

1999 WL 626628 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 30, 1999

\*1 Sheriff Johnny Mack Brown  
4 McGee Street  
Greenville, South Carolina 29601

Dear Sheriff Brown,

Thank you for your letter to Attorney General Condon which has been referred to me for a response. You have asked for an opinion on whether a magistrate, in addition to the circuit court judge, may sign a consent form for the forfeiture of seized gambling funds.

South Carolina Code Section 16-19-80 allows funds that are staked, betted, or pending on an event of any prohibited gambling activity to be forfeited. In an attached opinion to the Anderson County Sheriff, this Office interpreted the forfeiture proceedings under this provision to be conducted pursuant to South Carolina Code Section 44-53-530 and stated the local law enforcement agency must treat property obtained pursuant to a consent order just as if it had been obtained in a contested forfeiture proceeding (quoting an April 10, 1989 opinion to Lt. Sydney Wrenn).

Because the forfeiture proceedings fall under 44-53-530, that statute controls in determining who may sign the consent order. Section 44-53-530 (a) begins:

Forfeiture of property defined in Section 44-53-520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to *the court of common pleas for the jurisdiction where the items were seized*. (emphasis added)

Section 44-53-530 (d) later states:

Any forfeiture may be effected by consent order approved *by the court* without filing or serving pleadings or notices provided that all owners and other persons with interests in the property ... consent to the forfeiture. Persons entitled to notice under this section may consent to some issues and have *the judge* determine the remaining issues. (emphasis added)

Finally, Section 44-53-530(k) states:

In all cases where the criminal offense giving rise to the forfeiture of property described in Section 44-53-520 is prosecuted in state court, the forfeiture proceeding must be accomplished *in the court of common pleas for the jurisdiction where the items were seized*. (emphasis added)

The continuous references to the judge and the jurisdiction of the court of common pleas indicate the significance of his role in the adjudicatory process in the forfeiture proceeding. The statute appears to grant the authority to approve the consent of forfeiture only to the judge in the court of common pleas in the appropriate jurisdiction. The statute grants no such authority to a magistrate. Therefore, it is the opinion of this Office that a magistrate should not sign the Consent Forfeiture Order form in lieu of a circuit court judge.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

\*2 With kind regards, I remain  
Very truly yours,

Robert D. Cook  
Assistant Deputy Attorney General

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