



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 23, 1998

Investigator T. K. Davis
Spartanburg Department of Public Safety
Narcotics and Organized Crime Unit
145 Broad Street
Spartanburg, South Carolina 29306

Re: Informal Opinion

Dear Investigator Davis:

You have sought an opinion concerning "the division of seized gambling money after the case is disposed of." By way of background, you provide the following:

[f]or example, does the money go to the seizing agency or does it go to the general fund of the city or county government depending whether or not the seizing agency is City Police or the Sheriff's Department. In S.C. State Statute 16-19-80 there are no guide lines set forth in the handling of seized gambling money and property like [there] ... are for narcotics. This Department needs to know what type of guide lines we are to follow since our Solicitor's office cannot give us a solid answer.

In regards to the filing fee for seized monies and property due to a narcotics investigation, what statute states or requires that a law enforcement agency to pay the filing fee, since the seizure is part of an investigation and now the assessor's office is charging for information due to an investigation, on the ownership of property, etc. The latter part of the question may not be a legal question, but it is an

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example of another stumbling block that is taken away from the budget and the hindrance to having a good investigation.

Law / Analysis

With respect to your first question, this issue has been addressed in some detail in an Informal Opinion of this Office, dated September 22, 1997. A copy of that Opinion is enclosed for your review. The Opinion referenced § 16-19-80 and the case of State v. Petty, 270 S.C. 206, 241 S.E.2d 561 (1978). In Petty, pursuant to a search warrant, AFT and SLED agents searched the residence of the appellant. Found was gambling paraphernalia, as well as checks and cash. The lower court concluded that the currency and cash was forfeited to the State because it was money "staked, betted or pending" within the meaning of § 16-19-80. The South Carolina Supreme Court upheld the Circuit Court's ruling, describing the proceeding as follows:

[a]n action for forfeiture of property is civil in nature. \$3,265.28 In U.S. Currency v. District of Columbia, D.C. App., 249 A.2d 516 (1969); 36 Am.Jur.2d, Forfeitures and Penalties, § 17 (1968). It is an in rem proceeding against the property itself. U.S. v. Three Thousand Two Hundred Thirty-Six Dollars, 167 F.Supp. 495 (D. Alaska 1958); 36 Am.Jur.2d, supra. Being civil in nature, it is only necessary that the State prove its case by a preponderance of the evidence. \$3,265.28 In U.S. Currency v. District of Columbia, supra. In a civil action at law, on appeal of a case tried without a jury, this Court's scope of review is limited to a determination of whether there is evidence which reasonably supports the challenged findings of the judge

241 S.E.2d at 562. Thus, the Court concluded:

[f]rom the evidence it is reasonable to conclude that the appellant was conducting a substantial gambling operation from his residence. Given the scale of this operation as evidenced by the variety of quantity of gambling devices found in various locations in the appellant's residence and their close proximity to the large sums of money, it is not unreasonable to infer that the substantial and unexplained amounts of money seized were an integral part of or derived from these gambling activities.

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The Informal Opinion recommended the following course of action:

[i]n my view if the money or property seized at a cockfight can be shown to be an "integral part of" or the "fruits of gambling" it is subject to seizure and forfeiture pursuant to Section 16-19-80. I would suggest that you consult with your County Attorney regarding any civil forfeiture action to be brought on behalf of the county and in the name of the county for forfeiture of property which is related to a gambling operation. The distribution of such proceeds is governed by Section 14-1-205 et seq. as recently amended by Act No. 141 of 1997.

Thus, it is my view as stated in the earlier Informal Opinion, that the distribution of proceeds would be governed by Section 14-1-205 et seq. I would suggest that you read the Informal Opinion carefully and discuss the matter with your local attorney. I would be happy to discuss any additional questions which you may have.

With respect to the costs of filing fees for drug forfeiture actions, I refer you to § 44-53-530 which provides in part that

[f]orfeiture of property defined in Section 44-53-520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized.

I find nothing in § 44-53-530 which addresses the question of filing fees. The only prior opinion of this Office which I have found which is relevant to this question is the Opinion of December 12, 1988. Such Opinion concerned filing fees for forfeiture of motor vehicles and stated as follows:

I am unaware of any separate provision granting an exception to the payment of filing fees to a clerk of court by law enforcement officials, such as the exception of Section 8-21-810 of the Code which states "(n)o cost or fee shall be payable to probate courts for any item or copy requested by a county officer." Admittedly, the payment of fees by county law enforcement agencies to a county clerk of court would not result in any revenue gain by a county inasmuch as the fees

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paid to a clerk of court are paid into the general fund of a county. See: Section 8-21-300 of the Code. However, in the absence of an exception clearly stating that such fees are not to be paid by law enforcement agencies in a confiscation or forfeiture proceeding initiated pursuant to Section 26, it appears that such fees could be sought. However, consistent with the provision cited earlier stating that no additional fee is to be charged for filing other papers in the same action, it appears that only one filing fee should be charged in such a proceeding.

Again, I am unaware of any exception with respect to the filing fee required in a drug forfeiture proceeding. I would note, however, that such petitions are statutorily required to be filed by the Circuit Solicitor or his "designee." The only thing I might suggest is that you discuss this matter with your local attorney and the Circuit Solicitor.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosure