ALAN WILSON
ATTORNEY GENERAL

June 28, 2011

Gerald Brooks, Chief of Police
Greenwood Police Department
520 Monument Street
Greenwood, SC 29648

Dear Chief Brooks:

In a letter to this office you ask about forfeiture funds that are seized pursuant to S.C. Code Ann. §44-53-530 dealing with controlled substances. You reference an opinion of this office dated January 17, 1990, where we addressed whether a police agency could use money seized pursuant to the drug forfeiture laws to buy "equipment, vehicles, weapons, training, etc. for divisions within the department whose primary responsibility is not narcotic enforcement. . . ." We advised that:

> Section 44-53-530 (a) (c), South Carolina Code of Laws Ann. (1986, as amended), provides that the first $1,000.00 of any cash seized and forfeited pursuant to the Forfeiture Act remains the property of the law enforcement agency which seized the cash. That $1,000.00 can be used for any public purpose of law enforcement. Therefore, in the absence of any local government's restrictions, your office can use the first $1,000.00 of each cash drug forfeiture for the general law enforcement expenses listed above. However, the remaining money, if any, acquired through the provisions of §44-53-588 must be used "exclusively by law enforcement in the control of drug offenses."

You have requested an opinion of this office as to whether the "first $1,000.00" can still be used for any public purpose of law enforcement, as §44-53-530 has been amended since the 1990 opinion.

Law/Analysis

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Blackburn v. Daufuskie Island Fire Dist., 382 S.C. 626, 677 S.E.2d 606, 607 (2009). "All rules of statutory construction are subservient to the one that the 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." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 537 S.E.2d 543, 546 (2000). A court will give words their plain and ordinary meaning, without resort to subtle or

forced construction to limit or expand the statute's operation. Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006).

Moreover, courts consider not merely the language of the particular clause being construed, but the words and their meaning in conjunction with the purpose of the whole statute and the policy of the law. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002). In interpreting a statute, the language of the statute must be construed in a sense which harmonizes with its subject matter and accords with its general purpose. SCANA Corp. v. South Carolina Department of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Id.

The Legislature revised §44-53-530 in 1990 S.C. Acts No. 604, §3 ["1990 Act"]. The provisions of the 1990 Act were made effective to property, including cash, seized and forfeited from July 1, 1990, through June 30, 1992.

Prior to the 1990 Act, §44-53-370 (c) provided:

> [t]he 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. Whenever monies, in excess of one thousand dollars . . . are forfeited under the provisions of this section, the judge shall provide for the transfer of the items to the State Treasurer, who shall retain them in a special account. . . .

Section 44-53-588, prior to its repeal in the 1990 Act, provided that: ". . . [t]he State Treasurer shall remit directly to the governing body of the local law enforcement agency or to a state law enforcement agency . . . ninety percent of the proceeds from the sale of the forfeited property and ninety percent of monies . . . transferred to the State Treasurer pursuant to Section 44-53-530(c) to be used exclusively by law enforcement in the control of drug offenses. These additional funds may not be used to supplant operating funds within the law enforcement agencies current or future budgets. . . ." These latter provisions were the basis of our conclusion in the 1990 opinion. See also Op. S.C. Atty. Gen., April 10, 1989 [also determining that, pursuant to these provisions, any forfeited funds in excess of the one thousand dollars remaining with the law enforcement agency which seized the money can only be used for the "control of drug offenses"].

Subsection (B) (6) of the 1990 Act retained the substance of the language of former §44-53-530 (c), providing that:

> [t]he first one thousand dollars of any cash seized and forfeited pursuant to this article remains 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.

When the Legislature amended §44-53-530 in 1992 S.C. Acts No. 333, §3 ("1992 Act"), it retained subsection (B) (6) and placed that provision in §44-53-530 (f).

The Legislature also rewrote §44-53-588 and, pursuant to §44-53-530 (B) (7) of the 1990 Act, provided that:

> [a]ll forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 of the 1976 Code 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.
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> These accounts must not be used to supplant operating funds in the current or future budgets. Any 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.
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> 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.
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> All expenditures from these accounts must be documented, and the documentation made available for audit purposes.

The Legislature retained this language from the 1990 Act in §44-53-530 (g) of the 1992 Act. In 2009 Acts 62, §1, the first paragraph of §44-53-530 (g) was amended to read as follows:

> [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. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. <u>For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education</u>. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters. [Emphasis added].

The intent of the 1990 Act was to provide, *inter alia*, for a different formula for the disposition of the proceeds of excess property and cash forfeited.[1] The 1990 Act thus provided, under subsection (B) (5), that:

> [a]ll real or personal property, conveyances, and equipment of any value defined in Section 44-53-520 of the 1976 Code when reduced to proceeds, <u>any cash more than one thousand dollars</u>, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:
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> (a) seventy-five percent to the law enforcement agency or agencies;
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> (b) twenty percent to the prosecuting agency; and
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> (c) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State. [Emphasis added].

This provision was retained by the 1992 Act in §44-53-350 (e).

In an opinion of this office dated August 1, 1991, we discussed whether drug funds from a corporation created by a sheriff's department in 1985 to maintain and administer funds derived from drug forfeitures and seizures could be utilized to construct a training center for deputies. Referring to subsection (B) (7) of the 1990 Act [now §44-53-530 (g)], we stated that:

> [p]ursuant to provisions in effect in 1985, former §44-53-588, which was enacted in 1984, stated that forfeiture proceeds were "to be used by law enforcement in the control of drug offenses or for drug rehabilitation purposes." In 1986, such provision was amended to indicate that such proceeds were "to be used exclusively by law enforcement in the control of drug offenses." The same language was retained by the 1988 amendment. As referenced above, pursuant to the current provisions, these proceeds are to be used "for drug enforcement activities." However, as noted, the first one thousand dollars of cash seized and forfeited has been considered the property of the law enforcement agency

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[1]We note the South Carolina courts consider the title or caption of an act in aid of construction to show the intent of the Legislature. <u>Lindsay v. Southern Farm Bureau Cas. Ins. Co.</u>, 258 S.C. 272, 188 S.E.2d 374 (1972); <u>University of S.C. v. Elliott</u>, 248 S.C. 218, 149 S.E.2d 433 (1966). The Title for §2 of the 1990 Act provides as follows:

> . . . to amend section 44-53-530, relating to forfeiture procedures and disposition of forfeited items and proceeds of sales of property forfeited under the provisions of section 44-53-520, so as to provide for the division of proceeds of forfeited property if there is a dispute among the participating law enforcement agencies . . . provide for the retention of forfeited property by the governing body of the local law enforcement agency or by the state treasurer in the case of a state enforcement agency, and provide for a different formula for the disposition of all proceeds of property and cash forfeited . . . to repeal section 44-53-588. . .

> which effected the seizure. Pursuant to former §44-53-530 of the Code, which was enacted in 1986, the first one thousand dollars of cash seized and forfeited "is the property of the law enforcement agency which effected the seizure."
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> As referenced in the opinion [dated July 5, 1988], the first one thousand dollars of forfeited funds, which is considered the property of the particular law enforcement agency, could be used by the sheriff's department for general law enforcement expenses of the department. Such would appear to include funding construction of the referenced Law Enforcement Training Center. As noted in the enclosed opinion, other forfeited funds "should not be used for any activities not directly or indirectly connected with drug enforcement." To the extent the Training Center is not used directly or indirectly for drug enforcement activities, funds from drug forfeitures could not be used for the Center.

In later opinions of this office we also advised that, consistent with the provisions of §44-53-530 (g), funds generated from drug forfeitures may be used by law enforcement agencies only for activities centered around drug enforcement but may not be used for other extraneous purposes not specifically tied to drug enforcement. See Ops. S.C. Atty. Gen., November 14, 2004; December 2, 1998; May 1, 1995.

In the August 1, 1991, opinion, we also referenced subsection (B) (5) of the 1990 Act [now §44-53-530 (e)], stating that:

> . . . as to items seized and forfeited between July 1, 1990 and June 30, 1992 drug forfeiture assets are to be dispersed on a basis whereby five (5%) percent is returned to the State Treasurer, twenty (20%) percent goes to the special account of the appropriate prosecution agency and seventy-five (75%) percent is given to the special account of the appropriate law enforcement agency. The first $1000.00 of any cash forfeited is the property of the law enforcement agency making the seizure unless otherwise agreed. This Office in a letter dated November 20, 1990 advised that
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> > Only assets seized on or after July 1, 1990 . . . are to be dispensed on a 75%/20%/5% basis. In addition, any assets seized on or after July 1, 1990, but not forfeited prior to June 30, 1992, revert to the 90%/10% basis.
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> As referenced, pursuant to the [. . .] 1990 legislation, special accounts were authorized for the forfeited monies and proceeds from the sale of forfeited property designated for the local law enforcement agency. Therefore, only those funds generated by the property seized and forfeited pursuant to the recent legislation between July 1, 1990 and June 30, 1992 are designated for placement in the referenced accounts in the amounts specified above. Obviously, prior to the enactment of the new forfeiture legislation [. . .], funds

> were to be handled pursuant to former §44-53-588 unless otherwise ordered by the Court. See Op. Atty. Gen., November 3, 1988.

Finally, in an opinion of this office dated October 3, 2005, we dealt with the question of whether all the monies seized and held by a law enforcement agency before the final judgment of forfeiture are considered public trust funds which must be audited. We further addressed whether the one thousand dollars that may remain with a law enforcement agency after final judgment is also considered public trust funds subject to audit. Specifically relevant to your question, we recognized in the opinion that ". . . there is a distinction between the first one thousand dollars of any cash seized and forfeited (subsection f) and any remaining funds." We thus concluded:

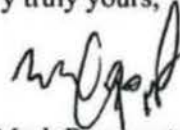
> [t]his first one thousand dollars . . . remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency." There is no specific reference to an audit of these funds. However, pursuant to subsection (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 audit purposes." Therefore, there is the specific statutory requirement of an audit of these other funds.

Conclusion

As noted above, §44-53-530 (e) provides a formula for the disposition of the proceeds of property forfeited, *e.g.*, any cash more than one thousand dollars. Additionally, §44-53-530 (g) specifically limits the use of funds by law enforcement agencies generated from drug forfeitures to activities centered around drug enforcement, and the provision directs that such may not be used for other extraneous purposes not specifically tied to drug enforcement, or for drug or other law enforcement training or education. However, we conclude from the plain reading of §44-53-530 (f), formerly §44-53-530 (c), providing that the first one thousand dollars of any cash seized and forfeited pursuant to the Forfeiture Act remains the property of the law enforcement agency which seized the cash, the Legislature intended to make a distinction between the first one thousand dollars of any cash seized and forfeited, and any excess funds, and that it did not intend to limit the use of the first one thousand dollars to drug enforcement activities, or for drug or other law enforcement training or education. We therefore reaffirm the above-referenced opinions of this office, and thus interpret the Legislature's intent with regard to this provision as allowing for the first one thousand dollars to be used for any public purpose of law enforcement. Clearly, only other forfeited funds "must be used for drug enforcement activities, or for drug or other law enforcement training or education." Of course, this office is not in a position to clarify such language any further inasmuch as such would involve a case-by-case analysis, which is the type of analysis not appropriate for an opinion of this office. Op. S.C. Atty. Gen., August 1, 1991.

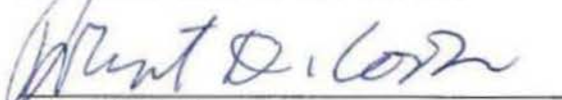
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General