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ATTORNEY GENERAL OPINION NO. 2013- 10

Natalie Randall, County Attorney
Office of the Ford County Attorney
Government Center
100 Gunsmoke, P.O. Box 1057
Dodge City, KS 67801

Re: Procedure, Civil—Asset Seizure and Forfeiture—Disposition of Forfeited Property; Use of Proceeds of Sale

Synopsis: Asset forfeiture funds may be used to pay for victim or witness relocation if the prosecutor determines the expenditure is for an additional law enforcement and prosecutorial purpose or the head law enforcement officer determines the expenditure is for a special, additional law enforcement purpose and the expenditure is not used to supplant normal expenditures. In addition, counties are not prohibited from agreeing to pay certain expenses for such victim or witness relocation so long the appropriate official in each county determines the expenditure meets the applicable statutory requirement. Cited herein: K.S.A. 60-4101; 60-4102; and K.S.A. 2012 Supp. 60-4117.

* * *

Dear Ms. Randall:

As Ford County Attorney, you ask for our opinion on whether moneys obtained through the Kansas Standard Asset Seizure and Forfeiture Act (the Act),¹ may be used to pay for costs associated with relocating witnesses and victims of gang violence who, presumably, are necessary to the investigation and/or prosecution of a criminal offense.

¹ K.S.A. 60-4101 *et seq.*

You anticipate the relocation costs to include the cost of movers, fuel, rental deposits, first month's rent, and similar costs. Additionally, you ask whether counties are authorized to pool forfeiture funds to pay for such victim or witness relocation costs pursuant to an interlocal agreement² or other method in order to accomplish the same task.

We look to the Act to determine the permissible use of proceeds from the sale of forfeited property. You direct our attention to the statute within the Act that authorizes the creation of a "special prosecutor's trust fund"³ and a "special law enforcement trust fund."⁴ While the provisions are similar, the standard used to measure the prosecutors' discretion and the law enforcement officers' discretion is slightly different. Therefore, we will address each fund separately. We note that our research revealed no cases that resolved or decided the questions presented.

Special Prosecutor's Trust Fund

The statute that provides for the establishment of a special prosecutor's trust fund, K.S.A. 2012 Supp. 60-4117, provides:

(c) The proceeds of any sale shall be distributed in the following order of priority:

...

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such *additional law enforcement and prosecutorial purposes* as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future

² See K.S.A. 12-2901 *et seq.*

³ K.S.A. 2012 Supp. 60-4117(c)(3)(A).

⁴ K.S.A. 2012 Supp. 60-4117(d)(2) and (3).

forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget.⁵

We interpret the statutes in accordance with rules of statutory construction employed by the courts.

"The fundamental rule of statutory construction is to ascertain the legislature's intent. The legislature is presumed to have expressed its intent through the language of the statutory scheme. Ordinary words are given their ordinary meanings. A statute should not be read to add language that is not found in it or to exclude language that is found in it. When a statute is plain and unambiguous, the court must give effect to the legislature's intent as expressed rather than determining what the law should or should not be."⁶

With regard to your first question, whether forfeiture funds from the special prosecutor's trust fund may be used to pay for victim or witness relocation costs, the language of K.S.A. 2012 Supp. 60-4117(c)(3)(A) is plain and unambiguous and simply requires the application of law to the facts. Forfeiture funds held in a special prosecutor's trust fund may be used for relocation expenses if (1) the prosecutor deems it appropriate, (2) the expenses are supplemental to normal operating expenses, and (3) the expenses are for additional⁷ law enforcement and prosecutorial purposes. In this case, relocation expenses for victims and witnesses of gang violence are not normal operating expenses for a prosecutor's office. Further, assuming that testimony from the victims and witnesses is important to the prosecutor's case, such expenses would serve additional law enforcement and prosecutorial purposes by protecting witnesses. Under these circumstances, if the prosecutor deems the relocation expenses appropriate, then they may be paid from the special prosecutor's trust fund.

With regard to your second question, whether it is permissible for counties to pool or aggregate their forfeiture funds pursuant to an interlocal agreement or other method to pay for costs of victim or witness relocation, we turn to the plain language of the statute. The funds authorized by statute that pertain to the disposition of forfeiture proceeds to a county or district attorney or where the law enforcement agency is a city or county agency are the special prosecutor's trust fund and the special law enforcement trust fund.⁸ The creation of any *fund* between counties using forfeiture funds is *not* authorized because the statute does not provide for it. Therefore, any agreement that

⁵ Emphasis added.

⁶ *State v. Bryan*, 281 Kan. 157, 159 (2006).

⁷ The word "additional" is not defined in the phrase "additional law enforcement and prosecutorial purposes." Thus, "additional" means supplemental when we apply the common, ordinary meaning of the word. Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/additional>, accessed April 22, 2013.

⁸ Although not applicable to your question, we state for clarity that K.S.A. 2012 Supp. 60-4117(c)(3)(B) authorizes proceeds to be credited to the Medicaid fraud prosecution revolving fund when the plaintiff's attorney is the Attorney General. Additionally, if the law enforcement agency is a state agency, K.S.A. 2012 Supp. 60-4117(d)(1) authorizes proceeds to be credited to such agency's state forfeiture fund.

contains a provision that requires moneys from a forfeiture fund to go into another fund to be pooled or aggregated is not authorized.⁹

You asked whether the agreement may take the form of an interlocal agreement. Interlocal agreements permit a public agency to cooperate with one or more public or private agencies to provide services, programs and facilities that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. In our opinion, interlocal agreements may not be used to pool or aggregate forfeiture funds because the creation of another fund is not authorized by statute.

That is not to say that all agreements are prohibited. We opine that prosecutors with a special prosecutor's trust fund may agree to pay for certain expenses for victim or witness relocation if each prosecutor in each of the participating counties independently makes the required findings that expenditure of forfeiture funds is permissible. There is no language in the statute that prohibits the expenditure of the forfeiture funds outside of the jurisdiction of the prosecutor. The prosecutor need only determine, in his or her discretion, that such disbursement is appropriate, supplemental to normal operating expenses and for additional prosecutorial or law enforcement purposes.

We conclude that under these circumstances, an agreement between counties to pay certain costs of relocating victims and witnesses from each county's special prosecutor's trust fund is not prohibited by the statute and further promotes the original purposes served by the Act.¹⁰

Special Law Enforcement Trust Fund

The statute that provides for a special law enforcement trust fund, K.S.A. 2012 Supp. 60-4117, provides:

(d) Any proceeds remaining [from the disposition of forfeited property] shall be credited as follows, *subject to any interagency agreement*.

...

⁹ If the statutory language is clear, no need exists to resort to statutory construction. *Graham v. Dokter Trucking Group*, 284 Kan. 547, 554 (2007).

¹⁰ "Asset forfeiture is an effective tool as it has multiple remedial benefits: (1) it removes the offending property be it guns or cash, so that it can't be used to commit future crimes; (2) it serves as a deterrent not only to the criminal who loses his ill-gotten gains, but to the youth who also see that drug dealing is not an easy way to riches; (3) it destroys the ability of an illegal enterprise to compete against or corrupt legitimate commerce; and (4) it turns illegal profits and equipment into badly needed resources for law enforcement agencies." Attorney General Robert T. Stephan's "Task Force on Asset Forfeiture," Final Report, January 11, 1993.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in...the special law enforcement trust funds...shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such *special, additional law enforcement purposes* as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.¹¹

Again, with regard to your first question, whether forfeiture funds may be used to pay for victim or witness relocations costs from the special law enforcement trust fund, the language in K.S.A. 2012 Supp. 60-4117(d)(2) and (3) is plain and unambiguous and simply requires the application of law to the facts. Forfeiture funds held in a special law enforcement trust fund may be used for relocation expenses if (1) the head of the law enforcement agency deems it appropriate, (2) the expenses are not normal operating expenses and are special,¹² and (3) the expenses are for additional law enforcement purposes. In this case, relocation expenses for victims and witnesses of gang violence are not normal operating expenses for a law enforcement agency. These expenses are not the usual expenses requested to be covered by forfeiture funds, even though such expenses fall within the broad categories of case-related expenses or investigative expenses. Again, assuming that testimony from the victims and witnesses is important to the investigation or prosecution of the case, such expenses would serve additional law enforcement purposes by protecting witnesses. Under these circumstances, if the head of the law enforcement agency deems the relocation expenses appropriate, then they may be paid from the special law enforcement trust fund.

With regard to your second question, whether pooling of law enforcement trust funds is authorized, we conclude that the plain reading of the statute does not authorize the creation of another fund. Therefore, pooling of funds is not authorized.

¹¹ Emphasis added.

¹² The word "special" in the phrase "special, additional law enforcement purposes" is not defined. Thus, "special" means distinguished by some unusual quality when we apply the common, ordinary meaning of the word. Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/special?show=0&t=1366625746>, accessed April 22, 2013.

We opine that heads of law enforcement agencies with a special law enforcement trust fund may agree to pay for certain expenses for victim or witness relocation if each official in each of the participating city or county independently makes the required findings that expenditure of forfeiture funds is permissible. There is no language in the statute that prohibits the expenditure of the forfeiture funds outside of the jurisdiction of the head law enforcement official. The official need only determine, in his or her discretion, that such disbursement is appropriate, supplemental to normal operating expenses and for special, additional law enforcement purposes.

We point out that K.S.A. 2012 Supp. 60-4117(d) specifically contemplates interagency agreements. The statute provides for the forfeiture proceeds to be credited to the various state, county, and city law enforcement agencies, *subject to any interagency agreement*. The plain reading of the phrase means that if there is an interagency agreement, that agreement is satisfied first in order to arrive at the amount of proceeds that are "remaining" to be distributed according to the statute. The important point here is that such agreements are authorized and can be used to accomplish the task of paying expenses of victim or witness relocation by more than one special fund.

Conclusion

We conclude that asset forfeiture funds may be used to pay for victim or witness relocation if the prosecutor determines the expenditure is for an additional law enforcement and prosecutorial purpose or the head law enforcement officer determines the expenditure is for a special, additional law enforcement purpose and the expenditure is not used to supplant normal expenditures. We also conclude that counties are not prohibited from agreeing to pay expenses for such witness relocation, so long as the appropriate official in each county determines that the expenditure meets the applicable statutory requirement and the forfeiture money is used to pay the expense directly and not pooled into a fund.

Sincerely,

Derek Schmidt
Attorney General

Athena E. Andaya
Deputy Attorney General