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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

April 10, 1989

Lt. Sidney R. Wrenn
Berkeley County Sheriff's Department
300 California Avenue
Room 105, County Courthouse
Moncks Corner, SC 29461

Dear Lt. Wrenn:

You asked this Office for several opinions dealing with civil forfeitures. As noted below, the circuit court judge determines all issues relating to the forfeiture of property. These inquiries necessarily involve analysis of the particular court order which orders confiscation of the property. Therefore, since this Office cannot foretell the provisions circuit court orders might contain specifically addressing the disposition of property, this opinion addresses only the statutory forfeiture law.

First, you requested guidance as to the disposition of money received pursuant to a state civil forfeiture proceeding. The disposition of money is regulated by South Carolina Code Ann. §44-53-530(c). That section provides that the first \$1,000 shall remain with the law enforcement association which seized the money. Any forfeited funds in excess of \$1,000 shall be transferred to the State of South Carolina. However, ninety percent of those proceeds will be returned to the local authorities. See South Carolina Code Ann. §44-53-588 (1976). This money can only be used for the "control of drug offenses." Section 588 provides that "[t]hese additional funds may not be used to supplant their operating funds within the law enforcement agency's current or future budgets. Any expenditure of these proceeds by a law enforcement agency for an item that would have a reoccurring expense to the governing body must be approved by the governing body before the purchase."

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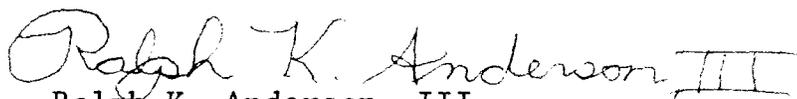
Second, you asked about the disposition of vehicles given to the local law enforcement authorities pursuant to a forfeiture proceeding. Section 530 provides that upon forfeiture of property, the judge determines the lienholder's interest in the property. That section further provides "[i]f any property seized is a conveyance or equipment, the judge may determine all other issues concerning interests in and disposition of the property before him." Rather than have the property sold and the proceeds turned over to the State, the local law enforcement agency may request to have the property transferred directly to the agency. Section 530 provides that the agency must make a showing of need in order to obtain the property directly. Once the law enforcement agency obtains the property, it is property of that agency with special limitations in its use by the forfeiture statute. Again, Section 530 provides that property transferred to the agency may not be used to supplant operating funds within the law enforcement agency's current or future budgets. Any expenditure of the proceeds from the sale of the property by a law enforcement agency for an item that would have a reoccurring expense to the governing body must be approved by the governing body prior to the purchase. If 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. The proceeds from that sale must be remitted to the State Treasurer. Afterwards, ninety percent of the proceeds from the sale will be remitted to the local law enforcement agency with the same contingencies concerning its use as set forth above.

Your third question sought a distinction between the use of property obtained pursuant to court ordered forfeiture proceedings and property obtained by the consent of the owners. Section 530(a) provides that "[a]ny forfeiture may be affected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interest in the property entitled to notice under this section, except lienholders and agencies, consent to the forfeiture." Though there is no specific forfeiture proceeding in these instances, the property is still obtained pursuant to the Forfeiture Act. Therefore, the law regulating forfeiture proceeds is applicable to property obtained pursuant to a consent forfeiture order. In other words, the local law enforcement agency must treat property obtained pursuant to a consent order just as if it had been obtained in a contested forfeiture proceeding.

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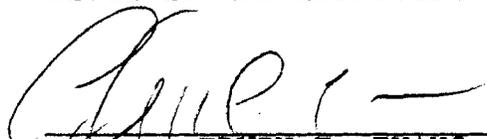
The final question you asked is concerning the handling of property seized through federal forfeiture laws. As I explained in our telephone conversation, your questions concerning the handling of property in those instances should be answered by the United States Attorney's Office.

Sincerely,


Ralph K. Anderson, III
Assistant Attorney General

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REVIEWED AND APPROVED:


EDWIN E. EVANS
Chief Deputy Attorney General


ROBERT D. COOK
Executive Assistant for Opinions