

1978 WL 34624 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 5, 1978

**\*1 RE: Money seized in connection with drug arrest**

Darrell Thomas Johnson, Jr., Esquire  
Town Attorney  
Town of Hardeeville  
Hardeeville, South Carolina

Dear Mr. Johnson:

You had inquired as to the disposition of cash seized in a drug arrest. The pertinent facts were that the money in question was found to be used in the commission of drug offenses. Thus, in the Court of General Sessions, Jasper County, the Presiding Judge ordered that all of the seized money, with due exception of that part levied upon by the Internal Revenue Service, should be placed in the general fund of Jasper County.

Until the November 2, 1977 order, the money had been in the custody of the Jasper County Sheriff's office, awaiting the final disposition of the criminal proceedings. Upon the defendant's convictions the presiding judge ordered the money out of the custody of the Sheriff, causing it to be paid to the IRS and the County. This order operated as a forfeiture of the funds. Of course, money is not per se contraband—its possession does not constitute a crime in and of itself—but money may constitute derivative contraband and become forfeitable because of its use in criminal activity. [People v. Mota](#), 27 Ill. App. 3d 982, 327 N. E. 2d 419.

Such forfeitures are disposed of as provided in [S. C. Code Ann. § 44-53-580 \(1976\)](#), which dictates that:

All fines and forfeitures collected by any court or agency resulting from any violation of any provision of this article [Narcotics and Controlled Substances] shall be remitted to the State Treasurer under such terms and conditions as he may determine. All such fines and forfeitures shall be used by the Department of Mental Health exclusively for the treatment and rehabilitation of drug addicts. . . .

Consequently, the forfeited funds are not the property of the county where the conviction was had but should be remitted to the State Treasurer for the purpose outlined in the statute. This result is not changed by the Judicial Reform Act of 1976, 76 Acts and Joint Res. No. 690, Art. VIII, § 3, which provided for disposition of fines and other revenues but excepted those remitted to the Department of Mental Health under [§ 44-53-580](#).

I hope this opinion is of some assistance to you. If you should need further assistance, please do not hesitate to contact me.  
Very truly yours,

Richard B. Kale, Jr.,  
Assistant Attorney General

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