

The State of South Carolina



Office of the Attorney General

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August 6, 1991

The Honorable Gene Taylor
Sheriff, Anderson County
P. O. Box 5497
Anderson, South Carolina 29623

Dear Sheriff Taylor:

In a letter to this Office you questioned procedures involving the sale of vehicles seized during drug operations. You referenced that upon the sale of the vehicle, the proceeds must be divided between the appropriate agencies. As to the share received by your department, you questioned whether county council approval must be obtained as to any purchase made with such proceeds. You also questioned whether council approval is necessary if no sale is made but the vehicle is traded for another vehicle.

Section (3)(B) of Act No. 604 of 1990^{1/} provides in part (7)

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

^{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.

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:

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.

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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

Referencing the above, forfeited funds and proceeds from the sale of forfeited property properly transferred to a sheriff are to be deposited in special accounts established by the county treasurer's office or finance office under the control of the sheriff and the solicitor. The account of the sheriff may only be used for "drug enforcement activities" of the sheriff.

In an opinion of this Office dated May 7, 1991 it was stated as to the question regarding whether a sheriff in making purchases is required to follow county purchasing procedures,

... it appears that their responsibility in this regard would be determined by whether they are typically required to follow county purchasing procedures. Of course, 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.") Of course, 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.

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As to your question concerning whether county council approval must be obtained as to any purchase made with proceeds from the sale of vehicles seized during drug operations, as referenced by the statutes cited above and Chief Justice Gregory's Order, any expenditure for an item with a recurring expense must be approved by the county governing body prior to purchase. An opinion of this Office dated July 31, 1991 indicated that as to the term "recurring expense", this Office could not absolutely construe such term and, as a result, only a court could make a determination with absolute certainty as to what constitutes a "recurring expense." Also, of course, any determination would have to be made on a case by case basis. The opinion did comment further that in the absence of precise guidelines,

... the term "recurring expense" is generally defined as "coming or happening again" ... Therefore, ... the term ... 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 future costs attached or anticipated, the county's approval prior to purchase would be necessary. However, if the items purchased could be reasonably expected to involve further costs or expenses, approval by the county would be necessary.

Aside from the review of expenditures which would constitute a "recurring expense", a local governing body may not otherwise interfere with a decision by a law enforcement agency as to the use of the funds, except perhaps as to the requirement of following county purchasing policies if such policies are typically required to be followed. Such funds should not be considered county funds and therefore subject to county regulation. These funds of course could not be expended in a manner inconsistent with State or county provisions restricting the use of public funds. Also any decision regarding the use of these funds must comply with relevant statutes, regulations and court orders.

You also asked whether county council approval is necessary if no sale is made but a vehicle is traded for another vehicle.

Section 3(B)(1) of Act No. 604 states in part

All property, conveyances and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of

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the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets.

I am unaware of any requirement mandating county council approval where a vehicle is traded for another vehicle.

You also referenced that your county council recently placed a hiring freeze in effect. You indicated that such freeze does not allow the filling of positions vacated by an officer, a secretary and a dispatcher. You have questioned whether council can prohibit such vacancies from being filled.

I am enclosing copies of several opinions of this Office which deal in part with the authority of a county council as to a sheriff's department. This Office in an opinion dated August 14, 1985 dealt with the question of whether action could be taken by a county council to withdraw the appropriation for a particular deputy's position. The opinion stated

While obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff ... Therefore it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

I would particularly refer you to the August 3, 1987 opinion. Reference was made to Section 4-9-30(5) of the Code which states

... if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and

functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

The opinion stated

... we deem that the purpose of the proviso contained in § 4-9-30(5) is to protect a sheriff's status as the chief law enforcement officer of a county. Clearly, his role as chief law enforcement officer cannot be altered unless the people of the county approve. It has been 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."

On the other hand, ... the proviso must also be interpreted with common sense... It must be construed so as to give effect, not only to the Legislature's intent to preserve a sheriff's role as the county's chief law enforcement officer, but also to give county council wide discretion in the appropriation of funds to county agencies... Obviously, not every appropriation by county council which impacts upon a sheriff's office, such as a reduction or increase in appropriations or equipment, can reasonably be deemed to be a "reorganization" or "restructuring" of the sheriff's department, thus requiring a referendum prior to implementation... (A) court would have to decide on a case by case basis whether an appropriation of county council will have the effect of altering a sheriff's role as the chief law enforcement officer of the county, or instead, merely represents a valid and legitimate exercise of council's legislative power in the area of appropriation of funds and funding of county agencies.

The opinion concluded by reiterating that this Office could not conclusively determine that action by a county council in not funding certain positions would constitute a "reorganization" or "restructuring" of a sheriff's department thereby requiring a referendum. However, it was further stated that it was "extremely doubtful" that a county council could take action to withdraw the appropriation for the position of a particular deputy sheriff. It was

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concluded that only a court could make an absolute determination in such regard. Such an analysis would be applicable to the situation you addressed regarding the hiring freeze placed into effect by the county council.

If there is anything further, please advise.

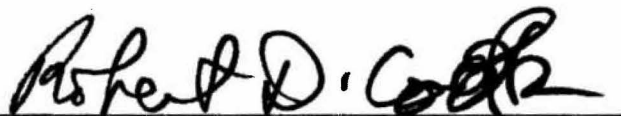
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:



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