Law enforcement trust fund - municipality

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Subject:
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Ms. Kimberly L. Rothenburg
City Attorney, West Palm Beach
Post Office Box 3366
West Palm Beach, Florida 33402-3366

RE: LAW ENFORCEMENT TRUST FUND – GRANT PROGRAM – MUNICIPALITIES – § 932.7055 does not authorize a municipality to delegate proceeds from the law enforcement trust fund to a grant program from which the Chief of Police would approve and award funds for programs that comply with the statute. Two specific programs, however, that are intended to address crime prevention and safe neighborhoods, appear to comply with the uses authorized in the statute, subject to the appropriation procedure outlined therein. § 932.7055, Fla. Stat. (2017).

Dear Ms. Rothenburg:

We are in receipt of your letter on behalf of the City of West Palm Beach Chief of Police, Sarah Mooney, requesting an opinion on the following questions:

1. Can the City Commission approve a grant program with the primary purpose of crime prevention, safe neighborhoods, drug abuse education and prevention programs, and other law enforcement purposes, and appropriate a specific amount of money from the forfeiture trust fund to the grant program, from which the Chief of Police could award funds to qualified 501(c)(3) entities pursuant to section 932.7055(1)(c) and 932.7055(5)(c)3., Florida Statutes (2017)?

2. Is the West Palm Beach Police Department authorized to use contraband forfeiture trust funds pursuant to sections 932.7055(1)(c) and 932.7055(5)(c)3., Florida Statutes (2017), to fund two annual programs, each to be operated by a nonprofit organization: the “Shop with a Cop” program, put on by the West Palm Beach Police Foundation, and the “Toy Giveaway Extravaganza” program, put on by the Coleman Park Neighborhood Association, or, in the alternative, may the City buy bicycles using forfeiture funds and donate them to the Coleman Park Neighborhood Association for use at the event?

In sum:

1. There are no provisions in section 932.7055, Florida Statutes, that authorize local government to establish a grant program consisting of funds from the law enforcement trust fund, out of which the Chief of Police would administer expenditures consistent with the authorized uses.

2. The two programs described in which gift cards and bicycles would be provided to children for the purpose of fostering crime reporting and safe neighborhoods appear to meet the criteria of

section 932.7055, so long as the Chief of Police certifies that they are in compliance with the uses authorized in the statute and the City Commission appropriates the funds.

Section 932.7055 establishes procedures to be used to dispose of real or personal property that has been seized and forfeited as contraband. Subsection (5) directs a county or municipal seizing agency to deposit the proceeds into a special law enforcement trust fund established by the local government. The statute then provides:

"Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in law enforcement vehicles, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency."

Subsequent provisions state that the Sheriff or Chief of Police may submit requests to local government for use of such funds by the agency, or on behalf of another agency or organization, when the proposed use is certified to be one of the authorized purposes.

Question 1

You ask whether, pursuant to sections 932.7055(1)(c) and 932.7055(5)(a)3., West Palm Beach may establish a grant program consisting of money from the law enforcement trust fund, from which the Chief of Police could then award amounts requested by nonprofit entities when consistent with the purposes authorized by the statute. You describe the proposed procedure as follows:

· The Chief of Police would certify that the grant program complies with the provisions of section 932.7055;
· The City Commission would approve the grant program and appropriate a certain amount of money from the trust fund to the grant program;
· The Chief of Police would review applications and certify those that are consistent with the purposes authorized in the statute;
· The Chief of Police would appropriate funds from the grant program to certified applicants.

The first provision you suggest as providing authority for this arrangement, section 932.7055(1)(c), states that a seizing agency that obtains a final judgment granting forfeiture of real or personal property, may elect to "[s]alvage, trade, or transfer the property to any public or nonprofit organization." This provision does not support the proposed grant program, however, because the plain language contemplates a direct transfer of forfeited property rather than retention of the property for deposit in a law enforcement trust fund.[1] If any proceeds remain following the salvage, trade, or transfer, the municipality must deposit them in the law enforcement trust fund.

The second provision you rely upon, section 932.7055(5)(c)3., mandates any local law enforcement agency that obtains $15,000 or more from forfeitures during a fiscal year, to provide

at least 25 percent “for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program or programs. The local law enforcement agency has the discretion to determine which program or programs will receive the designated proceeds.”

The narrow field of discretion authorized by section 932.7055(5)(c)3. gives local law enforcement agencies the choice as to which programs that receive law enforcement trust fund appropriations will comprise the mandatory 25 percent required from agencies that receive $15,000 or more through contraband forfeiture.[2] This provision does not give the City or the Chief of Police the discretion to create a different structure than that provided in the statute for the appropriation of funds.

There is no language in section 932.7055 that authorizes local governments to designate a certain portion of the law enforcement trust fund to a grant program, whereupon the Chief of Police would then have the discretion to appropriate funds to applicants that would use the funds for one of the purposes enumerated in the statute. A grant program and a trust fund are distinct entities, and the Legislature has in other statutes specifically authorized the creation of grant programs to fund comparable initiatives that address community issues,[3] and has also specifically authorized trust funds to be used to create grant programs.[4] Had the Legislature intended to authorize local government to create a grant program in conjunction with the law enforcement trust fund, it would have done so.

Instead, section 932.7055(5)(a) directs the municipal government to establish a law enforcement trust fund, and section (5)(b) allows the Chief of Police to submit requests for expenditure of funds for uses encompassed by the statute. Section (5)(b) expressly provides that expenditures may be made following such request “only upon appropriation to the…police department by…the governing body of the municipality.” The municipality cannot delegate its statutory authority to appropriate funds to the Chief of Police.

When the Legislature has provided a method for the implementation of a statute, alternative methods are implicitly prohibited.[5] It is therefore my opinion that section 932.7055 does not authorize the City of West Palm Beach to approve a grant program through which the Chief of Police may appropriate proceeds from the law enforcement trust fund.

Question 2

You also ask whether the West Palm Beach Police Department is authorized under the statute to use trust fund proceeds to fund two annual programs, each operated by a nonprofit organization. The first is called “Shop with a Cop,” in which the West Palm Beach Police Foundation provides funds for children of indigent families to shop during the holidays with police officers, having been provided with gift cards. You state that the main purpose of the event is to foster trusting relationships between law enforcement and community members, which would, in turn, encourage crime reporting, gang resistance education, and safe neighborhoods.

The second program is the “Toy Giveaway Extravaganza,” in which the Coleman Park Neighborhood Association purchases bicycles to distribute, along with crime prevention and gang-resistance materials, to children and families within the Coleman Park Neighborhood. The

purpose of the program is to encourage engagement between law enforcement and children and families within the community, and expose the latter to some of the special teams within the police department in order to enhance police-community relations, which should, in turn, foster crime prevention and safe neighborhoods.

From your description of these programs, it appears that each would serve the authorized statutory purposes of using funds for crime prevention and safe neighborhoods. Accordingly, it is my opinion that contraband forfeiture funds may be used for the two programs described above, if the Chief of Police certifies that such uses comply with section 932.7055(5) and the governing body of the City authorizes the appropriation.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 932.7055(1) permits a law enforcement agency to sell, salvage, or transfer forfeited property rather than retain it for the law enforcement agency. *See* Ops. Att'y Gen. Fla. 2001-48; 1997-46.

[2] *See* Op. Att'y Gen. Fla. 2005-62 (concluding that trust funds could be used to fund an educational program that addressed law enforcement and legal studies, and because the program's primary purpose was crime and drug prevention, it qualified as one of the programs that would satisfy the agency's required donation of contraband forfeiture funds under § 932.7055(5)(c)3.).

[3] *See, e.g.,* § 394.656(1) (authorizing creation of the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program within the Department of Children and Families, to fund county initiatives that increase public safety and provide treatment services for persons with mental health and substance abuse disorders), § 397.99(1) (establishing the school substance abuse prevention partnership grant program to be administered by the Departments of Education and of Juvenile Justice), § 943.031 (creating the Florida Violent Crime and Drug Control Council within the Department of Law Enforcement, having as one of its duties the establishment of a program that provides grants to criminal justice agencies that develop and implement programs to reduce drug-related crime, criminal gangs, and money laundering operations, § 985.676(1) (creating a community juvenile justice partnership grant program to be administered by the Department of Juvenile Justice), Fla. Stat. (2017).

[4] *See* § 320.08058(9)(b)2. (providing that a portion of the sports-team specialty license plate annual fees be deposited into a trust fund within the Department of Economic Opportunity, to be used in part "to institute a grant program for communities bidding on minor sports events that create an economic impact for the state"), § 403.413(6) (providing a civil penalty for unlawful dumping of litter, half of which shall be deposited into the Solid Waste Management Trust Fund for use in the solid waste management grant program pursuant to § 403.7095), § 938.01(1)(a)

(directing that certain court costs collected by the courts be distributed to the Department of Law Enforcement Operating Trust Fund to be used in its Criminal Justice Grant Program), Fla. Stat. (2017).

[5] *See Headley v. City of Miami*, 215 So. 3d 1, 9 (Fla. 2017) ("[L]egislative direction as to how a thing shall be done is, in effect, a prohibition against its being done any other way."); *Alsop v. Pierce*, 19 So. 2d 799, 805-06 (Fla. 1944) ("When the Legislature has prescribed the mode, that mode must be observed."); Op. Att'y Gen. Fla. 96-62 (1996) (applying this maxim to the procedure set forth in § 932.7055).