

# The State of South Carolina



## Office of the Attorney General

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May 7, 1991

J. David Standeffer, Esquire  
Anderson County Attorney  
Post Office Box 1965  
Anderson, South Carolina 29622

Dear Mr. Standeffer:

In a letter to this Office you raised several questions regarding forfeiture proceedings. You asked:

1. Does South Carolina law require such monies to be in forfeiture accounts under the control of the Treasurer or Finance Officer of the County or may the Sheriff or Solicitor receive their funds from the Treasurer to be placed in separate accounts under their control to be used for statutory purposes?
2. Does South Carolina law allow the Solicitor and Sheriff to maintain separate checking accounts which they may draw upon, on their own signature, for the stated statutory purposes?
3. May the Sheriff or Solicitor make purchases with such funds for statutory purposes without following county purchasing procedures?

In your letter you indicated that presently the Sheriff and Solicitor maintain separate checking accounts from which they draw without receiving approval from outside their agencies. While proper accounting for purchases is maintained, you indicated that county purchasing procedures are not used.

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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 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

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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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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.

....

3. In the case of a Solicitor's Office, the County Council shall direct the appropriate office of county government (i.e., the County Treasurer's Office or Finance Office) to establish a separate, special account in the name of the Solicitor's Office. This account may only be drawn on and used by the Solicitor's Office for matters relating to the prosecution of drug offenses and litigation of drug-related matters.

....

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 or solicitor's office 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. As to a solicitor, the account may only be used "for matters

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relating to the prosecution of drug offenses and litigation of drug-related matters." I am unaware of any restriction as to the type account which may be established and therefore presumably such may be maintained in the form of a checking account.

As to your question regarding a sheriff or solicitor making purchases without following 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.

With kind regards, I am

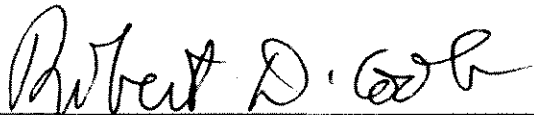
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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