Contraband forfeiture, use of trust funds

Number: INFORMAL

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Ms. Susan L. Trevarthen
Attorney, Town of Lauderdale-By-The-Sea
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301

Dear Ms. Trevarthen:

You ask whether the Town Commission for the Town of Lauderdale-By-The-Sea acted properly in approving the expenditure of law enforcement trust funds to renovate a property for use as a police station.

According to your letter, the Town of Lauderdale-By-The-Sea purchased property adjacent to the town hall for the purpose of converting it into a public safety complex for fire, ambulance and police use. You state that extensive renovations were necessary in order to convert the property into a proper police facility which included providing a holding cell, sally port, interview room and specialized video equipment. The police chief requested that law enforcement trust funds be used for such renovations and the use of such funds was approved by the town commission in 2009. You further state that the conversion of the property for use as a police facility is now complete and that the funds from the law enforcement trust fund have been expended. A member of the town commission, however, has questioned the legality of such an expenditure and the town commission, therefore, asks whether its actions were proper.

This office must presume the validity of action that has already been taken by a governmental body. However, in an effort to be of some assistance, the following informal comments are offered.

Sections 932.701-932.706, Florida Statutes, the Florida Contraband Forfeiture Act (Act), makes it unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds. Section 932.703(1)(a), Florida Statutes, provides that any contraband article, vessel, motor vehicle, aircraft, personal property, or real property used in violation of the Act's terms may be seized and shall be forfeited pursuant to its provisions. The Act authorizes a law enforcement agency to retain the property for the agency’s use, sell the property, or salvage or transfer property acquired through a forfeiture to any public or nonprofit organization.[1]

If the seized property is sold and the seizing agency is a municipality, the proceeds, after payment of certain liens and costs, shall be deposited in a special law enforcement trust fund established by the governing body of the municipality.[2] Section 932.7055(5)(a), Florida Statutes, requires that the proceeds from a forfeiture and the interest earned therefrom be used only

"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."

These funds may be expended upon the request of the chief of police to the governing body of the municipality and must be accompanied by a written certification that the request is in compliance with the provisions of section 932.7055(5).[3] An appropriation of contraband forfeiture trust funds must be made by the governing body of the municipality to the police department.[4]

Given the governing body's inability to expend such funds in the absence of a request, this office has recognized that some deference should be given to a sheriff's or police chief's request.[5] However, while the police chief certifies that the request is in compliance with the statute, ultimately the decision of whether the expenditure is for an appropriate law enforcement purpose must be made by the city commission.[6] The fact that the chief of police has certified a request to the governing body does not relieve the governing body of its responsibility under the statute to ensure that the expenditure is appropriate.

In light of the express statutory prohibition against using contraband forfeiture trust funds as a source of revenue to meet the normal operating needs of a law enforcement agency, this office has repeatedly stated that contraband 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.[7]

Thus, for example, this office in Attorney General 02-80 stated that the development and construction of a satellite community police office would appear to meet the "normal operating needs of the law enforcement agency" and therefore would not constitute an appropriate expenditure for contraband forfeiture trust funds. As discussed in that opinion, the development and construction of the community police office itself would appear to facilitate the normal day-to-day operations of the police department. Thus, construction of such a facility would appear to satisfy the police department's normal operating need for a site of day-to-day operations, but would not be an appropriate subject for the expenditure of contraband forfeiture trust funds.
In reaching this conclusion, this office relied in part on Attorney General Opinion 86-48 in which the Board of County Commissioners of Charlotte County asked whether it could expend contraband forfeiture funds to construct a building to be used by the sheriff for evidence storage. As discussed in Attorney General Opinion 86-48, space for the storing of evidence in criminal cases would appear to be one of the normal operating needs of the sheriff in carrying out the statutory duties of that office and represented a continuing, ongoing or regular duty or function of that office. Thus, the opinion concluded that the storage of property as evidence in criminal cases did not constitute a purpose expressly provided for in the Act, nor did such an activity represent an extraordinary program or purpose beyond what is usual, normal, regular, or established.

Similarly, in Attorney General Opinion 97-31, this office concluded that a city was not authorized

to use contraband forfeiture funds to build and maintain a stable for horses to be used for a mounted police patrol unit. As discussed in that opinion, the provision of law enforcement services is the usual, normal, regular, or established duty of a city police department and the provision of a facility to carry out such services would appear to be normal operating expense for which law enforcement trust funds may not be used.

Thus, the above opinions conclude that the provision of a facility to carry out the routine law enforcement functions of a police department would appear to constitute a normal operating expense. As noted above, however, the decision of whether the expenditure is for an appropriate expenditure for the use of law enforcement trust funds is one that must be made by the governing body of the city.

I hope that the above informal comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] Section 932.7055(1)(a)-(c), Fla. Stat.

[2] *See* s. 932.7055(5)(a), Fla. Stat.

[3] Section 932.7055(5)(b), Fla. Stat.

[4] *Id.*

[5] Ops. Att'y Gen. Fla. 03-39 (2003) and 96-62 (1996).

[6] *See, e.g.,* Ops. Att'y. Gen. Fla. 05-47 (2005); 02-35 (2002); 01-48 (2001); 98-32 (1998); 96-62 (1996).

[7] *See, e.g.,* Ops. Att'y Gen. Fla. 05-47 (2005), 03-39 (2003), and 02-80 (2002). *And see* Op. Att'y. Gen. Fla. 83-09 (1983), stating that "[i]t . . . appears that the legislative intent of s. 932.704, F.S., 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."