

The State of South Carolina



Office of the Attorney General

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April 17, 1991

The Honorable J. Al Cannon, Jr.
Sheriff, Charleston County
2144 Melbourne Avenue
North Charleston, South Carolina 29405

Dear Sheriff Cannon:

In a letter to this Office you questioned the disposition of funds generated pursuant to Section 56-5-6240 of the Code. Such statute provides for the forfeiture, confiscation and sale of vehicles in association with certain driving under suspension and driving under the influence cases. Pursuant to subsection (c) of such provision

The law enforcement agency making the arrest or its authorized agent shall sell the confiscated vehicle at public auction for cash to the highest bidder ... Upon the sale, the agency or its agent shall pay over the net proceeds, after payment of the liens and encumbrances on the vehicle, and after payment of the proper costs and expenses, if any, of the seizure, advertisement, and sale including any proper expense incurred for the storage of the confiscated vehicle, to the State or the political subdivision of this State of which the law enforcement agency is a part, for use in law enforcement.
(emphasis added)

You contrast such provision with Section 44-53-530 (B) (7) of the Code, a provision effective from July 1, 1990 through June 30, 1992 which relates to forfeiture procedures resulting from controlled substance cases. Such statute states in part:

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

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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 ... 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

You reference that the language of Section 56-5-6240 is not as specific as Section 44-53-530 as to how the funds are to be used. You indicated therefore that there is some question as to whether or not the funds generated by Section 56-5-6240 when deposited into the county general fund will be used to "supplant operating funds" within your current or future budgets. You further referenced that Section 27-21-30, which deals with proceeds from the sale of abandoned or recovered stolen property, specifically provides that the sum received "... shall be placed in the general fund of the county."

In the absence of specific restrictions as to how funds generated by Section 56-5-6240 are to be utilized, I am unable to read into such statute any further restrictions, such as those associated with proceeds generated from controlled substance cases. Clearly however, the General Assembly has directed that funds generated pursuant to Section 56-5-6240 are to go "... to the State or the political subdivision of this State of which the law enforcement agency is a part for use in law enforcement." Obviously, the language prohibiting such funds from "supplanting operating funds" is not present and therefore cannot be read in as a further restriction. Of course, consideration could be given to an amendment to such provision to place any restrictions considered advantageous to law enforcement.

With kind regards, I am

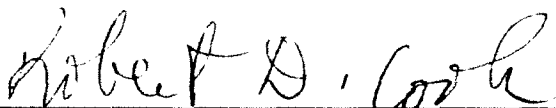
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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