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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

January 17, 1990

Honorable Gene Taylor
Anderson County Sheriff
P. O. Box 5497
Anderson, SC 29623-5497

Dear Sheriff Taylor:

This opinion combines two opinion requests you recently made of our Office. You asked five questions. First, whether money seized pursuant to the drug forfeiture laws could be used by a police agency to buy "equipment, vehicles, weapons, training, etc., for divisions within the department whose primary responsibility is not in narcotic enforcement. . . ." Section 44-53-530(a)(c), South Carolina Code of Laws Ann. (1986, as amended), provides that the first \$1,000.00 of any cash seized and forfeited pursuant to the Forfeiture Act remains the property of the law enforcement agency which seized the cash. That \$1,000.00 can be used for any public purpose of law enforcement. Therefore, in the absence of any local government's restrictions, your office can use the first \$1,000.00 of each cash drug forfeiture for the general law enforcement expenses listed above. However, the remaining money, if any, acquired through the provisions of §44-53-588 must be used "exclusively by law enforcement in the control of drug offenses."

Second, you asked whether an undercover officer investigating a gambling operation could participate in the gambling operations in order to establish a criminal case. The attached opinion to Chief John Ball dated August 10, 1977, upholds the possession of alcohol by a minor to assist in law enforcement. If a minor can purchase alcohol to assist a police investigation, presumably a police officer can participate in gambling in order to establish a criminal case against a targeted gambling establishment.

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Third, whether money confiscated in gambling raids and signed over to the local police department by the defendant must be turned over to the state or county. Section 16-19-80, South Carolina Code (1976), provides that all money that is "staked, betted or pending on an event" of any gambling activity prohibited by our state statutes is forfeitable. In the attached recent opinion to Lt. Sidney Wrenn, our Office stated "the local law enforcement agency must treat property obtained pursuant to a consent order just as if it had been obtained in a contested forfeiture proceeding." Once gambling proceeds are forfeited, the disposition of the money is regulated by South Carolina Code Ann. §20-7-1510. That section provides that except for drug forfeitures or forfeitures pursuant to game or fish law violations, three-fourths of all forfeitures "shall be paid over to the county in which the proceeding is instituted and one-fourth of such revenues shall be remitted to the state for the use in deferring the cost of the unified court system." Therefore, the forfeited money should be distributed to the state and county as set forth above.

Fourth, you asked whether seized gambling proceeds could be used without county council's approval to pay for an employee's moving expenses. As stated above, §20-7-1510 requires three-fourths of the gambling proceeds to go to the county. Once the gambling proceeds are forfeited, they should be turned over to the county government. At that point, the gambling proceeds become county funds. Therefore, only county council could properly allocate the money for an employee's moving expenses. South Carolina Code Ann. §4-9-30(6) (1976). 1/

Last, you asked whether county council's approval is required to spend money confiscated in drug investigations or may the sheriff spend the money on projects not approved by council. Section 44-53-530(c) provides that the first \$1,000.00 of any cash forfeited "remains with and is the property of the law enforcement agency which effected its seizure." Therefore, since that \$1,000.00 never becomes part of the county funds and subject to

1/ This Office has previously noted that such expenses should not be paid in the absence of specific authorization. Op. Atty. Gen. dated August 16, 1967. See Sections 8-11-130 and 8-11-135 of the Code as to such specific statutory authorizations granted to state agencies in this regard. In effecting such authorization, the political subdivision must consider Article III, Section 30 and Article X, Section 11 of the State Constitution.

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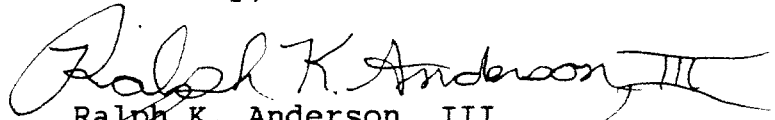
their regulations, you may spend the money without the county approving the appropriation. However, the \$1,000.00 cannot be spent in any manner inconsistent with State regulations or county provisions restricting the use of public funds.

The remaining money is transferred to the State Treasurer, who remits 90% of the money to the local governing body. It then becomes a part of the governing body's funds. However, the expenditure of that money is limited by §44-53-588. That section provides that the transferred money is

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 expenditures of these proceeds by a law enforcement agency for an item that would have a reoccurring expense to the governing body must be approved by the governing body before the purchase.

Even though the money is allocated for a specific purpose, it is transferred to the governing body, and once a part of the governing body's funds, is subject to distribution as approved by that body. South Carolina Code Ann. §4-9-30(6).

Sincerely,


Ralph K. Anderson, III
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:



EDWIN E. EVANS
Chief Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions