

The State of South Carolina



Office of the Attorney General

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July 9, 1991

The Honorable Joseph J. Watson
Solicitor, Thirteenth Judicial Circuit
Suite 113, Courthouse Annex
Greenville, South Carolina 29601-2192

Dear Solicitor Watson:

In a letter to this Office you raised several questions regarding civil forfeitures of vehicles. You first asked as to the situation where a law enforcement agency retains a vehicle, does the agency pay over to the State and the solicitor's office their percentage of the fair market value as of the date the vehicle is awarded to the agency or the fair market value as of the date the vehicle is sold at auction.

Section 3(B)(1) of Act No. 604 of 1990 1/ 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 the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets.

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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Subsection (5) of such provision states

All real or personal property, conveyances,
and equipment ... when reduced to proceeds,
... 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.

Referencing such provisions, when a law enforcement agency retains a vehicle, there is no requirement to pay to the State or to a solicitor's office their percentages until the vehicle is disposed of by the agency. Such conclusion is consistent with an opinion of this Office dated April 10, 1989.

You next asked whether in the situation where a law enforcement agency is awarded several low priced vehicles, can the agency trade them for one or more newer vehicles. Based upon my review, I am unaware of any prohibition against such a trade.

Assuming such a trade is permitted, you questioned what value does the law enforcement agency pay over to the State or the solicitor. Consistent with the answer to your first question, I am unaware of any requirement for a law enforcement agency to pay a percentage to the State or the solicitor prior to the "reduction to proceeds" of such vehicle.

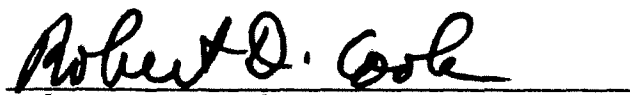
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


Robert D. Cook
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