

The State of South Carolina



Office of the Attorney General

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March 16, 1987

Mr. Larry C. Batson
Legal Advisor
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Dear Larry:

You have asked the opinion of this Office relative to the disposition of a sum of money derived from drug forfeitures and maintained in a special account with the State Treasurer. In responding to your inquiry, a brief review of the recent history of the related drug forfeiture provisions is necessary for a complete understanding of this area of the law. Prior to 1984 the prescribed scheme for disposition of forfeited funds was dependent upon whether the funds were categorized as "forfeited cash" or "forfeited proceeds". See, Op. Atty. Gen. No. 82-4; former § 44-53-580, South Carolina Code (1976); former § 44-53-530 South Carolina Code (1983 Cum. Supp.). The State Treasurer created two special accounts, one for "forfeited cash" and the other for "forfeited proceeds" in order to implement the distinct dispositional scheme provided for these funds.

In 1984, substantial amendments to the Drug Forfeiture Act were enacted. See, Act 482 of 1984. The State Treasurer construed the amendments as providing for two categories of forfeited funds, similar to the categorization of the funds provided by the law prior to the 1984 amendments. Thus, forfeited cash was placed in a special account as identified in § 4, Subpart 3 of Act 482 [§ 44-53-530(3) South Carolina Code (1985)], and forfeited proceeds were placed in a distinct special account identified in § 9 of Act 482 [§ 44-53-588 South Carolina Code 1985]. Section 9 of Act 482 expressly provided a dispositional

¹ As used herein "forfeited cash" includes monies, negotiable instruments or securities that have been forfeited to the State. "Forfeited proceeds" refers to cash obtained from the sale of forfeited property.

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scheme for forfeited proceeds and earmarked 25% of the residue of the special account for the Department of Corrections for prison rehabilitation programs. However, on the other hand, the special account created for forfeited cash identified in § 4, Subpart 3 of Act 482 provides no corresponding instructions as to disposition of the funds maintained in that account. Thus, as to such funds it appears that further appropriation by the General Assembly was necessary to permit their disbursement.

We note, in this regard, that we find no legal error in the State Treasurer's administrative interpretation of Act 482 as creating two categories of forfeited funds and providing special accounts therefore. The State Treasurer is the duly designated executive official charged with administering the applicable statutory provision, and thus, his interpretation of these provisions will not be overruled absent compelling reasons. Dunton v. South Carolina Board of Examiners in Optometry, Op.No. 22661, S.C. Supreme Court (filed February 2, 1987); Emerson Electric Company v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986). Here, the State Treasurer based his interpretation on both a literal reading of Act 482 and the traditional practice of separately categorizing forfeited cash and forfeited proceeds. While this Office may not have construed Act 482 in the same manner as did the State Treasurer, such speculation is irrelevant since the State Treasurer is the appropriate executive official to interpret and administer these provisions.

Accordingly, we advise that subsequent to June, 1984, (the effective date of Act 482), forfeited proceeds were dispersed in accordance with the dispositional scheme provided in § 9 of Act 482 and forfeited cash was retained in a special account to be dispersed only upon additional direction by the General Assembly. Apparently, the General Assembly has not appropriated these funds retained in the forfeited cash account and your inquiry concerns whether the Department of Corrections is entitled to these funds. We conclude that the money retained in this forfeited cash account cannot be dispersed absent appropriation by the General Assembly.

The 1986 amendments to the Drug Forfeiture Act clearly provide for the retention of forfeited funds in a single special account with the State Treasurer with 25% of the residue of that account earmarked for use by the Department of Corrections for prison rehabilitation programs. See, § 8 of Act 404 of 1986 [§ 44-53-588 of the South Carolina Code (1986 Cum.Supp.)] We do not believe, however, that the General Assembly intended to make this provision retroactive to apply to forfeited funds that were previously deposited in the special account created by the State Treasurer pursuant to § 4, Subpart 3 of Act 482 of 1984. The language of Act 404 of 1986 provides no indication of a legislative intent that the forfeited cash fund theretofore maintained by the State Treasurer should roll-over into the consolidated fund. In the absence of clear evidence of such

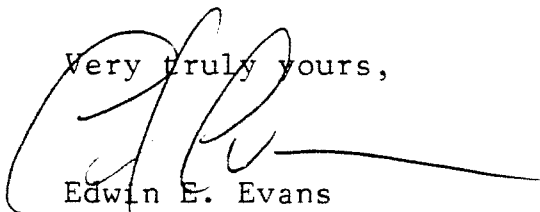
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legislative intent, the 1986 Act should not be given retrospective effect. Independence Insurance Company v. Independent Life & Accident Insurance Company, 218 S.C. 22, 61 S.E.2d 399 (1950).

We believe that our conclusion in this area is the more cautious approach since the General Assembly remains free to appropriate this forfeited cash by legislative enactment in the manner that it determines best serves the public good.² Most clearly, our conclusion permits the money to be appropriated by the General Assembly to the Department of Corrections for funding of its drug rehabilitation programs. If we conclude otherwise we would be assuming that the General Assembly intended to appropriate these funds without clear evidence to support such an intent.

In summary, I advise that the forfeited cash retained in the special fund within the State Treasurer's office does not automatically roll-over into the consolidated forfeited fund account created by § 9 of Act 404 of 1986 since there is no clear indication of legislative intent that said provision is to be given retrospective effect. Nonetheless, the General Assembly remains free to disperse³ the fund by appropriation as it determines to be appropriate.

Very truly yours,


Edwin E. Evans
Deputy Attorney General

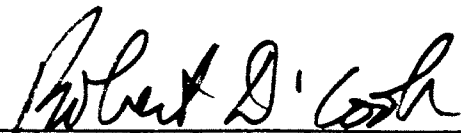
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² Absent constitutional limitations, a special fund created by the General Assembly may be diverted by subsequent statute to other and different purposes. 81 A.C.J.S. States § 228, at 800; State v. Bates, 198 S.C. 430, 18 S.E.2d 346 (1941).

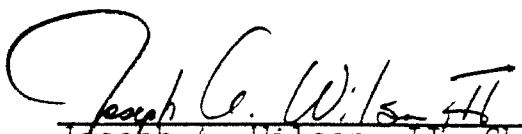
³ The conclusion reached herein relates to the forfeited cash retained in the special account identified in § 4 of Act 482 of 1984 and is not necessarily applicable to any funds remaining in the special account identified in § 9 of that Act. The dispositional scheme provided in § 9 of Act 404 of 1986 reenacts the provision of the 1984 Act that provided for distribution of forfeited proceeds and thus should be construed as a continuation of the original law. Sutherland Statutory Construction, § 22.36 at 301 (4th Ed. 1985).

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APPROVAL:



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