Forfeiture of vehicles

Number: AGO 74-110

Date: November 04, 1998

Subject:
Forfeiture of vehicles

RE: FORFEITURE OF VEHICLES--EFFECT OF s. 893.12, F. S., ON VEHICLES SEIZED PRIOR TO EFFECTIVE DATE THEREOF

To: Richard E. Gerstein, State Attorney, Miami

Prepared by: Donald K. Rudser, Assistant Attorney General

QUESTION:

Does the adoption of s. 893.12, F. S., and repeal of ss. 404.08 and 404.09, F. S., by Ch. 73-331, Laws of Florida, affect seizure of vehicles prior to July 1, 1973, upon which court proceedings had not been instituted?

SUMMARY:

Under the authority of s. 893.12, F. S., you have the authority to commence forfeiture proceedings on vehicles seized pursuant to law prior to July 1, 1973.

As you noted in your recent letter, s. 404.08, F. S., was repealed by s. 33, Ch. 73-331, Laws of Florida. However, s. 404.08, F. S., has been, in substance, set forth in s. 893.12(2) and (3), F. S., effective July 1, 1973. *See* s. 12, Ch. 73-331. Likewise, s. 404.09, F. S., was repealed by s. 33, Ch. 73-331 but was substantially readopted in s. 893.12(5)-(7), F. S., effective July 1, 1973. *See* s. 12, Ch. 73-331.

As you are aware, Forbes v. Board of Health, 9 So. 446 (Fla. 1891), holds that a law which repeals an act and reenacts provisions substantially the same as the act repealed is construed not to interrupt the provisions of the act repealed.

Likewise, it must be pointed out that Art. 10, s. 9, State Const., states: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed."

Also, I would note that s. 775.12, F. S., reads:

"No offense committed, and no penalty and forfeiture incurred, prior to the taking effect of these statutes, shall be affected thereby, and no prosecution had or commenced, shall be abated thereby, except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of these statutes, such provisions shall apply to and control any judgment or sentence to be pronounced, and all prosecutions shall be conducted according to the provisions of law in

force at the time of such further prosecution and trial applicable to the case."

While the procedure contemplated by s. 893.12, F. S., is not criminal in nature, the forfeiture is predicated upon the commission of a crime.

Likewise, I would point out that s. 11.2425, F. S., states in effect that the repeal of any statute by the enactment of Florida Statutes 1973 shall not affect a civil suit then pending.

Clearly, it has been the intent of the legislature through all the above authority not to void actions by amendment or reenactment of any law.

Inasmuch as Ch. 73-331, *supra*, merely amends and renumbers ss. 404.08 and 404.09, F. S., you clearly have the power under the authority cited above to commence forfeiture proceedings under s. 893.12, F. S., on vehicles seized before July 1, 1973.