



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

November 2, 1988

Thelma R. Kolodziej  
Clerk of the District Court  
Gem County  
415 E. Main Street  
Emmett, ID 83617

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Drug Enforcement Donation Account

Dear Ms. Kolodziej:

Your recent letter requests our advice as to how a county should handle and maintain drug enforcement forfeiture monies "donated" to the Gem County Sheriff as a result of a court ordered forfeiture. The outside auditors for Gem County have assisted the sheriff in establishing a checking account for the money under the control of the sheriff and separate from normal county budget and finance procedure. Specifically, you ask:

Does the Sheriff keep these monies in a separate regular checking account for his office, or should this go into the Auditor's office and be designated as "Drug Enforcement Donation Trust Account" under Idaho Code § 37-2744, to be used at the discretion of the Sheriff?

Based upon our analysis of Idaho Code title 31, chapters 15, 16, 21, 22 and 23, title 18, chapter 57, and § 37-2744, a county sheriff cannot keep drug forfeiture funds in a separate regular checking account but must treat and account for such money as public money as any other county officer would be obligated to do.

Thelma R. Kolodziej  
November 2, 1988  
Page 2

Idaho Code § 37-2744 provides for the forfeiture of property used in aid of a violation of the Uniform Controlled Substances Act. The director of the Idaho Department of Law Enforcement can recommend and the court can order such "property forfeited in whole or in part, to a city or county the law enforcement agency of which participated in the events leading to the seizure of the property. Upon such order, the city or county shall use the property for drug enforcement purposes consistent with this act." Idaho Code § 37-2744(e)(4). This statute clearly states that any money or other property forfeited belongs to the city or county for use in their drug enforcement efforts.

Unless otherwise provided by law, all money received by or paid to a county officer must be turned over to the custody of the county treasurer until disbursed according to law. Idaho Code §§ 31-2101 and 31-2119. The county auditor is obligated to keep current accounts of all such public money. Idaho Code § 31-2304.

Drug forfeiture money received as a result of the procedure set forth in § 37-2744 clearly meets the definition of money which must be turned over to the county treasurer. Nothing in this section or in title 31, chapter 22, covering the duties of the county sheriff, allows the establishment of an account outside the usual procedures required in county budget and finance law.

Public money is defined as all money belonging to the state or any city, county or district and all money received by any officer of the state or of any city, county or district. Idaho Code § 18-5703. This definition includes all money coming into the hands of any officer in his official capacity or because of his position. State v. Bell, 84 Idaho 153, 370 P.2d 508 (1962). Failure of a county officer to properly account for and promptly pay over public money when required constitutes misuse of public money and could result in criminal action against the officer. Idaho Code §§ 18-5701, 18-5702 and 18-5704.

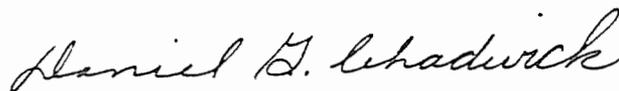
Thus, when a county sheriff receives drug forfeiture money from the courts or through a grant from the drug donation enforcement account established by § 57-816, he must turn the funds over to the county treasurer for custody. Idaho Code § 31-2119. The county auditor, as you suggest, is then obligated to establish a dedicated account to be used at the discretion of

Thelma R. Kolodziej  
November 2, 1988  
Page 3

the county but within the limitations imposed by Idaho Code § 37-2744. At no time should the sheriff maintain a separate account for these funds. Also, it is important that these funds be taken into consideration and addressed in the regular county budget and finance process. Title 31, chapters 15 and 16.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,



DANIEL G. CHADWICK  
Chief, Intergovernmental  
Affairs Division

DGC/mkf

cc: Charles J. Holden, IAC  
Sheriffs' Association  
Bill McConnell  
Bry Behrmann