



ALAN WILSON
ATTORNEY GENERAL

May 5, 2021

Chief Carl Ritchie
Mount Pleasant Police Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

Dear Chief Ritchie:

We received your request seeking an opinion on whether funds forfeited pursuant to S.C. Code Section 44-53-530 may be used to construct a law enforcement training facility. This opinion sets out our Office's understanding of your question and our response.

Issue:

Your request letter states, "the Mount Pleasant Police Department would like to construct a building that would be used to facilitate the training of Police Officers. More specifically, the building would provide a location to conduct scenario-based training, de-escalation training and defensive tactics training."

You note that S.C. Code Ann. § 44-53-530(g) restricts the used of seized funds such that "for law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education." Your question is whether construction of the described training facility would be a permissible use under this section of the Code.

Law/Analysis:

Section 44-53-530 governs the expenditure of funds seized under Section 44-53-520. As you note in your letter, Section 44-53-530(g) requires (in relevant part):

For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education.

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These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase

...

All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act.

S.C. Code Ann. § 44-53-530(g) (2016) (emphasis added). While our state's Supreme Court and Court of Appeals have issued several reported opinions which cite Section 44-53-530, those opinions each focus on the propriety of a seizure. We are not aware of any reported opinion in this State which addresses a challenge to the propriety of the specific use of funds after they were seized. Accordingly, a court faced with your question would resort to the rules of statutory construction to determine whether construction of a law enforcement training facility is a permitted expense.

The first rule of statutory construction is to give effect to the intent of the legislature which wrote and passed the law. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan*, supra. Words must be given their plain and ordinary meaning without resort to subtle or forced construction which limits or expands the statute's operation. *Id.* When construing an undefined statutory term, such term must be interpreted in accordance with its usual and customary meaning. *Id.* When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.*

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

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This Office has opined on several previous occasions on the propriety of certain expenditures with seized funds. See discussion, Op. S.C. Att’y Gen., 2017 WL 2399760 (May 17, 2017). Most recently this Office opined in 2017 “that funds seized pursuant to Section 44-53-520 may properly be used to purchase a gyroplane to be used primarily for drug law enforcement purposes.” Op. S.C. Att’y Gen., 2017 WL 2399760 (May 17, 2017). The opinion also cautioned that “costs of fuel and maintenance of the aircraft, however, must not be paid for with seized funds,” because those costs normally would be paid from an operating budget. Id. That 2017 opinion also summarized other prior opinions on the use of seized funds, and we have included a copy with this opinion for your reference. See id.

One prior opinion in particular warrants further discussion because it addressed the construction of a training center specifically. In an opinion dated July 31, 1991, we stated: “To the extent that the Training Center is not used directly or indirectly for drug enforcement, funds resulting from drug forfeitures could not be generally used for the Center.” Op. S.C. Att’y Gen., 1991 WL 633027 (July 31, 1991). However, this conclusion was based on the language of Section 44-53-530 in effect at that time, which required that “[f]or law enforcement agencies, the accounts must be used for drug enforcement activities.” S.C. Code Ann. § 44-53-530(g) (2002). Act 62 of 2009 amended this code section to the current language requiring that “[f]or law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education.”

Because the General Assembly amended section 44-53-530 to include training expenses, we believe the conclusion in our 1991 training center opinion does not control here. Based on the new statutory language, we believe that a South Carolina court probably would find that construction of a law enforcement training facility qualifies as an appropriate use of funds under the current version of section 44-53-530(g), to the extent that the primary purpose of construction is for “other law enforcement training or education.”

Ultimately, however, the question of whether any particular facility qualifies would depend on a court making a factual determination that the primary purpose of constructing the building would be law enforcement training. This requires case-by-case analysis, and this Office cannot make such a factual determination in an opinion. For this reason, you may consider bringing a declaratory judgment action as provided for in section 15-53-10 et seq. This would offer certainty in advance of undertaking construction.

We also caution that the question of ongoing utilities and maintenance is distinct from construction question. Section 44-53-530 mandates on two separate occasions within the same section that the forfeited property or funds “not supplant operating funds [for] the current or future budgets.” See Section 44-53-530(a) & (g). Moreover, Section 44-53-530(g) requires that the purchase of “an item that would be a recurring expense must be approved by the governing body before purchase.” Thus, the General Assembly contemplated that purchasing assets might increase the operational budget of a law enforcement agency beyond what could be paid for

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properly with forfeited funds and expressly required that the governing body which provides the agency's budget approve the purchase before that financial commitment is made. In other words, the General Assembly provided a means for forfeited funds to be used to purchase certain law enforcement assets, but anticipated that such purchases would not necessarily be revenue-neutral. You have not asked us to opine on this particular question. We simply bring it to your attention in order to be as responsive as possible to your question.

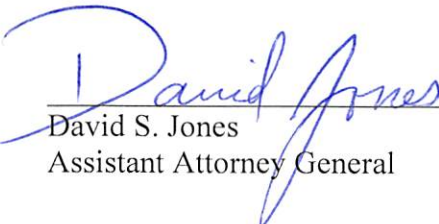
Conclusion:

In conclusion, it is the opinion of this Office that a court may well conclude that construction of a law enforcement training facility qualifies as an appropriate use of funds under the current version of section 44-53-530(g), to the extent that the primary purpose of construction is for "other law enforcement training or education." Ultimately, however, the question of whether any particular facility qualifies would depend on the court making a factual determination that the primary purpose of construction the building is law enforcement training. This Office cannot make such a factual determination in an opinion.

Consistent with our 2017 gyroplane opinion, we caution that that the question of ongoing recurring expenses, such as utilities and maintenance, is distinct from the construction question. Because South Carolina law mandates that forfeited funds "not supplant operating funds [for] future budgets . . . an item that would be a recurring expense must be approved by the governing body before purchase." S.C. Code Ann. § 44-53-530(g) (2018).

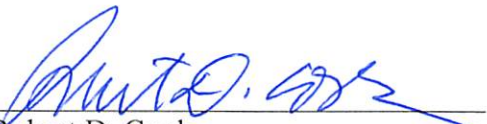
If your department would prefer to have a definitive and binding answer prior to contracting for construction, you may consider bringing a declaratory judgement action as provided for in section 15-53-10 *et seq.* This would offer certainty in advance of undertaking construction.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General