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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 10, 1997

William M. Roth, Chief of Police
Lexington Police Department
P. O. Box 397
Lexington, South Carolina 29071

Re: Informal Opinion

Dear Chief Roth:

You have sought an opinion to determine "the legality of using confiscated drug monies to purchase a computerized, video imaging system used in developing lineups used for identification purposes involving this type of criminal activity." You have included with your request a Memorandum from Lt. S. B. Day, which sets forth the following facts:

[a]s you are aware, our Department has experienced a 150% increase in narcotic activity from 1995 through 1996. This is a continuation of increases we have been experiencing over the past several years. The Department began aggressively targeting the areas known for this type of activity during the past several years and continue to do so to this date.

We work with individuals that serve as agents for our Department to target and purchase illegal drugs from suspected dealers in the high, drug activity areas. Our police officers are familiar with the people that frequent these areas and can recognize him/her on site. However, those serving as agents for the Department tend to be from other areas and are not familiar with the suspected drug dealer by his/her true name; only by the suspected drug dealer's "street" name.

Request Letter

Therefore, the Department has realized the necessity of having an accessible imaging system to create and produce photo lineups in a more expedient manner as this is the method of positive identification of a subject by the agent.

Time is of the essence in securing an arrest as this type of subject is extremely mobile and does not remain in the area for a long period of time. Presently, we are dependent upon assistance from other agencies that are equipped with this type system. The problem we are encountering is the turnaround time in obtaining a photo lineup for use in our criminal investigation by having to depend upon outside sources to produce this lineup. This definitely slows down the process of identifying and locating subjects; therefore, also slowing down the arrest process to remove these subjects from the street which helps in our effort to reduce drug transactions.

Law / Analysis

S.C. Code Ann. Sec. 44-53-530(g) provides as follows:

(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 appropriation 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 offense and litigation of drug-related matters.

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 or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

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In Op. Atty. Gen., Op. No. 92-74 (December 3, 1992), we commented with respect to a similar provision that

[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.

That same 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, I concluded that a radar unit could be purchased with drug forfeiture funds because of the strong connection between the use

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of radar and the interception of drugs being transported on the highways. I recognized that such a radar unit as equipment was a non-recurring expense. Moreover, I found that

... it is now fully recognized that a traffic control device such as radar also serves an important purpose in narcotics interdiction. ...

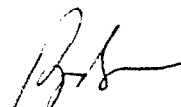
In view of the close correlation, recognized in the authorities above, between the use of radar in traffic stops for speeding and drug enforcement and interdiction, I am of the opinion that a court could construe the purchase of a radar unit as falling within the requirements of § 44-53-530 (g) as an expenditure for "drug enforcement activities."

Likewise, I am of the view that it is not unreasonable to purchase the type of equipment referenced in your letter with drug forfeiture monies. Certainly such expenditure would be for a non-recurring expense. Moreover, it is true 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. While such equipment may be used for non-drug-enforcement (other crimes), it is my understanding that the equipment in question would be used primarily for drug enforcement activities. Thus, the rationale of the earlier opinions referenced above would be applicable. The firearms analogy is particularly persuasive here. Thus, in my judgment, the referenced purchase would be authorized pursuant to the Drug Forfeiture law.

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/an