

The State of South Carolina



Office of the Attorney General

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July 31, 1991

The Honorable Allen F. Sloan
Sheriff, Richland County
Post Office Box 143
Columbia, South Carolina 29202

Dear Sheriff Sloan:

In a letter to this Office you requested an opinion regarding monies obtained as a result of drug forfeitures and the legality of guidelines established for the Richland County Sheriff's Department Training Center.

You have asked for a definition of exactly what the Sheriff's Department can spend or is forbidden from spending in regard to monies resulting from drug forfeitures. You also questioned what control, if any, does a county have over the expenditure of monies resulting from drug seizures. You additionally asked whether these funds can be spent to supplant any current or future line items in a sheriff's budget as approved by the county council. You also questioned what constitutes a "recurring expense" as such term is used in the forfeiture provisions.

Section (3)(B) of Act No. 604 of 1990^{1/} provides in part (6):

The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law

^{1/} Section 3 of Act No. 604 states in subsection (A)

For the purpose of the disposition of property, including cash, seized and forfeited pursuant to the provisions of Sections 44-53-520 and 44-53-530 of the 1976 Code, from July 1, 1990 through June 30, 1992, Section 44-53-530 of the 1976 Code does not apply and subsection (B) of this section applies.

Such provision is set forth in the Editor's Note following Section 44-53-520.

enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

Pursuant to part (7) of such provision:

All forfeited monies and proceeds from the sale of forfeited property ... 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. 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. 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. All expenditures from these accounts must be documented, and the documentation made available for audit purposes.

Supreme Court Chief Justice Gregory also issued an Order dated November 14, 1990, a copy of which is enclosed, which provides for the disposition of such property. Such Order states in part:

... upon final judgment of forfeiture, all forfeited monies plus interest, with the exception of the first one thousand dollars (\$1,000.00) of cash forfeited, and proceeds from the sale of forfeited property must be retained by the governing body of any local law enforcement agency or, in the case of a state law enforcement agency, by the State Treasurer, and deposited as follows:

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1. In the case of a Sheriff's Department, the County Council shall direct that the appropriate office of county government (i.e., the County Treasurer's Office or Finance Office) establish a separate, special account in the name of the Sheriff's Department. Such account may only be drawn on and used by the Sheriff's Department for drug enforcement activities.

....

5. These accounts may not be used to supplant operating funds within the current or future budgets. Any expenditures from these accounts for an item that would be a recurring expense to the governing body must be approved by the governing body before the purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law. All expenditures from these funds must be documented, and the documentation must be available for audit purposes

Pursuant to the Order of the Chief Justice, 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

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.

Referencing the above, forfeited funds and proceeds from the sale of forfeited property properly transferred to a sheriff are to be deposited in a special account established by the county treasurer's office or finance office under the control of the sheriff. The account of the sheriff may only be used for "drug enforcement activities" of the sheriff. I am unaware of any restriction as to the type account which may be established and therefore presumably such may be maintained in the form of a checking account. This would probably be a matter to be jointly determined by the county council and the sheriff.

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An opinion of this Office dated May 7, 1991 dealt with a question regarding a sheriff making purchases without following county purchasing procedures. The opinion concluded that a sheriff's responsibility in this regard would be determined by whether that office is typically required to follow county purchasing procedures. The opinion noted that as a matter of general policy, county purchasing procedures could be utilized for all purchases whether from drug funds or not. A prior opinion of this Office dated February 7, 1978 referenced the authority of a county council pursuant to Section 4-9-160 to provide for a centralized purchasing system and indicated that this was one example of the authority of the council to add to or alter the duties of an elected official, such as the sheriff. See also: Section 4-9-650 of the Code ("With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created by the Constitution or by the general law of the State.") The opinion referenced that as set forth by statute and the court order, any expenditure for an item with a recurring expense to a county must be approved by the county prior to purchase.

Other opinions and advice rendered by this Office prior to the most recent amendment to the forfeiture law as set forth above may also be instructive. This Office has advised that as to the first one thousand dollars received by a law enforcement agency, such fund by statute "remains with and is the property of the law enforcement agency which effected the seizure." Such funds are not considered county funds and are not subject to county regulation. It was stated however that these funds could not be spent in a manner inconsistent with state or county provisions restricting the use of public funds. We further advised that as to the funds transferred to a law enforcement agency, the county governing body may not substitute its judgment with regard to a decision by the law enforcement agency which initiated seizure as to the use of such funds. As to any expenditure for an item with a "recurring expense to the county", such must be approved prior to purchase. Moreover, any decision by law enforcement must be in compliance with relevant statutes, regulations and court orders and the funds must be used exclusively for drug enforcement activities.

An opinion of this Office dated January 17, 1990 which also predated the most recent forfeiture amendments dealt with the question as to whether forfeited funds could be used to buy equipment, vehicles, weapons, training, etc. for divisions within a law enforcement department where primary responsibility is not narcotics enforcement. The opinion concluded that the first one thousand dollars

... can be used for any public purpose of law enforcement. Therefore, in the absence of any

local government's restrictions, ... (a law enforcement agency) ... can use the first \$1000.00 of each cash drug forfeiture for the general law enforcement expenses listed above. However, the remaining money, if any, acquired through the ... (forfeiture provisions) ... must be used "exclusively by law enforcement in the control of drug offenses."

The opinion further noted that as to the referenced first one thousand dollars in forfeited funds

... since that \$1000.00 never becomes part of the county funds and subject to their regulations, ... (law enforcement) ... may spend the money without the county approving the appropriation. However, the \$1000.00 cannot be spent in any manner inconsistent with State regulations or county provisions restricting the use of public funds.

Another opinion of this Office dated July 5, 1988 dealt with the former statutory language that the forfeited funds are "to be used exclusively by law enforcement in the control of drug offenses." Such of course is similar to the present language restricting the use of forfeited funds beyond the initial one thousand dollars to "drug enforcement activities." The opinion commented that pursuant to the referenced language, the funds "... should not be used for any activities not directly or indirectly connected with drug enforcement."

This Office has also advised that the monies transferred to a law enforcement agency through forfeiture proceedings are

... "public monies" and should be maintained and spent in accordance with the laws and ordinances governing the custody and use of public monies.

Referencing the above, the first one thousand dollars of forfeiture funds is considered to be the property of the appropriate law enforcement agency. Prior advice of this Office as noted has indicated that these funds should not be considered county funds or funds subject to county approval or regulation. Nor do we believe the county could identify these funds to supplant current or future items in a sheriff's budget. As to use of the funds, it is our conclusion that these funds can be used for general law enforcement expenses of a department. However, as specified, these funds could not be expended in a manner inconsistent with provisions restricting the use of public funds generally.

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As to other forfeited monies returned to a law enforcement agency, as specified by statute and court order, these funds "must be used for drug enforcement activities." As referenced, these funds cannot be used "to supplant operating funds within current or future budgets." Any expenditure however for an item with a "recurring expense" must be approved by the county prior to purchase. As indicated, this Office has stated that as to the applicability of county purchasing procedures, such would depend on whether such purchasing procedures are typically required to be followed. Any expenditure for an item with a "recurring expense" must be approved by a county prior to purchase. However, this Office has indicated that a county council may not otherwise interfere with a decision by the law enforcement agency as to the use of such funds except to note that inasmuch as these funds are considered "public funds", there must be compliance with relevant statutes, court orders and regulations governing the custody and use of such funds generally.

You also questioned what constitutes a "recurring expense" as used in the referenced provisions. I am unaware of any statute or judicial determination providing a definition of such term. Therefore only a court could make a determination with absolute certainty as to what constitutes a "recurring expense." Moreover, any determination may have to be made on a case by case basis.

However, in the absence of any precise guidelines as to what may be meant by the term, as used above, I would note that the term "recurring" is generally defined as "coming or happening again." Webster's Third New International Dictionary. Therefore, it appears that the term "recurring expense" as used in the statute to provide that "any expenditures ... for an item that would be a recurring expense must be approved by the governing body before purchase" would indicate that if an item does not involve a one-time expenditure with no further costs attached or anticipated, the county's approval prior to purchase would be necessary. However, if the item purchased could be reasonably expected to involve further costs or expenses, approval by the county would be necessary. Again, however, any decision as to whether an item should be considered as a "recurring expense" would have to be made on a case by case basis.

You next raised questions relating to the Richland County Sheriff's Department Training Center. According to the copy of the bylaws which you forwarded along with your request

The Richland County Sheriff's Department Training Center is created for the purposes of promoting training, expertise, and health within

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the Richland County Sheriff's Department. These goals will be strived for through the purchase of training aids (films, reading materials, etc.); physical fitness equipment and training; training seminars; and supplemental equipment. The Training Center will form a recreational and training area for members of the Richland County Sheriff's Department and their families.

The Training Center will educate the citizens of Richland County in drug awareness, crime prevention, and overall safety and awareness of the function and benefits of the Richland County Sheriff's Department. The Training Center will purchase films, slide presentations, and appropriate aids which will assist in the education of the citizens.

Such is consistent with the statement in the Petition for Incorporation of the Training Center that the purpose of the Corporation would be

to promote training within the Richland County Sheriff's Department and to aid in educating the citizens of Richland County in law enforcement activities, not limited to the use of firearms deadly force; to promote good will for the Richland County Sheriff's Department.

As to your question concerning whether this Office deems the Training Center legal, I am interpreting your question as asking whether this Office considers the formation of a training program to be a proper exercise of the Sheriff's authority. We have not reviewed the copies of the documents forwarded along with your request as to their correctness or legality. Also, by this opinion we have not reviewed the manner of establishing the nonprofit corporation at issue. Such would require determination of factual issues and this Office has repeatedly indicated that factual determinations are not within the scope of an opinion of the Attorney General. See, Op. Atty. Gen., dated December 12, 1983.

Upon review of a sheriff's authority generally, I am unaware of any prohibition to the formation of a training program generally. Such additional training programs are consistent with the mandate of the Law Enforcement Training Act, as set forth in Section 23-23-10(B) of the Code which states

It is the intent of this article to encourage all law-enforcement officers, departments and agencies within this State to adopt standards

which are higher than the minimum standards implemented pursuant to this article, and these minimum standards in no way may be considered sufficient or adequate in those cases where higher standards have been adopted or proposed. Nothing herein may be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law enforcement officers which exceed the minimum standards set by the council, (emphasis added.)

Therefore reference is made to training other than that offered by the Criminal Justice Academy. Additionally, this Office in an opinion dated December 10, 1987 recognized a training program established for another sheriff's department in this State. Also, as referenced in the January 17, 1990 opinion noted above, it was the conclusion of this Office that the first \$1000.00 of cash from a forfeiture could be used "for any public purpose of law enforcement" which would include training.

Moreover, in an opinion of this Office dated August 3, 1987 in referring to a sheriff's status as the chief law enforcement officer of a county it was stated that "the internal operation of the sheriff's office ... is a function which belongs uniquely to the chief law enforcement officer of the county." Also, referencing the fact that any training program impacts on the deputies in the Sheriff's Department, this Office has in prior opinions recognized that a sheriff possesses both statutory and common law authority regarding deputies. See: Opins. dated May 8, 1989 and August 14, 1985. The 1985 opinion cited Willis v. Aiken County, 203 S.C. 96, 26 S.E.2d 313 (1943) and Allen v. Fidelity and Deposit Company of Maryland, 515 F.Supp. 1185 (D.S.C. 1981) where it was noted that pursuant to common law and statutory law a deputy sheriff is considered an agent of the sheriff and not an employee of the county. In Allen the court stated "... it is abundantly clear that historically in South Carolina the deputy sheriffs are answerable only to the sheriff and not to the county government." 515 F.Supp. at 1190. A sheriff's authority regarding the deputies in his department was also emphasized in Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) which recognized that a deputy sheriff serves at the pleasure of the sheriff.

Pursuant to Section 23-13-10 of the Code, a sheriff is "in all cases ... answerable for neglect of duty or misconduct in office of any deputy." Also, as referenced in Allen, supra, even at common law a deputy sheriff was considered to be the personal agent and representative of a sheriff and the sheriff was considered legally accountable for any negligent or intentional acts or omissions on the part of his deputies.

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Referencing the sheriff's status as chief law enforcement officer of a county and his status with regard to his deputies as set forth above, it appears that a program of a sheriff "promoting training, expertise, and health" within his department would be within a sheriff's authority. Moreover, a program designed to "educate the citizens of Richland County in drug awareness, crime prevention and overall safety and awareness of the function and benefits of the Richland County Sheriff's Department" would be consistent with a sheriff's role as chief law enforcement officer of a county.

As to your specific question, we have not located any statutes, case authority or opinions of this Office which deal with the issue of whether a Sheriff possesses authority to create a related private corporation to perform certain functions of his office. However, we have previously recognized that the general law enforcement duties of a Sheriff may not be limited by a contract with a private corporation. Op. Atty. Gen., April 11, 1985. On the other hand, we have concluded that a governmental entity may enter into an arms length contract with a private corporation to perform ministerial or administrative functions such as the operation of a bookstore. Op. Atty. Gen., November 29, 1989. See also, Op. Atty. Gen. August 8, 1985.

We cannot say that the Richland County Sheriff is absolutely prohibited from creating a related private corporation to perform certain training. However, because there is no specific statute or case authority precisely on point, and in view of our general advice in this area that legislative authorization is prudent, we believe the better course of action here would probably be for the Sheriff to obtain specific authorization from a legislative entity such as Richland County Council.

You additionally questioned whether the Training Center falls under the Order of Chief Justice Gregory and whether the Training Center account and monies should be regulated pursuant to that Order.

In responding to your question, I note that pursuant to the 501 exemption application which you also forwarded to this Office it is stated in regard to the financial support for the Training Center

Financial support will come from court, state and federal ordered transfer of ownership of money ... and also from public donations.

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The Bylaws state that

Financial support will come from court (state and federal)-ordered transfer of ownership of money, public donations, and sale of items received from the courts.

As referenced above, the Order of the Chief Justice is applicable to the disposition of property seized and forfeited pursuant to Sections 44-53-520 and 44-53-530. Therefore, to the extent the Training Center would receive any funds or property from such source, any account related to the Center and accompanying monies would be regulated pursuant to such Order. Therefore the requirements of such Order would have to be met in regard to such funds. Reference should be made to the prior statements in this opinion as to the propriety of the receipt and expenditure of funds in such regard. It should be noted that this Office has advised that the first one thousand dollars of forfeited funds is considered the property of the appropriate law enforcement agency. Such funds can be used for general law enforcement expenses of a department which would appear to include funding a training program. As to the remaining monies returned to a sheriff's department, these funds "must be used for drug enforcement activities." Consistent with the July 5, 1988 opinion, these funds "should not be used for any activities not directly or indirectly connected with drug enforcement." To the extent that the Training Center is not used directly or indirectly for drug enforcement, funds resulting from drug forfeitures could not be generally used for the Center.

You also asked whether the guidelines established in the bylaws of the Training Center for expenditures are appropriate and legal. In addition to the provisions referenced previously, the bylaws state:

The Training Center will support the Midlands area "Crime Stoppers" program through donations. Financial support will come from court (state and federal)-ordered transfer of ownership of money, public donations, and sale of items received from the courts.

The Manager and Director of the Training Center will decide how the assets will be distributed as pertaining to the purposes and goals of the Training Center. All purchases and/or donations will be made by check from the Training Center's checking account, which will require the signatures of both the Manager and Director.

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The Training Center will be operated on a non-profit basis, and at no time will the Director or Manager receive financial or material gain for personal use.

The review by this Office of your question is restricted to a review of the Sheriff's authority in such regard and should not be construed as a review of the contents of the bylaws themselves or the policies reflected by them. As referenced in the bylaws, the financial support of the Training Center will come from court-ordered transfers of money, public donations and sale of items received from the courts. Insofar as any of these monies are forfeited funds or proceeds from the sale of forfeited property pursuant to Sections 44-53-520 and 44-53-530, reference should be made to the portions of this opinion regarding expenditure and handling of such funds. These funds would remain "public funds" even if transferred to the related private corporation.

As to funds generated by public donations, such funds would be considered "public funds" and therefore should be spent in accordance with any laws or ordinances governing the custody and use of public monies. Therefore any expenditures for the Training Center must meet these same standards. As to the reference to the support of the "Crimestoppers" program, pursuant to Section 44-53-583 of the Code

Monies paid by any Crimestopper, Inc. for information that results in the arrest of any individual or individuals where monies are also confiscated and subsequently forfeited pursuant to Section 44-53-530 must be reimbursed from the forfeited monies to the Crimestoppers making the payment. The reimbursement must be for the amount of money paid, not to exceed one thousand dollars, upon a determination by the court that the money paid by Crimestoppers, Inc. was used for information that resulted in that arrest and forfeiture of money.

You also referenced that included in the bylaws is the statement "The Training Center will form a recreation and training area for members of the Richland County Sheriff's Department and their families." You asked whether this may be interpreted to indicate that a building, firing range and physical training facility may be constructed for the purpose of training.

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As referenced in the prior question, the formation of a training program for deputies or other law enforcement personnel is within the proper exercise of a sheriff's authority. Moreover, as noted previously, we cannot state categorically that a sheriff is absolutely prohibited from creating a related private corporation to perform certain training. However, should a sheriff choose this approach to training, specific authorization from a legislative entity is advisable.

As to your question regarding the actual construction of a facility, such involves a myriad of issues which would require determination of factual issues and possible review of various documents. As noted previously, this Office has repeatedly indicated that factual determinations are not within the scope of an opinion of the Attorney General. Therefore, any questions regarding the actual construction of any facility should be referred to the county attorney or private counsel. However, as to any questions regarding the expenditure of funds resulting from drug forfeitures or funds from public donations in association with such construction, reference may be made to the previous portion of this opinion as to the appropriateness of such expenditures. As to the expenditure of any other funds involved, such must be consistent with county regulations generally.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions