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Major Dan Ransone
Sunrise Police Department

11 June 2021

Re: Donation of Forfeiture Funds

Dan,

This letter is in response to a request for a legal opinion outlining the statutory authority and requirements allowing for donations from Forfeiture (specifically LETF) money. My opinion is based on the following: a review the relevant Florida Statutes; a review of the entities seeking donations; and the information provided to the City from those entities documenting the expenditure of money received in previous years. Please read carefully below to ensure that I have properly summarized the facts and answered the question posed. If you have any further questions, please notify me immediately.

Facts:

The Sunrise Police Department has received requests for donations specifically from forfeiture funds held in the Law Enforcement Trust Fund. The Department has typically granted these requests when received with documentation in accord with FSS 932.7055. The Department has money in its LETF account to grant the requests if they are deemed appropriate by the Chief. The Chief would like an opinion on what documentation is necessary for him to certify such donations.

Question:

Is there a legal impediment to the donation of LETF Forfeiture Funds in the above described scenario? If not, what due diligence is required prior to certification by the Chief?

Answer/Opinion:

Florida Chapter 932 is the chapter that authorizes and regulates forfeiture seizures and expenditures. Donations are considered an expenditure and are regulated in the same manner as forfeiture expenditures by the Department. The Department may utilize forfeiture funds for "authorized" or permissible expenditures only. Donations are a permissible expenditure[1] but "an agency or organization, other than the seizing agency, that wishes to receive such funds" must utilize the donated funds for an authorized purpose in the same manner as the donating agency.

[1] In fact, per FSS 903.7055(5)(c)3 donations are a required expenditure for any "agency that acquires at least $15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year." Such agencies must "expend or donate no less than 25 percent of such proceeds for the support" of authorized purposes.

FS 932.7055(5)(c) requires a requesting organization to apply "to the chief of police for an appropriation and its application ***shall be*** accompanied by a written certification that the moneys will be used for an authorized purpose." The requesting organization is also required "to include a statement describing anticipated recurring costs for the agency for subsequent fiscal years." Any agency or organization that "receives money pursuant to this subsection ***shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds."***

Subsection (c)1 states: "Such funds may be used ***only*** for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate."

Subsection (c)2 states: "Such funds ***shall not be a source of revenue to meet normal operating needs*** of the law enforcement agency."

Subsection (c)3 states in relevant part: "The local law enforcement agency has the discretion to determine which program or programs will receive the designated proceeds."

As always, all expenditures "may be expended upon request by . . . the chief of police to the governing body of the municipality, ***accompanied by a written certification that the request complies with the provisions of this subsection."***[2]

Therefore, a statutory rubric can be created by which the Department can scrutinize requests for donations. Each requesting organization should be required to:

1. Apply to the Chief in writing for an appropriation;
2. The application must certify the money will be used for an authorized purpose;
3. The application must describe anticipated recurring costs for the requesting agency;
4. The requesting organization must provide an accounting for such money;
5. The accounting method shall be the same as an agency that receives public funds.

[2] 932.7055(5)(b) These funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.

Another rubric should be created to show due diligence by the Department/Chief in certifying the money is actually being allocated and used for an authorized purpose. Each request should be scrutinized in the following manner:

1. The requesting entity should be a not for profit entity;
2. The requesting entity should be an active and lawfully created entity within the State;
3. The requesting entity should be current in all licensing/taxes/required registration fees;
4. The requesting entity's application should be scrutinized to ensure money is accounted for and expended within the statutory requirements and not being used for normal operating expenses;
5. The request should be scrutinized to be free of conflicts of interests[3];
6. The request should not directly benefit any employee or family member of the City[4].

Applying the above stated rubrics to the donation requests allows the Department to be transparent in either its approval of a donation request or its denial of such request.

Application

I have applied the rubrics above in my analysis of the requests sent to me for review. My findings are broken out by each requesting agency and the documentation provided.

Learning for Success, Inc.

There is a request from Learning for Success, Inc. It meets some of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent. The request includes an attached "accounting." The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric Learning for Success, Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in January of 2021. The IRS shows the required 990 tax form last filed in 2017. If taxes are not current it could put the not-for-profit designation in jeopardy. The letter of request is dated "July 29, 2019" for a donation in fiscal 2021. The "accounting" does not list the applicant's name[5] and reflects what appear to be normal operating expenses. If so, this would not be in accord with the stated certification within the letter. The Chief should consider all of these factors in considering certifying this request.

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[3] I am not in a position to opine on conflicts of interests or direct benefits to employees so there will be no analysis in these areas. This should be an internal process.

[4] See footnote 3 above.

[5] The accounting lists KAPOW as the benefiting agency/program but no tie to Learning for Success is established.

Kiwanis Club of Greater Sunrise in Broward Foundation, Inc.

There is a request from Kiwanis Club of Greater Sunrise in Broward Foundation, Inc.[6] It satisfies most of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent. The request includes an attached "accounting." The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric Kiwanis Club of Greater Sunrise in Broward Foundation, Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in April of 2021. The IRS shows the required 990 tax form filed with the last tax form filed in 2020. The letter of request is dated "December 7, 2020" for a donation in fiscal 2021. The letter certifying the proper use of previous donations includes an "accounting" of those funds and delineates with specificity each expense. The expenses do not appear to be normal operating expenses of the Kiwanis Club. The letter states that the money was used to give scholarships to five students. This expense is laudable but it must be determined if it fits within the statutory requirements. The Chief should consider all of these factors in considering certifying this request.

First Call for Help of Broward, Inc.

There is a request from First Call for Help of Broward, Inc. It meets some of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent. The request includes an attached "accounting." The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric First Call for Help of Broward, Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in January of 2021. The IRS shows the required 990 tax forms filed with the last tax form filed in 2020. The letter of request is dated "December 7, 2020" for a donation in fiscal 2021. The "accounting" directly reflects what appears to be a normal operating expense of the entity. If so, this would not be in accord with the stated certification within the letter. The Chief should consider all of these factors in considering certifying this request.

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[6] There is also an active registration in Florida for "Kiwanis Club of Greater Sunrise in Broward" but that entity has not filed 990 tax forms in over three years and is no longer eligible to receive charitably deductible donations. This seems to coincide with the creation of the "Kiwanis Club of Greater Sunrise in Broward Foundation, Inc." and is likely simple name change by this respected entity.

Crime Stoppers Council of Broward County, Inc.

There is a request from Crime Stoppers Council of Broward County, Inc. It satisfies most of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent. The request includes an attached "accounting." The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric Crime Stoppers Council of Broward County, Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in January of 2021. The IRS shows the required 990 tax forms filed with the last tax form filed in 2019.[7] The letter of request is dated "January 13, 2021" for a donation in fiscal 2021. There is a letter certifying the proper use of previous donations. There is an accounting and this requestor also included documentation of the specific expenditure of funds and delineates with specificity each expense. The expenses appear to directly support a law enforcement purpose as required by statute. The Chief should consider all of these factors in considering certifying this request.

Women in Distress of Broward County, Inc.

There is a request from Women in Distress of Broward County, Inc. It satisfies most of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent. The request includes an attached "accounting." The "accounting method" in this case is thorough and transparent.

Applying the due diligence rubric Women in Distress of Broward County, Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in January of 2021. The IRS shows the required 990 tax form filed with the last tax form filed in 2020. The letter of request is dated "December 4, 2020" for a donation in fiscal 2021. There is a letter certifying the proper use of previous donations. There is a transparent but generalized "accounting" which appears to show the use of funds for normal operating expenses. It may be that the requestor needs to more specifically delineate what the funds were applied to. The expenses appear to directly support a law enforcement purpose as required by statute. The Chief should consider all of these factors in considering certifying this request.

[7] The IRS online tool has a note that this page has not been updated since November of 2020 so it is likely the listed information is not current and the entity is in compliance based on its inclusion in Publication 78 Data and on the Deductibility Code listed online.

Broward Victim's Rights Coalition

There is a request from Broward Victim's Rights Coalition. It satisfies most of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent while delineating how the funds were spent. The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric Broward Victim's Rights Coalition is registered with the Department of State as an "active" not for profit entity filing an annual report in February of 2021. The IRS shows the required 990 tax form filed with the last tax form filed in 2020. The letter of request is dated "January 19, 2021" for a donation in fiscal 2021. There is a letter certifying the proper use of previous donations. There is a delineation of specific expenditures which make it apparent how the funds were spent. The expenses appear to very directly support a law enforcement purpose as required by statute. The Chief should consider all of these factors in considering certifying this request.

A Child is Missing Inc.

There is a request from A Child is Missing Inc. It satisfies most of the statutory rubric. There is a letter requesting a donation in fiscal 2021. The letter is a "written" request to the Chief for an appropriation. The letter acknowledges the application of FSS 932.7055 and certifies the requested money will be "expended on very specific and identifiable items and services and include; crime prevention, safe neighborhood initiatives, drug abuse education and drug prevention programs." There is a letter certifying previous donations were properly spent while delineating how the funds were spent. The "accounting method" may or may not be "the same as an agency that receives public funds." There is no statement of "anticipated recurring costs."

Applying the due diligence rubric A Child is Missing Inc. is registered with the Department of State as an "active" not for profit entity filing an annual report in April of 2021. The IRS shows the required 990 tax form filed with the last tax form filed in 2019.[8] The letter of request is dated "December 17, 2020" for a donation in fiscal 2021. There is a letter certifying the proper use of previous donations. There is a delineation of specific expenditures which make it apparent how the funds were spent. The expenses appear to support a law enforcement purpose as required by statute. The Chief should consider all of these factors in considering certifying this request.

These properly chartered charitable organizations do tremendous work in the community. Donations that meet the required rubrics would be permissible uses of LETF funds under State law and would count towards the required twenty-five percent (25%) of funds to be distributed to specific charitable organizations pursuant to FSS 932.7055(5)(c)3.

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[8] The IRS online tool has a note that this page has not been updated since November of 2020 so it is likely the listed information is not current and the entity is in compliance based on its inclusion in Publication 78 Data and on the Deductibility Code listed online.