



ALAN WILSON
ATTORNEY GENERAL

May 17, 2017

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Dear Mr. Battle:

Attorney General Alan Wilson referred your letter dated January 20, 2017 to the Opinions section for a response. Please find following our understanding of your questions and our response to them.

Issue:

You have asked us to consider whether a police department may purchase a gyroplane (a small aircraft similar to a helicopter) with funds forfeited pursuant to S.C. Code Ann. § 44-53-520 (2016), South Carolina's civil asset forfeiture statute. You also asked whether those funds could be used for certain related expenses: associated needed equipment, training for two pilots, fuel, and maintenance of the aircraft. You indicate that the gyroplane would be used primarily for direct drug law enforcement operations and for activities with a strong correlation to drug law enforcement. You also anticipate certain incidental purposes which are minimally related or stipulated to be unrelated to drug law enforcement. You list the following specific anticipated uses (edited for length and clarity):

1. Narcotics Enforcement. This would include aerial surveillance of active narcotics investigative operations, monitoring of narcotic undercover operations, and gathering intelligence pre- and post-operation. You anticipate that this will decrease detection of undercover law enforcement officers, decrease potential vehicle pursuits, and substantially decrease overall danger to civilians, law enforcement officers, and targeted persons.
2. Direct Support of the 15th Circuit Solicitor's Drug Enforcement Unit, "DEU." You note that because the DEU "encompasses two counties . . . that are anchored by ocean, inlets, waterways, and a commercial port, the ability to deploy an aircraft to monitor and surveil enforcement functions related to narcotics interdiction would far exceed the current capabilities."

3. Support of Local and Federal Task Force Operations, i.e. FBI/DEA Drug Task Force, ATF Gang Task Force, FBI Joint Terrorist Task Force. You note that while these task forces vary in specific purpose, it is known and assumed that illegal narcotic involvement is a primary focus or a secondary association of their operations.
4. Marshall's Service Fugitive Task Force. This task force is a partnership between members of the Federal Marshall's Service and local agencies, tasked with locating and apprehending fugitives. In many cases, these fugitives have ties to illegal narcotic involvement.
5. K-9 Tracking. You note that aerial support of K-9 tracking would add to the overall success of operations and increase safety to the dog, the handler, supporting members of the operation and the target of the operation itself. Using the gyroplane could reduce the geographic scope and required time of K-9 operations, approximately ninety percent of which directly relate to narcotics enforcement.
6. SWAT Operations. You note that historically, a high percentage of SWAT call outs can be attributed to illegal narcotics enforcement. Aerial support would be extremely beneficial in providing real time surveillance and could aid in overall perimeter security and resource allocation in incidents that typically are highly charged and high-risk.
7. Pre- and Post-Natural Disaster Analysis. You note that aerial support is the most efficient and, after startup costs, the most cost effective way to survey the results of a natural disaster. This surveillance and analysis is crucial to the initial recovery process, and you indicate that your department is willing to partner with the state and other local governments if needed. You stipulate that the use of the gyroplane in this circumstance would not squarely fall into the language of Section 44-53-530, but note that your department would be less than forthcoming if it did not disclose the high likelihood of this use.
8. Major Event Intelligence Gathering (e.g., Bike Week). The City of Myrtle Beach hosts many major events involving large crowds. You anticipate deploying the gyroplane to forecast problem areas and address accordingly. As above, you stipulate that the use of the gyroplane in this circumstance would not squarely fall into the language of Section 44-53-530, but note that your department would be less than forthcoming if it did not disclose the high likelihood of this use.
9. Ocean and Waterway Patrol Functions to Include Rescue Operations. You anticipate that the gyroplane would be used to respond to reports of hazardous ocean conditions,

to aid in response to swimmers in distress, and (in the worst case scenario) to pinpoint and aid in recovering the bodies of drowning victims. You also would be able to rapidly deploy the gyroplane to respond to reports of suspicious sightings in the ocean and boats in distress. You indicate that your department is willing to partner with the state and other local governments and the Coast Guard if needed. As above, you stipulate that the use of the gyroplane in this circumstance would not squarely fall into the language of Section 44-53-530, but note that your department would be less than forthcoming if it did not disclose the high likelihood of this use.

You conclude your request by writing:

In general the purchase of a piece of equipment, i.e. aircraft using funding, if approved, as prescribed in [44-53-530] would be a major benefit in enhancing our department's ability to investigate and enforce illegal narcotic activities within our jurisdiction and outlying areas. And in looking at the scope of this enforcement [I note] that our department has committed personnel to fulltime positions on a variety of Federal Task Forces involving the FBI, ATF, DEA, U.S. Marshall's Service and a specialized Terrorist unit while emphasizing that the work being done on these Task Forces often had direct ties to illegal narcotics. I'm of the belief that we meet the requirements in [44-53-530] to use seized funds to pursue the purchase of the aircraft.

As for examples 7, 8, and 9, I'm of the opinion that any law enforcement agency that had access to [manned] aircraft and failed to use it in these situations would be failing the public we are committed to serve if we did not deploy and use this resource. I feel that the primary uses without doubt would be related to illegal narcotics enforcement; however, in the circumstances related to examples 7, 8, and 9, we would have to also use the aircraft. Given this stated intent would the use of seized funding for the purpose of purchasing an aircraft be disqualified?

For the purposes of this opinion, our Office is proceeding on the understanding that the gyroplane would be purchased with funds properly seized pursuant to Section 44-53-520. We are not opining on the propriety of any particular seizure, both because that subject is beyond the scope of your question and because it is a matter for a decision by a court.

Law/Analysis:

It is the opinion of this Office that a South Carolina court would find that funds seized pursuant to Section 44-53-520 may properly be used to purchase a gyroplane to be used primarily for drug law enforcement purposes, even if other incidental uses are contemplated at the time of purchase. Such funds may also be used to pay for associated equipment and training

for the pilots. The costs of fuel and maintenance of the aircraft, however, must not be paid for with seized funds. For that reason, the agency's governing body must approve the purchase.

As we discussed by phone, Section 44-53-530 governs the expenditure of funds seized under Section 44-53-520. Section 44-53-530(g) requires (in relevant part):

For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education.

...

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

...

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, Title 30, the Freedom of Information Act.

S.C. Code Ann. § 44-53-530(g) (2016).

This Office has opined on several previous occasions on the propriety of certain expenditures with seized funds.¹ In our December 3, 1992 opinion, we stated:

[a]ny examination of the use of drug forfeiture funds obviously involves a case by case analysis. For instance, an opinion of this Office dated August 1, 1991 determined that to the extent a law enforcement training center is not used directly or indirectly for drug enforcement activities, drug forfeiture funds could not be used for the center. Another opinion of this Office dated August 19, 1991 dealt with the question of whether handguns for deputies could be purchased from funds derived from drug forfeitures and seizures. The inquiry stated that as to the small law enforcement agency involved, each and every law enforcement officer was involved in drug arrests, eradication and/or deterrent activities. The opinion, referencing the involvement in drug arrests and enforcement, determined that drug forfeiture funds could be used to purchase handguns for the deputies.

Op. S.C. Att'y Gen., 1992 WL 575680 (December 3, 1992). Other opinions have approved the use of forfeited funds to "upgrade and maintain the 116 Implied Consent/Datamaster sites

¹ While our state's Supreme Court and Court of Appeals have issued several reported opinions which cite Section 44-53-530, those opinions each focus on the propriety of a seizure. We are not aware of any reported opinion in this State which addresses a challenge to the propriety of the specific use of funds after they were seized.

throughout the state" (Op. S.C. Att'y Gen., 2011 WL 3918177 (August 1, 2011)), radar speed detection units (Op. S.C. Att'y Gen., 1996 WL 766534 (December 9, 1996)), and video imaging equipment to create and produce photo lineups for identification purposes (Op. S.C. Att'y Gen., 1997 WL 568838 (July 10, 1997)). While the reasoning of each of those opinions is set out more fully therein, generally speaking our Office has concluded that the requirement of the statute is satisfied where the primary intent of the purchase was drug law enforcement, or drug or other law enforcement training, even if the department received incidental or tangential benefits from the purchase which were unrelated to drug law enforcement. *See id.* Conversely, our 1992 opinion quoted above concluded that "while a purpose of the program at issue does include decreasing drug trafficking on rural roads, the primary intent of the program is traffic safety," and opined that forfeited funds could not be used to fund that program. Op. S.C. Att'y Gen., 1992 WL 575680 (December 3, 1992).

Based on your letter, we believe that a South Carolina court would find that the primary intent of the proposed purchase of a gyroplane is for drug law enforcement activities. We sincerely appreciate your candor in setting out certain other unrelated and likely uses of the gyroplane, but we do not believe those uses violate the letter or the spirit of Section 44-53-530, provided that the primary purpose of the gyroplane is and remains drug law enforcement.

The first rule of statutory construction is to give effect to the intent of the legislature which wrote and passed the law. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan*, supra. Words must be given their plain and ordinary meaning without resort to subtle or forced construction which limits or expands the statute's operation. *Id.* When construing an undefined statutory term, such term must be interpreted in accordance with its usual and customary meaning. *Id.* When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.*

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

One legislative intent which is apparent on the face of Section 44-53-530(g) is that the funds seized in drug operations be repurposed to fund more drug law enforcement, but not be used to completely fund a department in lieu of an appropriated budget. On the other hand, while the statute plainly requires use of the funds "for drug enforcement," we are not aware of any requirement that such funds be used exclusively for drug enforcement, and we have never interpreted it as such. On the contrary, we believe that reading Section 44-53-530 so as to tacitly insert the word "exclusively" before "for drug enforcement" would amount to a "forced construction which limits . . . the statute's operation." *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002).

By analogy, if a county used forfeited funds to purchase a patrol car with the "D.A.R.E." logo emblazoned on the side, the common understanding would be that the car would be used primarily, for example, for community outreach to prevent drug use among minors, not for routine traffic enforcement. If, however, a Category 5 hurricane devastated the county, or if a massive public event required a strong police presence to preserve order, it would be absurd to conclude that the General Assembly intended in such an "all hands on deck" situation for that specific car to remain at the station while every other asset is in use. Such absurd results are decidedly disfavored by the South Carolina Supreme Court, which has long held that:

[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. *Stackhouse v. Rowland*, 86 S.C. 419, 68 S.E. 561 (1910). If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect. *Id.*

Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

Similarly, the South Carolina Supreme Court has rejected an overly-strict reading of the public purpose requirement for state bonds in Article X, Section 13 of the South Carolina Constitution. *WDW Properties v. City of Sumter*, 342 S.C. 6, 15, 535 S.E.2d 631, 635 (2000). The Court has held that the constitutional mandate that "general obligation debt may not be incurred except for a public purpose" may be satisfied even if "private parties within the area may benefit incidentally." *Id.* In doing so, the Court overruled previous jurisprudence which took a narrower view of the doctrine, which previously prevented "revenue bonds [from being issued] on behalf of . . . commercial businesses." *Id.* While the question of a public purpose under the South Carolina Constitution is distinct from the question presented here in several ways, this holding further supports our conclusion that the Court would construe Section 33-53-530 such

that incidental uses of assets purchased with forfeited funds are permissible, provided that the primary purpose of the purchase is to enforce drug laws.

For these reasons, we believe that a South Carolina court most likely would conclude that the purchase of a gyroplane with seized funds for the purposes which you have presented to us satisfies Section 44-53-530. By extension, the purchase of the associated equipment with seized funds also would satisfy the statute. Moreover, training of the pilots, including ongoing training after initial licensure, would qualify as "drug or other law enforcement training or education."

The question of fuel and maintenance, however, is a separate one, and for the reasons set out below, we believe that those expenses should be paid through the agency's general budget, not with forfeited funds. Section 44-53-530 mandates on two separate occasions within the same section the forfeited property or funds "not supplant operating funds [for] the current or future budgets." *See* Section 44-53-530(a) & (g). Moreover, Section 44-53-530(g) requires that the purchase of "an item that would be a recurring expense must be approved by the governing body before purchase." Thus, the General Assembly contemplated that purchasing assets might increase the operational budget of a law enforcement agency beyond what could be paid for properly with forfeited funds and expressly required that the governing body which provides the agency's budget approve the purchase before that financial commitment is made. In other words, the General Assembly provided a means for forfeited funds to be used to purchase drug law enforcement assets, but anticipated that such purchases would not necessarily be revenue-neutral.

Fuel and maintenance are both routine operating expenses for any law enforcement agency which has a motor pool, and typically these expenses are paid through that agency's general budget. Because our courts have never considered the question, it is possible that a court could find that forfeited funds may purchase fuel and maintenance for an asset purchased for drug law enforcement so long as the asset is continued to be used for that purpose. However, we believe that a more accurate reading of Section 44-53-530(g) would lead a South Carolina court to conclude that offsetting these costs with forfeited funds would amount to "supplant[ing] operating funds in the current or future budgets," which is explicitly prohibited by the statute. S.C. Code Ann. § 44-53-530(a) & (g) (2016).

We also believe that allocating fuel and maintenance to the general budget as opposed to seized funds is most in line with the legislative intent of Section 44-53-530. South Carolina's civil asset forfeiture statute reflects an effort to empower law enforcement agencies to repurpose drug money to fight drug crime while avoiding one common criticism of civil seizures. As you no doubt are aware, some critics of civil asset forfeiture assert that where agencies receive a substantial portion of their operating budgets from seizures, law enforcement agents may face undue pressure and perverse incentives to seize assets as a primary funding mechanism, not as a tool incidental to their primary goal of even-handed law enforcement. The decision of the General Assembly to preclude forfeited property from funding a South Carolina law enforcement agency's general budget helps preserve public trust in the integrity of the hard-working men and

James R. Battle, Esq.
Page 8
May 17, 2017

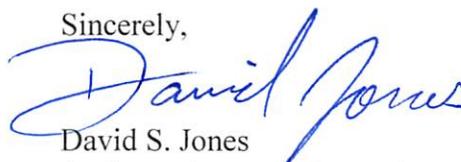
women who serve and protect our state every day. We believe that the inclusion of this prohibition was intentional and deliberate, and that it is indicative of the legislative intent that should control any interpretation and application of the statute.

Conclusion:

In conclusion, for the reasons set out above, it is the opinion of this Office that a South Carolina court most likely would find that funds seized pursuant to Section 44-53-520 may properly be used to purchase a gyroplane to be used primarily for drug law enforcement purposes, even if other incidental uses are contemplated at the time of purchase. The costs of fuel and maintenance of the aircraft, however, may not be paid for with seized funds.

We note that this advisory opinion is based only on the question presented, the current law, and the information which you provided to us. This opinion is not an attempt by this Office to establish or comment upon public policy. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in this matter. You may also choose to petition a court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. *See* S.C. Code Ann. § 15-53-20 (2005). If it is later determined that our opinion is erroneous in any way, or if you have any additional questions or issues, please do not hesitate to contact our Office.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General