S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
P. O. BOX 20207
NASHVILLE, TENNESSEE 37202-0207

December 2, 2002

Opinion No. 02-130

Use of Drug Forfeitures for Police Training

QUESTION

Do the provisions of Tenn. Code Ann. §§ 39-17-420 and 40-33-211 allow the member agencies of the Tennessee Association of Police Chiefs to use one percent of the funds they receive from drug forfeitures pursuant to Tenn. Code Ann. §53-11-451 to pay for the expenses of outside speakers and trainers participating in a continuous training program for the benefit of all municipal law enforcement agencies of Tennessee?

OPINION

Yes, provided such expenditures are not for supplementing salaries of public employees or law enforcement officers or for long-term obligations that recur, including salaries.

ANALYSIS

Introduction

The Tennessee Drug Control Act of 1989 provides for the forfeiture of controlled substances, containers, conveyances, and other property of value furnished or intended to be furnished in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989. As pointed out in the request, there are two statutes that set parameters for law enforcement's use of funds resulting from such drug forfeitures. Tenn. Code Ann. § 39-17-420 provides, in pertinent part, as follows:

> All fines and forfeitures of appearance bonds received because of a violation of any provision of this part and the proceeds of goods seized and forfeited under the provisions of § 53-11-451 and disposed of according to law, shall be accounted for in a special revenue fund of the jurisdiction that initiated the arrest. . . . Moneys in the special revenue fund may be used only for the following purposes:

> (A) Local drug enforcement program;
> (B) Local drug education program;
> (C) Local drug treatment program; and
> (D) Nonrecurring general law enforcement expenditures.

Tenn. Code Ann. § 39-17-420(a)(1) (2001). The recited portion became effective in 1997.

The use of funds resulting from forfeitures pursuant to section 53-11-451 is also addressed by Tenn. Code Ann. §40-33-211, which provides, in pertinent part, as follows:

> The proceeds from all seizures, confiscations and sales made by a state agency pursuant to the provisions of §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-403(k), 57-3-411, 57-5-409, 57-9-201, 67-4-1020, and 70-6-202, shall be transmitted to the state treasurer and deposited in the state treasury. All such seizures, confiscations and sales made by county or municipal law enforcement personnel shall be paid to the county trustee or city recorder, respectively, and shall be used exclusively for the benefit of the seizing county or municipality for law enforcement or drug education purposes.

Tenn. Code Ann. §40-33-211(a).[1]

Thus section 40-33-211 on its face allows use of drug forfeiture proceeds "for the benefit of the seizing county or municipality for law enforcement or drug education purposes." The sole substantive proviso as to use is that such funds "shall not be used to supplement the salaries of any public employee or law enforcement officer." Tenn. Code Ann. § 40-33-211(b). The pertinent portion of the statute relevant to this analysis was effective in 1994.

One statute, § 40-33-211, therefore, allows use of drug seizure funds for any law enforcement purpose other than salaries. Thus under this statute, the proposed use of the funds to pay the expenses of outside speakers and trainers in a continuous training program for municipal law enforcement officers would be permissible.

---

[1] The other sections named in the statute relate to proceeds from non-drug forfeitures. For example, section 39-14-307 deals with forfeiture of vehicles and property used in the commission of arson and related offenses. Section 47-25-1105(5) deals with personal rights protection and section 55-10-403 deals with DUI forfeitures.

The later statute, § 39-17-420, permits the use of such funds for general law enforcement expenditures only if they are nonrecurring.[2] The analysis must proceed to whether payment of expenses for speakers and trainers for a continuous training program out of drug forfeitures is permissible under this statute.[3]

Tennessee courts have promulgated two cardinal rules of statutory construction. "The cardinal rule of statutory construction is to follow the plain meaning of the statute where the language is clear and unambiguous on its face." *Jackson v. General Motors Corp.*, 60 S.W.3d 800, 804 (Tenn. 2001). "The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aids to that end." *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). "Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Hamblen County Educ. Ass'n v. Hamblen County Bd. of Educ.*, 892 S.W.2d 428, 431 (Tenn. Ct. App. 1994) (citing *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). Thus, "If a statute is unambiguous, legislative intent is to be determined from the face of the statute . . . It is not for the courts to question the wisdom of legislative enactment." *Id*. at 432.

As this office has previously stated, "The language of Tenn. Code Ann. § 39-17-420(a)(1) is clear and unambiguous". Op. Tenn. Atty. Gen. No. 99-202 (Oct. 6, 1999). This statement was made in regard to limitations on the use of drug seizure proceeds. This "language" mandates that drug seizure monies can only be used for nonrecurring general law enforcement expenditures and drug enforcement, education, and treatment programs. Op. Tenn. Atty. Gen. No. 99-202 specifically rejects the use of such funds to pay salaries of non-drug law enforcement personnel because these are recurring. The statute appears to allow payment for outside speakers' and trainers' expenses in a continuous training program, if such are nonrecurring. The statute would, however, prohibit using the funds for such expenses if they are regularly recurring as the result of long-term obligations or salaries.

Assuming that the proposed training program does not involve supplementing salaries of any public employee or law enforcement officer, it would not run afoul of Tenn.Code Ann. §40-33-211. Use of the funds as proposed would likewise not violate Tenn. Code Ann. §39-17-420 so long as such does not involve payment of long-term obligatory recurring expenses.

---

[2] Use of proceeds from fines and appearance bond forfeitures under title 39, part 17, is governed by section 39-17-420. These are not "drug seizure funds." Thus these funds can only be used for *nonrecurring* law enforcement expenses or for *local* drug enforcement, education, and treatment programs.

[3] Op. Tenn. Atty. Gen. No. 99-202 dealt with payment of salaries and the same two statutes. The opinion notes that salaries are recurring expenditures. 1999 WL 1012981, *2(Tenn. A.G.). In Op. Tenn. Atty. Gen. No. 97-037(April 12, 1997), this office examined the same statutes in reaching a conclusion that drug forfeiture funds resulting from county or municipal law enforcement efforts may not be used for private drug education.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

RICHARD H. DUNAVANT
Assistant Attorney General

Requested by:

Honorable Ben Atchley
State Senator
305 War Memorial Bldg
Nashville, Tennessee 37243-0206