

The State of South Carolina

5015 Luluway



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

December 3, 1992

G. Edward Welmaker, Esquire
Pickens County Attorney
Post Office Box 978
Pickens, South Carolina 29671

Dear Mr. Welmaker:

In a letter to this Office you questioned whether monies from drug forfeiture accounts established pursuant to S.C. Code Ann. § 44-53-530(d) may be expended to purchase automobiles for a program to be funded by a federal grant. You forwarded a narrative summary of the goals and objectives of the program associated with the grant. Based upon my review, it appears that the program is primarily related to traffic safety although one purpose is to "decrease the use of rural roads for drug trafficking activities."

Section 44-53-530(d) provides that funds in drug forfeiture accounts "may be drawn on and used only by the law enforcement agency for drug enforcement activities." See also: Order of Chief Justice Gregory dated November 14, 1990 (drug forfeiture accounts established in the name of a Sheriff's Department "may only be drawn on and used by the Sheriff's Department for drug enforcement activities.") Former provisions indicated that funds in drug forfeiture accounts were "to be used exclusively by law enforcement in the control of drug offenses." A prior opinion of this Office dated July 5, 1988 stated that pursuant to such restrictive language, the funds "... should not be used for any activities not directly or indirectly connected with drug enforcement."

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Any examination of the use of drug forfeiture funds obviously involves a case by case analysis. For instance, an opinion of this Office dated August 1, 1991 determined that to the extent a law enforcement training center is not used directly or indirectly for drug enforcement activities, drug forfeiture funds could not be used for the center. Another opinion of this Office dated August 19, 1991 dealt with the question of whether handguns for deputies could be purchased from funds derived from drug forfeitures and seizures. The inquiry stated that as to the small law enforcement agency involved, each and every law enforcement officer was involved in drug arrests, eradication and/or deterrent activities. The opinion, referencing the involvement in drug arrests and enforcement, determined that drug forfeiture funds could be used to purchase handguns for the deputies.

As referenced above, it appears that while a purpose of the program at issue does include decreasing drug trafficking on rural roads, the primary intent of the program is traffic safety. As a result, it does not appear that funds which "may be drawn on and used only ... for drug enforcement activities" could be utilized to purchase vehicles which would be used in the program.¹

¹You also questioned that provision of § 44-53-530(d) which states that "(a)ny expenditures from ... (drug forfeiture) .. accounts for an item that would be a recurring expense to the governing body must be approved by the governing body before the purchase" A prior opinion of this Office dated July 31, 1991 stated:

... the term "recurring expense" is generally defined as "coming or happening again" ... (Therefore) ... if an item does not involve a one-time expenditure with no future costs attached or anticipated, the county's approval prior to purchase would be necessary.

Therefore, if drug forfeiture accounts were to be used in another situation to purchase vehicles, it appears that such would be an expenditure for an item with a "recurring expense" inasmuch as further costs or expenses could reasonably be anticipated in association with the maintenance of the vehicles. Therefore, approval by the appropriate governing body would be necessary prior to purchase.

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If there is anything further, please advise.

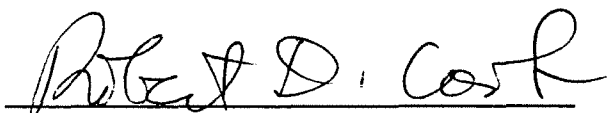
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions