



ALAN WILSON
ATTORNEY GENERAL

March 5, 2013

Jamie P. Ham, Chief of Police
Blacksburg Police Department
P.O. Box 517
Blacksburg, SC 29702

Dear Chief Ham:

In a letter to this Office you indicate that the Blacksburg Police Department (the "Department") is seeking to utilize forfeited funds seized pursuant to S.C. Code Ann. §§44-53-520, -530 to purchase the following for the Department: (1) shotguns, handguns, rifles, tasers; (2) radar units; (3) radio and communications equipment; (4) computer systems; (5) evidence tracking software; (6) cameras and video recording equipment; (7) night vision equipment, raid uniforms, ballistic vests; (8) crime scene equipment used for narcotics; (9) K-9 units; (10) vehicles; (11) digital in-car cameras; (12) emergency vehicle equipment; and (13) narcotics training classes. You explain that:

[o]ur law enforcement agency is small and has a limited number of employees, in regard to the comparison of other larger agencies. Therefore, it has long since considered and substantiated that every sworn officer within [the Department] is and will be involved in drug arrests, eradication, and/or deterrent activities.

Law/Analysis

Section 44-53-530(g) states:

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

Prior opinions of this Office have addressed the use of drug forfeiture funds in various scenarios. An opinion of this Office dated July 10, 1997 (1997 WL 568838) referenced several other prior opinions of this Office, indicating that:

[i]n Op. Atty. Gen., Op. No. 92-74 (December 3, 1992) [1992 WL 575680], we commented... [that]... any 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 [1991 WL 633026] 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 [1991 WL 474780] 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. [The December 3, 1992] opinion concluded that the purchase of automobiles for a traffic safety program to be funded by a federal grant, was not a use for drug enforcement activities. While one of the purposes of the program was to “decrease the use of rural roads for drug trafficking activities” there was no doubt that the principal and overriding objective of such program was traffic safety. We thus stated:

[a]s referenced above, it appears 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. As a result, it does not appear that funds which “may be drawn on and used only ... for drug enforcement activities” could be utilized to purchase vehicles which would be used in the program.

And in an Informal Opinion dated December 9, 1996 [1996 WL 766534] ... [this Office] ... concluded that a radar unit could be purchased with drug forfeiture funds because of the strong connection between the use of radar and the interception of drugs being transported on the highways.... [The opinion] ... recognized that a traffic control device such as radar also serves an important purpose in narcotics interdiction. . . .

In the December 3, 1992, opinion referenced above (1992 WL 575680), we concluded that as to the utilization of such funds for the purchase of automobiles:

...it appears 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. As a result, it does not appear that funds which may be drawn on

and used only for drug enforcement activities could be utilized to purchase vehicles which would be used in the program.

In the July 1997 opinion, we concluded that it was not unreasonable to purchase video imaging equipment used to create and produce photo lineups for identification purposes with drug forfeiture monies. We recognized that, typically, drug dealers use “street” names, and having “an accessible imaging system to create and produce photo lineups in a more expedient manner” would be for “drug enforcement activities” within the limitations of the drug forfeiture statute.

In an opinion dated November 15, 2004 (2004 WL 2745673), we considered whether a law enforcement agency could utilize seized drug funds for a law enforcement team that would focus their efforts on saturating identified drug problems in the municipality. The requestor indicated that:

[t]he officers would work with the community to provide enforcement for drug offenses and deter the criminal element from continuing their enterprise. The detail would be independent from the officer's normal duties, and above and beyond what we could normally offer the community during the normal course of business. The assignments would focus solely on operations geared towards drug interdiction and investigation.

Upon reviewing the prior opinions of this Office, we concluded:

. . . these opinions indicate that, consistent with Section 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. Consistent with such, in my opinion the drug forfeiture funds referenced by you could be utilized for the program you are proposing that would be focused on saturating identified drug problems in the City of Myrtle Beach.

Conclusion

Pursuant to §44-53-530(g), drug forfeiture funds “must be used for drug enforcement activities.”¹ Our opinions indicate that, consistent with §44-53-530(g), funds generated from drug forfeitures may be used by law enforcement agencies for activities centered around drug enforcement but may not be used for other extraneous purposes not specifically tied to drug enforcement. As you indicated to us, each law enforcement officer in the Department is involved in drug arrests and enforcement. However, while some of the items indicated in your letter appear to be directly connected to drug enforcement activities, other items might also be used for non-drug enforcement activities (other crimes). We thus advise that drug

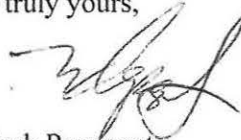
¹We have previously advised that, pursuant to §44-53-530(f), the first \$1,000 of forfeited funds, which is considered the property of a particular law enforcement agency, may be used by that agency for any public purpose of law enforcement and would, therefore, not be limited to drug enforcement activities. See Op. S.C. Atty. Gen., June 28, 2011 (2011 WL 2648712).

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forfeiture funds may be used to purchase these items provided the items are used primarily for drug enforcement activities of the Department within the limitations established by law and pursuant to the guidelines of our previous opinions. For us to address whether these particular items might be used for purposes other than drug enforcement would involve a case-by-case determination, which is the type of analysis not appropriate for an opinion of this Office. See Op. S.C. Atty. Gen., August 1, 1991. In addition, we advise that drug forfeiture funds may be used by the Department for drug or other law enforcement training or education.

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