

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

August 1, 1991

Ronald M. Childress, Esquire
Richland County Attorney
P. O. Box 192
Columbia, South Carolina 29202

Dear Mr. Childress:

In a letter to this Office the former Richland County Attorney referenced that in 1985 a corporation was formed by the former Richland County Sheriff for the apparent purpose of maintaining and administering drug money. He indicated that funds derived from drug forfeitures and seizures are on deposit in an account maintained by the Sheriff. He further stated that the current Sheriff has appeared before the County Council to request that he be deeded a parcel of County property on which a training center for his deputies will be constructed. It was indicated that the Sheriff intends to utilize drug funds to construct the facility.

In light of such, the following questions were raised:

1. May the funds from the Sheriff's account be utilized to construct the proposed facility?
2. May the funds be used for an audit of the funds? Must such audit be conducted? Must the funds be audited by an independent audit firm, or may they be audited by the Richland County Internal Auditor or an Auditor from within the Sheriff's Department?
3. Was the formation of the Richland County Sheriff's Department Training Center, Inc., a proper exercise of authority by the Sheriff?

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4. If the Sheriff had the authority to form such corporation, does he have the authority to keep the funds that have been forfeited since prior to 1984 in his account, or must they be deposited with the County Treasurer or Finance Department pursuant to §44-53-530, Code of Laws of South Carolina, 1976, as amended, and the order of the Chief Justice of the Supreme Court of South Carolina dated November 14, 1990?
5. Does Richland County Council have a right to audit all drug related forfeiture accounts?
6. For what purposes may the funds be used, pursuant to the old law in Section 44-53-588 and the new law in Section 44-53-530. The words "drug enforcement activities" are ambiguous.

Attached is a copy of an opinion to Sheriff Sloan which is responsive to several of the same questions raised above.

It was referenced that the corporation at issue here was formed in 1985 by the former Richland County Sheriff for the "apparent purpose of maintaining and administering forfeited drug money." Pursuant 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 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."

As referenced in the opinion to Sheriff Sloan, 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

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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.

Questions were also raised concerning any audit of the funds. The Order of the Chief Justice states that the forfeited monies plus interest and proceeds from the sale of forfeited properties, except the first one thousand dollars of cash forfeited, which are considered the funds of the sheriff's department, shall be placed in a separate, special account in the name of that department. The Order states:

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...All expenditures from these funds must be documented, and the documentation must be available for audit purposes...(emphasis added.)

Section (3)(B)(7) of Act No. 604 of 1990 similarly states

All expenditures from these accounts must be documented, and the documentation made available for audit purposes.

Therefore, the audit of expenditures from the funds covered by such Order and statutory provisions is specifically authorized. Inasmuch as the Order or statute is not specific as to who or what agency conducts the audit, it would be inappropriate for this Office to so indicate. Legislative clarification or further instructions from the Court would be useful in resolving this question.

It was also asked whether the formation of the referenced Training Center was a proper exercise of the Sheriff's authority. The enclosed opinion indicates:

Referencing the sheriff's status as chief law enforcement officer of a county and his status with regard to his deputies...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

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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.

A question was also raised as to whether the Sheriff is authorized to keep funds that have been forfeited since prior to 1984 in his account or must they be deposited with the County Treasurer or County Finance Department pursuant to §44-53-530 and the referenced Order of the Chief Justice.

Pursuant to former §44-53-588 of the Code, which was enacted in 1984

All cash proceeds and other proceeds from the sale of forfeited items under §44-53-530 must be remitted to the State Treasurer, who shall place

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them in a special account. The State Treasurer shall remit to the governing body of the local law enforcement agency...whichever initiated seizure of the item or items, twenty-five percent of the proceeds from the sale of the forfeited item or items to be used by law enforcement in the control of drug offenses or for drug rehabilitation...Any governing body...receiving the proceeds shall annually report to the State Treasurer and to the Attorney General the use made of the funds and the funds must not be used to supplant current operating funds.

In 1986, §44-53-588 was amended to read:

All proceeds from the sale of forfeited property under §44-53-530 must be remitted to the State Treasurer, who shall place them in the special account. The State Treasurer shall remit directly to the governing body of the local law enforcement agency...whichever initiated seizure of the property, twenty-five percent of the proceeds from the sale of the forfeited property and twenty-five percent of monies, negotiable instruments or securities transferred to the State Treasurer pursuant to § 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 agency's current or future budgets. Any expenditure of these proceeds by a law enforcement agency for an item that would have a recurring expense to the governing body must be approved by the governing body prior to the purchase...

In 1988 such provision was amended to state

All proceeds from the sale of forfeited property under §44-53-530 must be remitted to the State Treasurer who shall place them in the special account. The State Treasurer shall remit directly to the governing body of the local law enforcement agency...whichever initiated seizure of the property, ninety percent of the proceeds from the sale of the forfeited property and ninety percent of monies, negotiable

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instruments, or securities transferred to the State Treasurer pursuant to §44-53-530(c) to be used exclusively by law enforcement in the control of drug offenses...

Such provision was repealed by Act No. 604 of 1990.

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 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

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.

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 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.

....

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

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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.

As referenced, pursuant to the Order and 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 and the issuance of the Order, funds were to be handled pursuant to former §44-53-588 unless otherwise ordered by the Court. See Op. Atty. Gen., November 3, 1988.

As to the question regarding whether the County Council has the right to audit all drug related forfeiture accounts, the Order of the Chief Justice and the provisions of Act No. 604 noted above provide for the audit of expenditures from accounts established pursuant to these authorities. Therefore, such provisions would be inapplicable to any other accounts.

A question was also raised as to the purposes for which the forfeiture funds referenced by former §44-53-588 and present provisions of Act No. 604 may be used. It was indicated that the term "drug enforcement activities" is ambiguous.

As referenced above, former §44-53-588 provided that the forfeiture proceeds were to be used "in the control of drug offenses or for drug rehabilitation purposes." In 1986 the provision was amended to indicate that the funds were "to be used exclusively by law

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enforcement in the control of drug offenses." Pursuant to Act No. 604 and the referenced Order of the Chief Justice, forfeiture proceeds "must be used for drug enforcement activities."

As referenced in the opinion to Sheriff Sloan, a prior opinion of this Office dated July 5, 1988 indicated that the language restricting the forfeited funds to use "in the control of drug offenses" should be construed to indicate that the funds "should not be used for any activities not directly or indirectly connected with drug enforcement." This Office is not in a position to clarify such language further inasmuch as such would involve a case by case analysis, which is the type analysis not appropriate for an opinion of this Office. As a result, further clarification by the General Assembly or the Court may be considered.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions