Contraband Forfeiture Fund

Number: AGO 2017-07

Date: November 30, 2017

Subject:
Contraband Forfeiture Fund

The Honorable David Morgan
Sheriff, Escambia County
Post Office Box 18770
Pensacola, Florida 32523

RE: FLORIDA CONTRABAND FORFEITURE ACT – contraband forfeiture trust funds may be used to pay Sheriff's recurring contractually allocated share of school resource officer program personnel costs, but not to defray personnel costs for certified school resource officers incurred apart from their participation in the program. § 932.7055(5)(a), Fla. Stat. (2017).

Dear Sheriff Morgan:

On behalf of the Escambia County Sheriff's Office, you have requested an opinion addressing the following questions:

1. Whether the Sheriff of Escambia County ("Sheriff") may use funds obtained pursuant to Florida's Contraband Forfeiture Act ("Act"), sections 932.701-.7062, Florida Statutes:

(a) to pay the *pro rata* costs of salary and benefits for deputies regularly assigned to perform school resource officer duties throughout the school year, even if such costs recur from year to year; and
(b) to pay the personnel costs incurred for such officers when they are not performing school resource officer duties because school is not in session?

2. Whether the Sheriff may use these funds to pay or reimburse the County for the salary and benefits of a deputy based on his or her designation as a "school resource officer," regardless of the amount of time such deputy is performing school resource officer duties?

In sum:

1. Section 932.7055(5)(a) of the Act specifically provides that contraband forfeiture proceeds may be used for school resource officer programs; therefore, such funds may be used to pay the Sheriff's contractual share of personnel costs[1] resulting from assignment of school resource officers to schools throughout the school year, even if such costs recur from year to year. Such funds may not be used to pay for the personnel costs of such officers during periods when they are *not* performing school resource officer program duties (*e.g.,* when school is not in session).

2. Section 932.7055(5)(a) of the Act specifies that trust fund proceeds may be used for school resource officer *programs*; therefore, such funds may not be used to offset personnel costs of

certified school resource officers who are not regularly assigned to perform school resource officer duties pursuant to the Escambia County program.

Question One

Section 932.7055, Florida Statutes, indicates the purposes for which Florida Contraband Forfeiture Act trust fund monies may be used. In general,[2] a law enforcement agency may use these funds for the specific purposes set forth in section 932.7055(5)(a), and for other extraordinary law enforcement programs and purposes, "beyond what is usual, normal or established."[3] The former comprise "school resource officer, crime prevention, safe neighborhood, [and] drug abuse education and prevention programs[.]"[4] By way of illustration, the latter may "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."[5] In authorizing the use of funds for these purposes, the Act vests discretion in the county or municipal governing body to permit funds to be expended for any of the enumerated purposes.[6] While funds may, thus, be used to defray costs that recur in connection with the identified programs or purposes, in allocating trust fund monies to pay for "other law enforcement purposes," the funds must "not be used to meet normal operating expenses of the law enforcement agency."[7]

Consistent with these principles, in Attorney General Opinion 93-18, this office opined that contraband forfeiture trust funds could be used to pay current city police officers *overtime* to work on a new task force directed to preventing crimes involving tourists and drug trafficking. "While this office has recognized that detecting and combating drugs and drug abuse may be a normal duty of law enforcement agencies, participating in a task force concept for accomplishing these purposes would appear to be outside the regular or established approach to such law enforcement duties."[8]

Later, in Attorney General Opinion 98-32, this office opined that contraband forfeiture trust funds could be used "to provide tuition for Bay County Sheriff's Office personnel for training and education[,]" to allow such full-time employees to "develop additional expertise in specific areas related to their job duties." None of the courses would apply towards the 40 hours of continuing education or training for law enforcement officers required by section 943.135(1), Florida Statutes; instead, the assistance would be used to "encourage employees to obtain *additional* education and expertise in areas that enhance job skills related to their Sheriff's Office careers."[9] (Emphasis added.)

In Attorney General Opinion 89-78, in contrast, the City of North Bay Village had asked whether contraband forfeiture trust funds could be used to provide supplements to tuition for recruits trained by the police academy, and to augment salaries to attract more qualified persons for employment with the City's police department. Because the recruitment of potential employees with enhanced skills appeared to be a "recurring and routine activity" related to the City's normal operating need to hire new personnel to perform regular, day-to-day law enforcement duties, this office opined that contraband forfeiture trust funds could not be used for such purpose.

As applied here, counsel for the Sheriff's Office suggests that these distinctions appear to dictate that contraband forfeiture trust funds can *only* be used for school resource officer programs if

such programs involve “unbudgeted, special, non-recurring school resource officer special events or programs,” and may not be used “for the salary and benefits of such officers, because salary and benefits are included in the normal operating expenses of the Sheriff.” This necessarily reflects a view that the Legislature has placed a limitation on the use of trust funds which may effectively vitiate the statute’s authorization to use those funds for the purposes expressly enumerated in the statute.

Key to this analysis, section 932.7055(5)(a), Florida Statutes, provides:

“(5)(a) If the seizing agency is a county or municipal agency, the remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. 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.*” (Emphasis added.)

To determine whether the Legislature intended the last sentence to be a further limitation (or, stated more accurately, a further *description*) applicable to the purposes specifically authorized in the prior sentence, we must look first “to the statute's plain language.”[10] If that language can be variously interpreted, then we “cannot rely solely on [the statute’s] plain language to discover the legislative intent[,]”[11] and must “look to canons of statutory construction.”[12]

Here, the doctrines of *ejusdem generis* and *noscitur a sociis* provide insight into the Legislature’s intent:

“An important canon is that of *ejusdem generis*, ‘which states that when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed.’…‘Distilled to its essence, this rule provides that where general words follow an enumeration of specific words, the general words are construed as applying to the same kind or class as those that are specifically mentioned.’… A related canon of statutory construction is *noscitur a sociis*, which instructs that ‘a word is known by the company it keeps.’”[13]

Applying these principles, in section 932.7055(5)(a), the Legislature has described certain law enforcement purposes authorized for funding—some specified (*i.e.,* school resource officer, crime prevention, safe neighborhood, and drug abuse education and prevention programs), and others illustrative[14] (*i.e.,* “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”)—*all* of which are not part of the “normal operating expenses of the law enforcement agency.” The fact that some of these programs may be funded annually does not change their status in the law. As stated in Op. Att’y Gen. Fla. 91-69 (1991):

“The Legislature, in specifically authorizing the use of forfeiture funds for school resource officers, has made the determination that the expenditure of trust funds for such a purpose is

appropriate and does not constitute a source of revenue to meet normal operating needs of the law enforcement agency. Thus, the expenditure of special law enforcement trust fund monies for school resource officers would appear to be authorized even when such officers have previously been funded from other sources."

Moreover, with respect to school resource officer programs, such interpretation would be at odds with both the statutory framework provided to enable school districts to establish such programs, and with the special duties performed by school resource officers, which are not part of the "normal" operations of the Sheriff's office. Pursuant to section 1006.12(1), Florida Statutes, district school boards may establish school resource programs "through a cooperative agreement" between the district school board and the law enforcement agency. Section 1006.12(1). In fact, you have provided a copy of one such agreement as an enclosure with your letter. It describes the myriad duties fulfilled by those school resource officers who are regularly assigned to schools, some of which are particular to such officers.[15]

Further, pursuant to section 1006.12(1)(b), Florida Statutes, school resource officers "shall abide by district school board policies and shall consult with and coordinate activities through the school principal, but shall be responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency. Activities conducted by the school resource officer which are part of the regular instructional program of the school shall be under the direction of the school principal."

These contractual and statutory responsibilities require additional skills and commitments which are not ordinarily part of a law enforcement officer's duties. For this reason, school resource officers are recognized as fulfilling a variety of roles: "Unlike police officers who respond to calls at schools, SROs traditionally adopt the 'triad model,' serving students and staff in three different roles: the law enforcer, the counselor, and the law-related educator."[16] Their mission has been judicially described as "unique,"[17] and they are to be treated as "part of the school administrative team and not as outside police officers entering school grounds to conduct an investigation."[18]

As the Florida Fifth District Court of Appeal has observed:

"[School resource officers] are certified law enforcement officers who are assigned to work at schools under cooperative agreements between their law enforcement agencies and school boards. § 1006.12(1)(a), (b), Fla. Stat. (2007). They are statutorily bound to 'abide by district school board policies' and 'consult with and coordinate activities through the school principal....' *Id.* In this capacity, resource officers are called upon to perform many duties *not traditional to the law enforcement function*, such as instructing students, serving as mentors and assisting administrators in maintaining decorum and enforcing school board policy and rules."[19]

Consistent with these observations, this office has long recognized the unique role of the school resource officer in Florida's school system:

"The Attorney General's Office, in 1985, developed the first 40-hour Basic Training Course adopted by FDLE to train SRO's with the basic knowledge and skills necessary to implement crime prevention programming in a school setting. The definition of a School Resource Officer

encompasses three major components of his/her job: that of law enforcement, education, and counseling, which is a pro-active approach to law enforcement through positive role modeling. These three components allow the SRO to promote positive relations between youth and law enforcement, which encourages school safety and deters juvenile delinquency."[20]

The fact that (as evidenced, in part, by the renewed agreements between the Sheriff's Office and the Escambia County School Board) the school resource program in Florida may be "flourishing"[21]—which the Legislature appears to have intended, in specifically authorizing use of trust fund monies to support it—would not reasonably appear to justify a conclusion that this "dynamic, innovative"[22] program has, thus, been converted into a "normal operating need" of the Sheriff's office, for which the specifically authorized use of trust fund monies is consequently prohibited.

Therefore, I am of the opinion that the Florida Contraband Forfeiture Act authorizes proceeds to be used for the Sheriff's share of personnel costs resulting from the school resource officer program in Escambia County, regardless of whether such program continues from year to year. However, such funds may not be used to pay for the personnel costs of such officers during periods when the officers are not performing school resource officer program duties (*e.g.,* when school is not in session).

Question Two

In the second part of your inquiry, the Sheriff's Office asks *not* whether law enforcement trust funds can be used to defray the cost to enroll a deputy in the Basic School Resource Officer Course, but whether the Sheriff may use law enforcement trust funds "to pay or reimburse the County for the salary and benefits of a deputy based on his or her designation as a 'school resource officer,' regardless of the amount of time that such deputy is performing school resource officer duties." Citing Op. Att'y Gen. Fla. 91-69 (1991)—which, in pertinent part, addressed "whether funds already awarded to the county under the contraband forfeiture act may be used to fund or reimburse the county for the costs of a school resource officer"—Sheriff's counsel states that "[i]t would seem that the exception that is suggested by the Attorney General in Attorney General Opinion [91-69] would permit the Sheriff to pay the Deputy or reimburse the County for the personnel cost of the Deputy [who has achieved a School Resource Officer designation] *regardless of how much of the Deputy's time is devoted to school resource officer functions.*" (Emphasis added.) But nothing in Attorney General Opinion 91-69 or section 932.7055(5)(a), itself, suggests or supports this surmise.

In posing the funding question involving school resource officers in AGO 91-69, the Volusia County Attorney did not indicate that the subject officers would not actually be serving as school resource officers. Nor has this office ever interpreted section 932.7055, Florida Statutes, to allow the personnel costs of officers who are not participating in a school resource officer program to be paid with contraband forfeiture funds. Instead, the statute specifies that school resource officer *programs* may be funded using such funds.[23] While the enrollment cost for a deputy to complete the Basic School Resource Officer Course would appear to fall within the Legislature's description of "law enforcement purposes" that are not part of the "normal operating expenses of the law enforcement agency," the ongoing personnel costs of an officer who has achieved school resource officer certification, but *does not serve in the school resource officer program* do

not. Because such officer, despite his or her certification, is performing regular, day-to-day law enforcement duties and *not performing* the unique mission of officers actively assigned to a school resource officer program, it follows that such officer's ongoing personnel costs may not be paid using contraband forfeiture trust funds.

Based on the foregoing, I am of the opinion that the Florida Contraband Forfeiture Act authorizes proceeds to be used for the Sheriff's share of personnel costs (as allocated in the agreement between the Escambia County Sheriff's office and the School Board of Escambia County) resulting from the school resource officer program, regardless of whether such program continues from year to year. However, contraband forfeiture funds may not be used to offset the personnel costs of officers who are merely designated "school resource officers," but are not regularly assigned to perform duties as part of the Escambia County school resource officer program.

Sincerely,

Pam Bondi
Attorney General

PB/ttlm

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[1] As an enclosure with your request, you provided this office with a copy of the 2016-17 agreement between the Escambia County Sheriff's office and the School Board of Escambia County, Florida. That agreement identifies the school resource officer program personnel costs (to be split 50/50 between the School Board and the Sheriff's office) as follows:

"1. Salary
2. Longevity Pay
3. Pension and Retirement contributions
4. Disability Insurance
5. Incentive Pay
6. Life Insurance
7. Health Insurance
8. Equipment, Travel, etc.
9. Annual Training"

[2] Pursuant to § 932.7055(4)(d), Fla. Stat., "for the 2017-18 fiscal year only, the funds in a special law enforcement trust fund established by the governing body of a municipality may be expended to reimburse the general fund of the municipality for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. This paragraph expires July 1, 2018."

[3] Op. Att'y Gen. Fla. 95-29 (1995); *see also* Att'y Gen. Op. Fla. 02-35 (2002) (citing Ops. Att'y Gen. Fla. 98-32 (1998) (reflecting that a program developed by the sheriff that reimburses employees for tuition for college level course work may be funded using contraband forfeiture trust funds when the purpose of that program is to develop additional expertise in these

employees in specific areas related to their job duties); 91-84 (1991) (reflecting that a city police athletic league created to prevent crime by providing recreational programs for disadvantaged youths may be supported with contraband forfeiture funds, if the city's governing body determines that such activities are an appropriate law enforcement purpose)).

[4] § 932.7055(5)(a), Fla. Stat. (2017).

[5] § 932.7055(5)(a), Fla. Stat. (2017).

[6] *Id.*

[7] § 932.7055(5)(a), Fla. Stat. (2017); *see also* Op. Att'y Gen. Fla. 97-31 (1997) (reflecting that the city could not use contraband forfeiture trust funds to build and maintain a stable for horses to be used in a mounted police patrol unit); Op. Att'y Gen. Fla. 83-09 (1983) (reflecting that contraband forfeiture trust funds could not be used to compensate a physician's assistant to render medical aid to county prisoners).

[8] Op. Att'y Gen. Fla. 93-18 (1993).

[9] Op. Att'y Gen. Fla. 98-32 (1998).

[10] *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008) (citing *Borden v. East–European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006)).

[11] *Kasischke*, 991 So. 2d at 807.

[12] *Id.* at 811 (citing *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000) ("[I]f the language of the statute is unclear, then rules of statutory construction control.").

[13] *State v. Weeks*, 202 So. 3d 1, 8 (Fla. 2016) (quoting *State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007); *Fayad v. Clarendon Nat'l Ins. Co.*, 899 So. 2d 1082, 1088–89 (Fla. 2005); *Nehme v. Smithkline Beecham Clinical Labs., Inc.*, 863 So. 2d 201, 205 (Fla. 2003)) (additional citation omitted).

[14] *See generally Pro-Art Dental Lab, Inc. v. V-Strategic Grp., LLC*, 986 So. 2d 1244, 1257 (Fla. 2008) (citing *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100, 62 S.Ct. 1, 86 L.Ed. 65 (1941) ("[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle."); *see also* Black's Law Dictionary (10th ed. 2014) (observing, in defining "include," that "[t]he participle including typically indicates a partial list").

[15] The supplied agreement provides, in pertinent part:

"C. Duties of School Resource Officers
1. The SRO shall coordinate all of his activities with the principal and staff members concerned and will seek permission, advice, and guidance prior to enacting any program within the school.
2. The SRO shall develop expertise in presenting various subjects to the students. Such subjects

shall include a basic understanding of the laws, the role of the police officer, and the police mission.
3. The SRO shall encourage individual and small group discussions with students based upon material presented in class to further establish rapport with the students.
4. When requested by the principal, the SRO shall attend parent/faculty meetings to solicit support and understanding of the program. (Overtime: Refer to Article IV, C.)
5. The SRO shall make himself available for conferences with students, parents, and faculty members in order to assist them with problems of law enforcement or crime prevention nature. Confidential information obtained pursuant to Chapter 39, Florida Statutes (Proceedings Relating to Children), shall not be disclosed except as provided by law or court order.
6. The SRO shall become familiar with all community agencies which offer assistance to youth and their families such as mental health clinics, drug treatment centers, etc. The SRO shall make referrals to such agencies when necessary thereby acting as a resource person to the students, faculty, and staff of the school.
7. The SRO shall assist the principal in developing plans and strategies to prevent and/or minimize dangerous situations which may result from student unrest.
8. Should it become necessary to conduct formal police interviews with the students, the SRO shall adhere to School Board policy and legal requirements with regard to such interviews.
9. The SRO shall take law enforcement action as required. As soon as practicable, the SRO shall make the principal of the school aware of such action. At the principal's request, the SRO shall take appropriate law enforcement action against intruders and unwanted guests who may appear at the school and related school functions to the extent that the SRO may do so under the authority of the law. Whenever practicable, the SRO shall advise the principal before requesting additional police assistance on campus.
10. The SRO shall inform school personnel anytime he learns of another law enforcement officer conducting student interviews on school campuses.
11. The SRO shall give assistance to other police officers and deputy sheriffs in matters regarding his school assignment, whenever necessary. The SRO shall, whenever possible, participate in and/or attend school functions.
12. The SRO shall maintain detailed and accurate records of the operation of the School Resource Officer Program and shall submit other reports of an instructional nature as required by the principal or school staff.
13. The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility. However, if the principal believes an incident is a violation of the law, the principal may contact the SRO, and the SRO shall then determine whether law enforcement action is appropriate. SROs are not to be used for regularly assigned lunchroom duties, hall monitors, or other monitoring duties. If there is a problem area, the SRO may assist the school until the problem is solved.
14. SROs will be considered part-time non-degreed teachers and agree to complete the necessary requirements set forth in Section 1012.39, Florida Statutes.
15. SROs will be permitted eight (8) days per academic year absence from SRO duties at the school to attend ECSO training.
16. SROs will be allowed to have monthly meetings, as deemed necessary by the ECSO Community Services Officer in Charge. Whenever possible, such meetings will be held on a school campus that has an assigned SRO.
17. SROs will complete written offense reports pursuant to ECSO policy and procedure for any reports made to them by school teacher, administrators or other member of school staff for the

incidents described in Article III."

[16] Amanda Merkwae, *Schooling the Police: Race, Disability, and the Conduct of School Resource Officers*, 21 Mich. J. Race & L. 147, 161 (2015) (citing Spencer C. Weiler & Martha Cray, *Police at School: A Brief History and Current Status of School Resource Officers*, 84 The Clearing House 160, 161 (2011)).

[17] *C.M.M. v. State*, 983 So. 2d 704, 705 (Fla. 5th DCA 2008).

[18] *M.D. v. State*, 65 So. 3d 563, 565 (Fla. 1st DCA 2011).

[19] *C.M.M.*, 983 So. 2d at 705 (emphasis added).

[20] Florida Crime Prevention Training Institute webpage, "School Resource Officer Practitioner Designation" (available at http://www.fcpti.com/fcpti.nsf/pages/SROPD, last visited August 23, 2017). The Florida Crime Prevention Training Institute, which provides training for school resource officers, was established in the Office of the Attorney General in 1982 as part of the "HELP STOP CRIME" program. *See* § 16.54, Fla. Stat.

[21] *Id.*

[22] *Id.*

[23] § 932.7055(5)(a), Fla. Stat. (2017).