



# **COMMONWEALTH of VIRGINIA**

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The Honorable H. Roger Zurn, Jr.  
Treasurer, County of Loudoun  
P.O. Box 1000  
Leesburg, Virginia 20177-1000

Dear Mr. Zurn:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## **Issues Presented**

You ask whether state asset forfeiture funds must be received and held by the county treasurer for the use of the sheriff or whether the sheriff may receive and hold such funds in a separate account under his management without the oversight of the county treasurer. Next, you ask the same questions regarding federal asset forfeiture funds. You further inquire whether a sheriff may have his own "treasury" as an "agency" separate and apart from the locality he serves. Finally, you ask whether the guidelines of the Department of Criminal Justice Services require asset forfeiture funds to be paid to law-enforcement agencies only or whether such funds may be placed into a county account.

## **Response**

It is my opinion that the county treasurer is responsible for receiving any asset forfeiture funds, which must be held and used only for law-enforcement purposes. It further is my opinion that a sheriff may not establish a separate account or "treasury" for such funds separate and apart from the locality he serves. Finally, it is my opinion that the guidelines of the Department of Criminal Justice Services do not require that asset forfeiture funds be paid only to law-enforcement agencies, but such funds only may be used for law-enforcement purposes.

## **Applicable Law and Discussion**

Chapter 22.1 of Title 19.2, §§ 19.2-386.1 through 19.2-386.14, governs forfeiture of assets. Section 19.2-386.14 provides that:

B. Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department [of Criminal Justice Services] for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total

law-enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share *directly to the appropriate treasury* of the participating agency.

....

D. *All forfeited property*, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section *shall be used to promote law enforcement* but shall not be used to supplant existing programs or funds. The [Criminal Justice Services] Board shall promulgate regulations establishing an audit procedure to ensure compliance with this section. [Emphasis added.]

The powers and duties of a treasurer are set out generally in Article 2, Chapters 31, §§ 58.1-3123 through 58.1-3172.1, and 39, §§ 58.1-3910 through 58.1-3939, of Title 58.1. Section 58.1-3127(A) provides that:

Each treasurer shall receive the state revenue and the levies and other amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer. Such treasurer shall account for and pay over the revenue received in the manner provided by law.

Additionally, 58.1-3127.1 provides, in part, that:

All amounts to be received or expended by any department or agency, or department or agency head, of a political subdivision of the Commonwealth by virtue of a federal grant, gift, or forfeiture or other disposition of federal funds shall be made payable to the treasury or treasurer of the political subdivision and shall not be made payable to such department or agency, or department or agency head.

Finally, § 15.2-1615(A) directs a sheriff to promptly deposit all monies received with the county or city treasurer except

that the sheriff shall maintain an official account for (i) funds collected for or on account of the Commonwealth or any locality or person pursuant to an order of the court and fees as provided by law and (ii) funds held in trust for prisoners held in local correctional facilities, in accordance with procedures established by the Board of Corrections pursuant to § 53.1-68.

The applicable rule of statutory construction requires that words be given their ordinary meaning, given the context in which they are used.<sup>1</sup> The words used in § 19.2-386.14(B) express the clear intent of the General Assembly that all asset forfeiture funds be paid to and received by the appropriate treasury of the participating agency. The appropriate treasury for a county sheriff is the county treasury. Therefore, because asset forfeiture funds do not meet the requirements in § 15.2-1615(A) for a sheriff's official account, the asset forfeiture funds must be deposited into the county treasury. Section 19.2-386.14(D), however, requires that any funds received by a law-enforcement agency through the asset forfeiture

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<sup>1</sup>Va. Beach v. Bd. of Supvrs., 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993).

sharing program “be used to promote law enforcement but shall not be used to supplant existing programs or funds.”

A treasurer is responsible for collecting taxes and other revenues payable into the treasury of the locality served by the treasurer.<sup>2</sup> The treasurer is required to “account for ... the revenue received in the manner provided by law.”<sup>3</sup> Therefore, the role of the treasurer is to receive, distribute, and account for the asset forfeiture funds for law-enforcement purposes.

You also inquire regarding the receipt, distribution, and accounting of federal asset forfeiture funds. I note that the authority to share federally forfeited property with state and local law enforcement agencies is vested with the Attorney General of the United States (“Attorney General”).<sup>4</sup> The exercise of this authority is discretionary.<sup>5</sup> Should the Attorney General exercise his discretionary authority to share federally forfeited property with state and local law-enforcement agencies, he has “pre-approved” a number of expenses as permissible uses of shared funds and property.<sup>6</sup> All of the shared funds and property must supplement and not supplant existing resources of the law-enforcement agency.<sup>7</sup> The pre-approved uses provide that “priority should be given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures.”<sup>8</sup>

Therefore, it is clear that the Attorney General’s requirement regarding use of federally forfeited funds shared with state and local law-enforcement agencies is similar to the requirements of the Criminal Justice Services Board. Federally forfeited funds that are shared with local law enforcement agencies must be used only for law-enforcement purposes, with priority given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures.<sup>9</sup> In addition, the Attorney General requires that the shared federally forfeited funds be maintained in a separate revenue account that is used solely for federal sharing proceeds.<sup>10</sup> Thus, the role of a county treasurer, with reference to federal sharing proceeds, is also to receive, distribute, and account for asset forfeiture funds for law-enforcement purposes.<sup>11</sup>

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<sup>2</sup> See § 58.1-3127(A) (2004) (mandating that treasurer receive state revenue and levies and other amounts payable to such treasury); § 58.1-3910 (2004) (mandating that county treasurer receive local taxes and other amounts payable to such treasury).

<sup>3</sup> Section 58.1-3127(A).

<sup>4</sup> See 18 U.S.C.A. § 981(e)(2) (West 2000); 19 U.S.C.A. § 1616a(c)(B)(ii) (West 1999); 21 U.S.C.A. § 881(e)(1)(A), (e)(3) (West 1999).

<sup>5</sup> U.S. DEP’T OF JUST., A GUIDE TO EQUITABLE SHARING OF FEDERALLY FORFEITED PROPERTY FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES, § I, (Mar. 1994), available at <http://www.usdoj.gov/criminal/afmls/publications/guidetoeq.pdf> [hereinafter “GUIDE”].

<sup>6</sup> See *id.* § X(A)(1), (3).

<sup>7</sup> See *id.* § X(B).

<sup>8</sup> *Id.* § X(A)(1).

<sup>9</sup> See *supra* notes 4 and 8 and accompanying text.

<sup>10</sup> See GUIDE, *supra* note 5, at § XI, apps. C-D.

<sup>11</sup> See *id.* apps. C-D.

Finally, you inquire whether a sheriff may maintain his own treasury for asset forfeiture funds. A sheriff is an independent constitutional officer whose duties “shall be prescribed by general law or special act.”<sup>12</sup> The Commonwealth follows the Dillon Rule of strict construction<sup>13</sup> that local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.<sup>14</sup> The Dillon Rule is applicable to constitutional officers.<sup>15</sup> As a general rule, the duties of a sheriff and his deputies are regulated and defined by statute.<sup>16</sup> As previously discussed, §§ 58.1-3127(A), 58.1-3127.1, and 15.2-1615(A) preclude a separate treasury for asset forfeiture funds. Furthermore, § 15.2-1615(A) provides only limited circumstances in which a sheriff may maintain an official account. Consequently, a sheriff may not maintain his own treasury account for asset forfeiture funds or for any purpose unless authorized by statute.

### Conclusion

Accordingly, it is my opinion that the county treasurer is responsible for receiving any asset forfeiture funds, which must be held and used only for law-enforcement purposes. It further is my opinion that a sheriff may not establish a separate account or “treasury” for such funds separate and apart from the locality he serves. Finally, it is my opinion that the guidelines of the Department of Criminal Justice Services do not require that asset forfeiture funds be paid only to law-enforcement agencies, but such funds only may be used for law-enforcement purposes.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:1358; 1:213; 1:941/08-040

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<sup>12</sup>VA. CONST. art. VII, § 4; VA CODE ANN. § 15.2-1600(A) (2003) (parallel statute).

<sup>13</sup>See *Commonwealth v. County Bd.*, 217 Va. 558, 573, 232 S.E.2d 30, 40 (1977); *City of Richmond v. Bd. of Supvrs.*, 199 Va. 679, 684-85, 101 S.E.2d 641, 644-45 (1958).

<sup>14</sup>See, e.g., *Op. Va. Att’y Gen.*: 2007 at 53, 54; 2006 at 200, 201; 1987-1988 at 146, 146.

<sup>15</sup>See, e.g., *Op. Va. Att’y Gen.*: 2006, *supra* note 14, at 201; 1984-1985 at 284, 284.

<sup>16</sup>See *Hilton v. Amburgey*, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); *Narrows Grocery Co. v. Bailey*, 161 Va. 278, 284, 170 S.E. 730, 732 (1933).