

The State of South Carolina

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Office of the Attorney General

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December 22, 1992

Larry L. Barnhill, Chief of Police
Conway Police Department
Post Office Drawer 1075
Conway, South Carolina 29526-1075

Dear Chief Barnhill:

In a letter to this Office you questioned whether forfeited drug funds may be used to pay overtime salaries for narcotics detectives after budgeted overtime funds have been expended.

S.C. Code Ann. § 44-53-530(d) states:

All forfeited monies and proceeds from the sale of forfeited property ... must be retained by the governing body of the local law enforcement agency ... and deposited and maintained 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 for drug enforcement activities. These accounts may not be used to supplant operating funds within the current or future budgets.

The term "operating funds" is not expressly defined. However, by analogy, the term "operating expenses" has been construed by courts to include salaries and labor costs. See: Powell v. City and County of San Francisco, 144 P.2d 617 (1944); State ex rel. Railroad Commissioners v. Louisville and N. R. Co., 57 So. 673 (1912); People ex rel. Schlaeger v. Reilly Tar and Chemical Corp., 59 N.E.2d 843 (1945). Consistent with such definition it does not appear that forfeited drug funds could be used to pay overtime salaries of narcotics officers inasmuch as Section 44-53-530 expressly prohibits the use of such funds to supplant operating funds in a law enforcement agency's budget.

Chief Barnhill
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With kind regards, I am

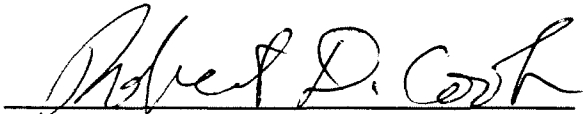
Very truly yours,

A handwritten signature in cursive script, reading "Charles H. Richardson".

Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, reading "Robert D. Cook".

Robert D. Cook
Executive Assistant for Opinions