Contraband Forfeiture Trust Fund -- Pilot Program

Number: AGO 2014-05

Date: June 20, 2014

Subject:
Contraband Forfeiture Trust Fund -- Pilot Program

The Honorable Jerry L. Demings
Sheriff of Orange County
Post Office Box 1440
Orlando, Florida 32802-1440

Dear Sheriff Demings:

You have asked for my opinion on substantially the following question:

Is the Orange County Sheriff's Office authorized to use Florida Contraband Forfeiture Trust Fund monies to support a pilot program designed to reduce crime and the fear of crime in high crime neighborhoods by creating a task force comprised of private security personnel?

In sum:

Special law enforcement trust funds, which have been requested by and appropriated to the Orange County Sheriff's Office pursuant to the Florida Contraband Forfeiture Act, may be used to support a time-limited pilot program creating a task force comprised of private security personnel and designed to reduce crime and the fear of crime in high crime neighborhoods.

According to information you have submitted to this office, the Orange County Sheriff's Office is considering using Florida Contraband Forfeiture Trust Fund monies for a pilot program. The sheriff intends to identify certain high crime, low income residential neighborhoods and create a task force comprised of private security personnel to provide targeted patrols. This program will be conducted on a trial basis to determine the efficacy of using these types of resources. Areas targeted for the pilot program will have specific crime trends that may be tracked and be identified through crime analysis and historical knowledge of those areas. Other indicators such as high foreclosure or abandoned property rates may also be used. The sheriff's office will assess the success of the program by evaluating and tracking criminal activity through the sheriff's Crime Analysis Unit. Benchmarks will be established to provide objective, empirical data on crime statistics as well as the residents' perception and fear of crimes.

The private security personnel participating in this program would not be used to meet the normal day-to-day operating needs of the sheriff's office, such as responding to calls for service handled by deputies. Instead, their activities will be dedicated to a specific, identifiable area to conduct focused activities to prevent and identify crimes. Their activities would be supplemental to those services provided by sworn personnel and would be specifically aimed at the problems identified in the neighborhood. You advise that the Sheriff's allocation of sworn personnel to

these areas would not be altered or supplanted by the private security officers.

The Florida Contraband Forfeiture Act (the Act), sections 932.701-932.706, Florida Statutes, authorizes the seizure and forfeiture of contraband articles, as well as the vessels, motor vehicles, aircraft, and other personal property used in transporting, concealing, or conveying contraband.[1] Under the Act, detailed procedures are set forth to effectuate such forfeitures and for the disposition of forfeited property.[2] The Act authorizes the law enforcement agency effecting a forfeiture of seized property to sell or otherwise salvage or transfer the property to any public or nonprofit organization rather than retaining it for the use of the law enforcement agency.[3] If forfeited property is sold, proceeds are first applied to any preserved lien balances, then to various costs incurred in connection with the forfeiture proceedings.[4]

For counties, the remaining proceeds are deposited in a special law enforcement trust fund established by the board of county commissioners.[5] These funds may only be expended upon request of the sheriff to the board of county commissioners, accompanied by a written certification that the request complies with section 932.7055(5), Florida Statutes, and only upon appropriation to the sheriff's office by the board of county commissioners.[6] Thus, in the instant case, any funds from the special trust fund for this program may only be expended at the request of the Sheriff of Orange County and upon appropriation to the sheriff's office by the board of county commissioners.

Further, the Act requires that

"[s]uch 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."[7]

Section 932.7055(5)(a), Florida Statutes, prohibits the use of contraband forfeiture trust funds as "a source of revenue to meet normal operating needs of the law enforcement agency." Based upon identical language in a previous statute,[8] this office has stated that the legislative intent expressed therein is that these trust funds should be used only for the expressly specified purposes or for other extraordinary programs and purposes, beyond what is usual, normal, regular, or established.[9]

While it is clear that combating crime is a normal duty of law enforcement agencies, you have stated that this pilot program would be supplemental to the sheriff's allocation of sworn personnel to the areas targeted. The act specifically authorizes the use of such proceeds for "crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes" and directs the use of these funds to defray the cost of "providing additional equipment or expertise[.]"

In Attorney General Opinion 93-18, this office concluded that special law enforcement 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."

In a similarly reasoned opinion determining that participation in a multi-jurisdictional drug task force was an allowable expense under the Florida Contraband Forfeiture Act,[10] this office also concluded that the funding of a law enforcement officer from contraband forfeiture funds was permissible when the officer was assigned full-time to the drug task force.[11]

However, in Attorney General Opinion 95-29, this office cautioned that the special law enforcement trust fund, established under the Florida Contraband Forfeiture Act, could not be used to pay current police officers in the Vice, Intelligence and Narcotics Division of the City of Plantation Police Department who were engaged in carrying out their normal law enforcement functions. These officers were tenured employees, not new or temporary employees and filled regularly budgeted positions.

Thus, while this office has approved the use of contraband forfeiture trust funds to supplement the salaries of officers engaged in activities outside of the regular activities of such officers, those moneys may not be used to fund the normal operating budget of a police department.

The pilot program under consideration by your office would be of limited duration. It would be directed at reducing crime and the fear of crime in high crime neighborhoods. It would not supplant or alter the sheriff's allocation of sworn personnel to these areas such that it could be characterized as accomplishing the normal day-to-day activities of law enforcement personnel in the sheriff's department. The funding of crime prevention programs is expressly authorized by the Act.[12] The Legislature has made the determination that the expenditure of trust funds for crime prevention programs is appropriate and does not constitute a source of revenue to meet normal operating needs of the law enforcement agency.

Therefore, I am of the opinion that special law enforcement trust funds which have been requested by and appropriated to the Orange County Sheriff's Office may be used to support a time-limited pilot program creating a task force comprised of private security personnel and designed to reduce crime and the fear of crime in high crime neighborhoods.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 932.702, Fla. Stat.

[2] Sections 932.703 and 932.704, Fla. Stat.

[3] Section 932.7055, Fla. Stat.

[4] Section 932.7055(4), Fla. Stat.

[5] Section 932.7055(5)(a), Fla. Stat.

[6] *Id.* at (5)(b).

[7] *Supra* n.5.

[8] Section 932.704(3)(a), Fla. Stat. (1991), stated that these funds could be used "to defray the costs of protracted or complex investigations; to provide additional technical equipment or expertise . . .; to provide matching funds to obtain federal grants; or for school resource officer, crime prevention, or drug abuse programs or such other law enforcement purposes as the . . . governing body of the municipality . . . deems appropriate and *shall not be a source of revenue to meet normal operating needs of the law enforcement agency.*" (e.s.)

[9] *See, e.g.,* Ops. Att'y Gen. Fla. 89-78 (1989) (payment of salaries of police personnel would appear to be a normal operating expense of the municipal police department and special law enforcement trust funds may not be used to augment such salaries); 83-09 (1983) (furnishing medical attention and treatment to county prisoners is a continuing and ongoing or regular duty of the sheriff's office and forfeiture trust fund monies may not, therefore, be used for such purpose).

[10] *See* Op. Att'y Gen. Fla. 93-06 (1993).

[11] *And see* Inf. Op. to Chief Wayland Clifton, Jr., dated September 17, 1990, stating that the City of Gainesville could use contraband forfeiture funds to pay the salary and benefits of a full-time legislative liaison who was to develop statewide legislation for criminal justice assessment centers. This office concluded that such funds could be used in light of the nonrecurring limited duration of the position, provided that the position fell outside of the normal operating needs of the law enforcement agency and the municipal governing body determined that it fulfilled an appropriate law enforcement purpose.

[12] Section 932.7055(5)(a), Fla. Stat.