



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

March 10, 1986

OPINION NO. 86-52

Mr. Charles L. Robinson, CPA
Legislative Auditor
State Capitol
Little Rock, Arkansas 72201

Dear Mr. Robinson:

You have requested an Attorney General's opinion on the following issues:

1. If a court under Ark. Stat. Ann. §82-2629(e) (1) permits a law enforcement agency or prosecuting attorney to retain property that is actual cash, would those funds have to be deposited in the county or municipality general fund or special fund and appropriated by the proper body? (i.e. the County Quorum Court).
2. Do the proceeds from the sale of forfeited property under the Controlled Substances Act (Ark. Stat. Ann. §82-2601, et al) have to be deposited in the county general fund of the county where the property was seized and be appropriated by the proper body?
3. Would a "drug buy fund" to be used in the future be a proper expense of the proceedings for forfeiture and sale under Ark. Stat. Ann. §82-2629(e)(2)?

Your questions are in reference to the provisions of the Arkansas Uniform Controlled Substances Act, codified as Ark. Stat. Ann. §82-2601 et seq. (Repl. 1976 and Supp. 1985). Specifically, §82-2629, to which you refer, provides for the forfeiture of various types of property including controlled substances; property used to facilitate the manufacturer, sale or purchase of controlled substances; and proceeds of the sale of controlled substances.

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Your first question asks whether "actual cash", which has been forfeited pursuant to a court order under the provisions §82-2629(e)(1) for the official use of the law enforcement agency or the prosecuting attorney, must be deposited in the county or municipality general fund or special fund and appropriated by the proper legislative body. §82-2629(e) provides as follows:

(e) When the circuit court having jurisdiction over the property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this Act, the Court shall enter an appropriate order. The Court may:

(1) permit the proper law enforcement agency or the Prosecuting Attorney for the Judicial District in which the property was seized to retain the property for official use;

(2) permit the proper law enforcement agency to sell at public or private sale that which is not required by law to be destroyed and which is not harmful to the public. In the event of a sale the Court shall provide by appropriate order that the proceeds be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of investigation, seizure, maintenance of custody, advertising and court costs. All proceeds from the sale of forfeited property in excess of proper expenses shall be paid into the county general fund of the county where the property was seized.

(3) require the Commissioner to take custody of the property and remove it for disposition in accordance with law.

The only money required by the express terms of §82-2629(e) to be paid into the county general fund, etc., is that money which constitutes proceeds from the sale of forfeited property. The statute does not provide for "actual cash" that is forfeited (and which is not considered proceeds from the sale of forfeited property) to be deposited into the county general fund. Thus, it is my

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opinion that "actual cash" which is forfeited need not be deposited in a county or municipal general or special fund, but instead may be retained by the law enforcement agency or the prosecuting attorney for official use if the circuit court's order so provides.

Your second question asks whether the proceeds from the sale of forfeited property under the Controlled Substances Act have to be deposited in the county general fund of the county where the property was seized and be appropriated by the proper body. As I indicated above, §82-2629(e)(2) specifically provides that "all proceeds from the sale of forfeited property in excess of proper expenses shall be paid into the county general fund of the county where the property was seized." Thus, it is my opinion that the proceeds of the sale of forfeited property must be deposited in the county general fund of the county where the property was seized and must be appropriated by the proper body as with other public funds.

Finally, you ask whether a "drug buy fund" to be used in the future would be a proper expense of the proceedings for forfeiture and sale under §82-2629(e)(2). Section 82-2629(e)(2) clearly provides that the proceeds of the sale of forfeited property shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, "including expenses of investigation, seizure, maintenance of custody, advertising and court costs." The statute does, therefore, include within its definition of "expenses" the expense of investigation.

Although the expense of making an undercover buy could certainly be considered as an expense of investigation, a drug buy fund to be used in the future would not appear to constitute a proper expense of the forfeiture and sale of property already seized under the terms of the statute. It cannot be fairly said that the existing statute authorizes future expenses to be paid as a proper expense of a forfeiture and sale. Thus, it is my opinion that a "drug buy fund" to be used in the future would not be a proper expense of the proceedings for forfeiture and sale of seized property under §82-2629(e)(2).

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This opinion which I hereby approve, was prepared by
Assistant Attorney General Jack Gillean.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Clark", written over the printed name.

STEVE CLARK
Attorney General

SC:JG:jh