



2005 - 121

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

May 2, 2005

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Law Enforcement - Forfeiture -
Municipalities - Funds - Mobile
County

State forfeiture proceeds received by a municipal law enforcement agency under section 20-2-93(e)(2) of the Code of Alabama must be deposited in the municipal general fund and used as determined by the municipal law enforcement agency. Therefore, the funds must be appropriated by the city council to the police department and may be used as determined by the police department.

Federal forfeiture proceeds received by the municipal law enforcement agency must be deposited in a separate account maintained by the city clerk and spent in accordance with federal guidelines. If the federal proceeds are appropriated by the city council to the police department, the police chief is authorized to expend the funds. If not, the city council may approve specific expenditures on the chief's recommendation. In the case of a disagreement, the council has no authority other than to disapprove the request.

Dear Mr. Reid:

This opinion of the Attorney General is issued in response to your request on behalf of the Saraland City Council.

QUESTIONS

1. Should state forfeiture proceeds received by a municipality be deposited in the general fund or a separate fund?
2. Should federal forfeiture proceeds be treated differently?
3. Who has authority to spend these funds?
4. In the event of a conflict between the city council and the police chief as to the expenditure of funds, who makes the final decision?
5. If a separate account is established, who would be the proper signatories on the account, because the city clerk would have no authority over or accounting for such funds?

FACTS AND ANALYSIS

Section 20-2-93 of the Code of Alabama provides for the disposition by state law enforcement agencies of seized and forfeited property used or intended for use in violation of the state's controlled substances law. Section 20-2-93(e)(2) provides for the sale of the property and the distribution of the proceeds between the agencies contributing to the seizure. ALA. CODE § 20-2-93(e)(2) (1997). It specifically states that proceeds received by "a county or municipal law enforcement agency or department shall be deposited into the respective county or *municipal general fund and made available to the affected law enforcement agency or department.*" *Id.* (emphasis added).

Your remaining questions regarding state forfeiture proceeds were answered in a recent opinion to Honorable Nick Abbett, Lee County

District Attorney's Office, dated January 4, 2005, A.G. No. 2005-035. That opinion concluded that "forfeiture proceeds received by an Alabama county or municipal law enforcement agency shall be used as determined by the agency." *Id.* at 3. Therefore, the funds must be appropriated by the city council to the police department, and the funds may be spent as determined by the police department.

Forfeiture proceeds from property seized by a federal agency and transferred to a municipal agency are governed by the U.S. Dep't of Justice's *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* (Mar. 1994) ("*Guide*"). For a state or local law enforcement agency that has contributed to the seizure to receive proceeds, a "Federal Equitable Sharing Agreement" ("Agreement"), available at the U.S. Department of Justice web site at <http://www.usdoj.gov/criminal/afmls/forms/sharingfrm2005.pdf>, must first be executed. The Agreement must be signed by the head of the law enforcement agency and the head of the agency's governing body, i.e., city council. The instructions for the Agreement include the following stipulation: "By signing the agreement, the head of the governing body . . . certifies that the receiving state or local law enforcement agency is in compliance with the *Justice . . . Guide*[], and agrees to be bound by the statutes and guidelines which regulate the equitable sharing program." *Id.*

Like the city's receipt of grant funds that must be spent in accordance with the grant program, forfeiture proceeds must be spent in accordance with the *Guide*. Paragraph 7 of the Agreement and the *Guide* require that forfeiture proceeds be deposited in a separate account and not commingled with other funds. *Guide* 29 (Appendix C).

The Code of Alabama charges the city clerk with keeping "a separate account with each department for which a separate appropriation shall have been made" and "***such other accounts as may be necessary*** to show the financial condition of the municipality and of each department at all times." ALA. CODE § 11-43-102 (1989) (emphasis added). The clerk should maintain forfeiture proceeds in the same manner as other funds that are required by law to be maintained in separate accounts, such as the four cents and seven cents gasoline tax accounts. ALA. CODE § 40-17-78(3), § 40-17-224(b)(3) (2003). The city council may designate the mayor, any council member, or any municipal official or employee to sign checks for the city. Opinion to Honorable Bob McKee, Member, House of Representatives, dated August 14, 2001, A.G. No. 2001-260.

The *Guide* also requires that the proceeds only be expended for law enforcement uses [*Guide* at 10] and that they not be used to supplant the

normal appropriated resources of the law enforcement agency. *Id.* at 14. The proceeds must increase the total resources of the agency. *Id.* Thus, the *Guide* explains that it would be impermissible for “a police department [to] receive[] \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council.” *Id.*

The *Guide* addresses the expenditure process as follows:

(7) Establish an internal procedure to *recommend* expenditures from the revenue account. In many small agencies, the Chief of Police determines the purposes for which the funds are utilized. In larger agencies, committees have been formed to make recommendations for expenditures to the agency head. The agency head must authorize all expenditures from the federal sharing revenue account.

Id. at 29 (Appendix C) (emphasis added).

The next paragraph is of particular importance to Alabama agencies: “(8) In some jurisdictions, approval for expenditures must *also* be obtained from the governing body, such as a town council or city manager’s office.” *Id.* (emphasis added). These provisions contemplate that the expenditures will be authorized by or on the recommendation of the police chief.

Under Alabama law, the city council is granted ultimate “control of the finances and all property, real and personal, belonging to the city or town.” ALA. CODE § 11-43-56 (1989). Section 11-43-57 states that the council shall appropriate the sums necessary for the expenditures of the several departments. ALA. CODE § 11-43-57 (1989). If forfeiture proceeds are appropriated as part of the normal budgetary process, the police chief is authorized to expend the funds. If not, however, under the terms of the *Guide* to which the city agreed, the city may approve specific expenditures on the recommendation of the police chief. In the case of a disagreement, the council has no authority other than to disapprove the request. The chief and the council must work together to ensure that the proceeds are used for valid law enforcement purposes in accordance with the federal guidelines.

CONCLUSION


State forfeiture proceeds received by a municipal law enforcement agency under section 20-2-93(e)(2) of the Code of Alabama must be deposited in the municipal general fund and used as determined by the law enforcement agency. Therefore, the funds must be appropriated by the city council to the police department and may be used as determined by the police department.

Federal forfeiture proceeds received by the agency must be deposited in a separate account maintained by the city clerk and spent in accordance with federal guidelines. If the federal proceeds are appropriated by the city council to the police department, the police chief is authorized to expend the funds. If not, the city council may approve specific expenditures on the chief's recommendation. In the case of a disagreement, the council has no authority other than to disapprove the request.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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