

The State of South Carolina



Office of the Attorney General

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October 2, 1991

Captain Tony Lynch
Laurens County Sheriff's Office
P. O. Box 68
Laurens, South Carolina 29360

Dear Captain Lynch:

In a letter to this Office you questioned the propriety of utilizing a procedure in drug forfeiture situations involving a form consent agreement, a copy of which you enclosed with your letter, whereby a defendant would relinquish his right to currency which has been seized. You stated that the form consent agreement is a form that allows offenders to "donate currency" to your department. You questioned whether in such situations it is mandatory that the court approve such consent agreement. You indicated that in such situations there would be no division of funds with the relevant solicitor or the State.

Section 3(B)(4) of Act No. 604 of 1991 1/ states:

Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the

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.

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forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

All proceeds of property and cash forfeited by consent order must be disposed of as provided in item (5) of this subsection.

Subsection (5) provides

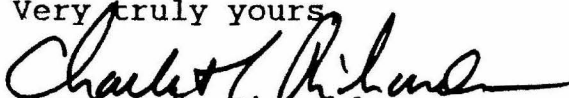
All real or personal property, conveyances, and equipment of any value defined in Section 44-53-520 of the 1976 Code when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

- (a) seventy-five percent to the law enforcement agency or agencies;
- (b) twenty percent to the prosecuting agency; and
- (c) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

The provisions referenced above set forth the manner in which forfeitures may be handled by consent agreements. Inasmuch as the procedure outlined in your letter is in conflict with such, it would not be authorized.

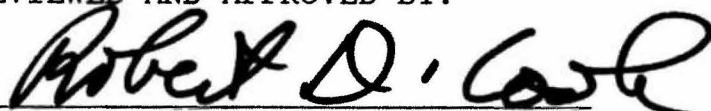
With kind regards, I am

Very truly yours,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


Robert D. Cook
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