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Sgt. Steven Negron
Sunrise Police Department

19 May 2021

Re: Expenditure of Forfeiture Funds

Steve,

This letter is in response to your request for an opinion on the possible expenditure of Forfeiture money. My opinion is based on the following: a review of the Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies; a review of the relevant Florida Statutes; a review of the forty-five (45) Executive Orders signed by President Biden through May 14, 2021¹; and the information you supplied to me in an e-mail received on May 5, 2021. 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 is in need of replacing equipment necessary to the Mobile Field Force Unit. Specifically, the Department intends to purchase the following:

- Long Range Acoustic Device (LRAD)
- Wireless kit
- Magnetic mount

This equipment is an upgrade to the current LRAD system the Department purchased ten (10) years ago. Forfeiture funds were utilized for this previous purchase. The current LRAD is inoperable. The internal components and drivers are not repairable. The new technology offers the following: superior voice intelligibility; extended frequency range; a wireless control module that enables remote operation of the device from safe locations; and, improved internal drivers.

The LRAD system provides long-range communications capability to issue authoritative commands and attention-commanding deterrent tones to safely enhance response capabilities, modify behavior, and scale the use of force if necessary.

¹ It is important to note that I researched the forty-five (45) Executive Orders propounded by President Biden since he took office through the date of this opinion letter. The last Order was dated May 14, 2021. The research was to see if any Orders changed the present rules pertaining to Federal forfeiture funds. No changes were found. Therefore, the Rules in the Equitable Guide are still applicable and I have relied on them for this opinion.

Question:

Is there a legal impediment to the use of Forfeiture Funds for the above described expenditure?²

Answer/Opinion:

There is no legal impediment to the use of either Federal Forfeiture or Law Enforcement Trust Fund (LETf) money to purchase the equipment described above. The threshold question is whether it is permissible to expend forfeiture funds for the purchase. If so, the second question focuses on the issue of supplanting. I will address each issue below.

It is my opinion that under the U.S. Department of Justice and the U.S. Treasury Department's existing "joint" Guide to Equitable Sharing, published on July 23, 2018, the purchase of the equipment would be a "permissible use" as stated below.

Section V.B.1.d permits "*the purchase*, lease, maintenance (including repairs or service agreements), or operation *of law enforcement equipment* for use *by law enforcement personnel that supports law enforcement activities*." As described, the purchase of the equipment is for the use of the Mobile Field Force Unit of the Department while performing law enforcement functions in support of law enforcement activities.

Under the authorizing section of Federal law, the requirement is that the expenditure be for: law enforcement equipment; use by law enforcement personnel; supporting law enforcement activities; or for a law enforcement purpose. It is my opinion the purchase of the equipment is in support of a law enforcement purpose and the expenditure is permissible.

Supplantation

Section V.A.1 of the Guide specifies that agencies cannot use Forfeiture Funds to "Supplant" money that should come out of general revenue funds nor should the Department budget and plan to spend Forfeiture funds not yet received. Forfeiture funds should increase the agencies' budget and cover items not regularly purchased. Based on the facts as stated it appears the expenditure you are inquiring about would not occur but for the need for new equipment. This expenditure is more like a capital cost. Therefore, the money is not supplanting other money previously budgeted for this expense in the General Budget. As such, this expenditure does not violate the rules pertaining to supplanting.

Therefore, it is my opinion the expenditure listed above is a permissible expenditure of Federal forfeiture funds.

² The request did not delineate whether the Department intended to utilize Federal or "State" (LETf) forfeiture funds or a combination of both. Therefore, this opinion letter addresses both sources.

Florida Statute 932.7055 is the section that authorizes and restricts the expenditure of "State" or "LETf" forfeiture money. The relevant subsection addressing your question is subsection 5.a. It states: "If the seizing agency is a county or municipal agency . . . Such proceeds and interest earned therefrom shall be used for school resource officer, *crime prevention*, safe neighborhood, drug abuse education and prevention programs, *or for other law enforcement purposes*, which include defraying the cost of protracted or complex investigations, providing *additional equipment or expertise* . . . and providing matching funds to obtain federal grants."

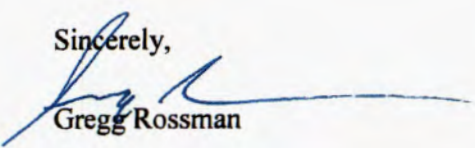
As to the issue of supplanting, Florida law is similar to Federal law and states that forfeiture "proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency." As stated above, the expenditure is not a normal operating expense and does not violate this restriction.

Therefore, it is my opinion the expenditure listed above is a permissible expenditure of State LETf forfeiture funds.

All forfeiture expenditures require the Chief's certification. For the reasons stated above it is my opinion the Chief can certify the use of either Federal Forfeiture Funds or LETf funds for the purchase of the equipment described herein above.

I hope this letter clearly identifies the issues and provides an answer in a manner satisfactory to the Department. If you need any further information in this matter please let me know.

Sincerely,



Gregg Rossman