Atty. Gen. Op. No. 89-42 (April 10, 1989), we stated that "[i]f a vehicle which is directly transferred to the law enforcement agency pursuant to forfeiture proceedings later becomes surplus property, then disposition of that property should follow the procedures used by the agency for disposition of surplus property."

It would appear to me, based upon the foregoing, that you are correct in your assessment of the relevant procedure here. Funds received from the sale of the property would be deposited in the special fund recognized in Section 44-53-370(g). The procedure for disposition of the property would be in the manner generally established for the sale of surplus property in the county.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph