

Note from the Attorney General's Office:

1989 Op. Att'y Gen. No. 89-078 was modified
by 1998 Op. Att'y Gen. No. 98-023.

OPINION NO. 89-078**Syllabus:**

1. Proceeds in a law enforcement trust fund may be expended at the discretion of the board of county commissioners for any law enforcement purpose enumerated in R.C. 2933.43(D) or for law enforcement purposes similar to those provided for in R.C. 2933.43(D).
2. R.C. 2933.43(B)(2) precludes execution, pursuant to R.C. 2949.15, against contraband seized, pursuant to R.C. 2933.43(A), pending a forfeiture hearing held pursuant to R.C. 2933.43(C).
3. Proceeds from the sale of forfeited contraband are to be deposited in the law enforcement trust fund of either the county or that of the municipal corporation whose law enforcement agency made the seizure, pursuant to R.C. 2933.43(A). Where both county and municipal corporation(s) law enforcement agencies are involved in the seizure of contraband, pursuant to R.C. 2933.43(A), the court ordering the forfeiture shall equitably divide the proceeds for deposit into the respective law enforcement trust funds of the county and municipal corporation(s).

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 16, 1989

I have before me your request for my opinion on several questions concerning law enforcement trust funds established pursuant to R.C. 2933.43(D). Specifically you ask:

1. Can proceeds from the Law Enforcement Trust Fund mandated by Ohio Revised Code § 2933.43 be used for the following purposes: a) to purchase and [maintain] equipment and resource materials for general use by the Prosecuting Attorney's Office; b) for expert witnesses in criminal prosecutions; c) for funding mandatory continuing legal education requirements imposed by the Ohio Supreme Court; d) for hiring additional personnel or supplementing funding of new or existing personnel in the Prosecutor's Office; e) and for any other technical training of new or existing personnel?
2. Does Ohio Revised Code § 2933.43 preclude the execution against seized contraband, for payments of fines and costs as provided in [§ 2949.15]?
3. [W]hat is the most appropriate method of establishing an understanding or agreement between the Prosecutor's Office and law enforcement agencies in his jurisdiction for the equitable distribution of proceeds to their respective Law Enforcement Trust [Funds]?

The board of county commissioners of each county is required to establish a law enforcement trust fund in which proceeds from the sale of forfeited contraband may be deposited. R.C. 2933.43(D). Pursuant to this section, proceeds in a law enforcement trust fund are to "be allocated from the fund by the board of county commissioners only to the office of the county sheriff or prosecuting attorney, or both."

I turn now to your first question which concerns the expenditure of proceeds from a law enforcement trust fund. R.C. 2933.43(D) sets forth the specific purposes for which proceeds in a law enforcement trust fund may be expended:

The fund shall be expended only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, or for such other law enforcement purposes¹ that the commissioners or legislative authority determines to be appropriate. The fund shall not be used to meet the operating costs of the subdivision that are unrelated to law enforcement. (Footnote added.)

It is generally held that where the expenditure of public moneys is limited by statute, the moneys may only be expended for a purpose specified by statute. See *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1914). See generally *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916) (per curiam) (authority of county commissioners to act in financial transactions must be clearly and distinctly granted). Consequently, proceeds in a law enforcement trust fund may only be expended for those law enforcement purposes expressly provided for in R.C. 2933.43(D) or determined to be appropriate by the board of county commissioners or other legislative authority.

The question of whether a specific expenditure is for a law enforcement purpose expressly provided for in R.C. 2933.43(D) or for such similar purposes depends upon the facts surrounding each proposed expenditure. As a general matter, however, R.C. 2933.43(D) expressly prohibits use of the law enforcement trust fund for costs unrelated to law enforcement. You have asked whether the costs of expert witnesses in criminal prosecutions may be paid with moneys from the law enforcement trust fund. Since "the costs of protracted or complex investigations or prosecutions" are statutorily authorized, the costs of expert witnesses in such cases are a proper use of law enforcement trust funds. A decision as to the appropriateness of the other expenditures about which you ask, however, is dependent upon the functions of the new personnel and the type of materials, equipment, legal education and training contemplated. Such factual determinations cannot be made by the Attorney General. See generally 1989 Op. Att'y Gen. No. 89-057; 1988 Op. Att'y Gen. No. 88-008; 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body;...I shall not attempt to make final determinations where issues of fact are involved").

Furthermore, the General Assembly has bestowed upon the county commissioners the authority to allocate proceeds from the law enforcement trust fund and the discretion to determine whether a proposed expenditure is an appropriate use of such proceeds. R.C. 2933.43(D). Where discretion has been

¹ The General Assembly's use of the word "such" when referring to "other law enforcement purposes" clearly indicates that any other law enforcement purpose, which is not expressly provided for in R.C. 2933.43(D), must be similar to one of the law enforcement purposes expressly provided for in R.C. 2933.43(D). See *Black's Law Dictionary* 1284 (5th ed. 1979) ("such" represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent"). If the General Assembly's intention were that moneys in a law enforcement trust fund could be spent on any law enforcement purpose, it would have been a simple matter to leave the word "such" out of R.C. 2933.43(D). See generally R.C. 1.47(B) (in enacting a statute, it is presumed that, "[t]he entire statute is intended to be effective"); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five) ("significance and effect should, if possible, be accorded to every word...of an act, and in the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used"). Thus, the phrase "such other purposes" is linked back to the preceding express purposes.

bestowed upon another governmental officer or entity, I have no authority to exercise such discretion on behalf of that officer or entity. *See generally* 1989 Op. Att'y Gen. No. 89-038; 1988 Op. Att'y Gen. No. 88-007; 1985 Op. Att'y Gen. No. 85-007. The exercise of any judgment which is necessary in making such determinations remains with the board of county commissioners. I caution, however, that such exercise of discretion must be reasonable and within the limitation set by statute. *See generally* Op. No. 89-038; 1985 Op. Att'y Gen. No. 85-003. Accordingly, it is my conclusion that proceeds in a law enforcement trust fund may be expended at the discretion of the board of county commissioners for any law enforcement purpose enumerated in R.C. 2933.43(D) or for law enforcement purposes similar to those provided for in R.C. 2933.43(D).

Your second question asks whether R.C. 2933.43 precludes execution, pursuant to R.C. 2949.15, against the seized contraband² of a nonindigent person convicted of a felony for the payment of the costs of prosecution. R.C. 2949.15, which allows writs of execution to issue for unpaid costs of prosecution, provides in part:

If a nonindigent person convicted of a felony fails to pay the costs of prosecution pursuant to section 2949.14 of the Revised Code, the clerk of the court of common pleas shall forthwith issue to the sheriff of the county in which the indictment was found, and to the sheriff of any other county in which the person has property, executions against his property for fines and the costs of prosecution, which shall be served and returned within ten days, with the proceedings of such sheriff or the certification that there is no property upon which to levy, indorsed thereon.

R.C. 2933.43(B)(2), however, provides that:

Pending a hearing pursuant to division (C) of this section, and subject to divisions (B)(1) and (C) of this section, any *property lawfully seized* pursuant to division (A)³ of this section *because it was contraband* of a type described in division (M)(2), (4), (5), (6), (7), (8), (9), or (10) of section 2901.01 of the Revised Code *shall not be subject to replevin or other action in any court*, and shall not be subject to release upon request of the owner, and *no judgment shall be enforced against the property*. Pending the hearing, and subject to

² Your question concerns execution against "seized contraband." The phrase "seized contraband" denotes contraband seized by law enforcement officers, pursuant to R.C. 2933.43(A), and which is subject to forfeiture. R.C. 2933.43(C). Consequently, I will confine my analysis to execution against contraband seized, pursuant to R.C. 2933.43(A), pending a forfeiture hearing held pursuant to R.C. 2933.43(C). I note that once a forfeiture hearing is held, pursuant to R.C. 2933.43(C), property loses its character as "seized contraband." If the court holding the forfeiture hearing determines that forfeiture is warranted, the property is no longer considered seized, since "all rights, interest, and title to the forfeited contraband vests in the state or the political subdivision that employed the officer who made the seizure...effective from the date of seizure." R.C. 2933.43(C). Similarly, if the court determines that a forfeiture is unwarranted, the law enforcement agency with custody of the property shall return it to its owner.

³ R.C. 2933.43(A)(1) provides:

Except as provided in this division, a law enforcement officer shall seize any contraband that has been, is being, or is intended to be used in violation of division (A) of section 2933.42 of the Revised Code. A law enforcement officer shall seize contraband that is a watercraft, motor vehicle, or aircraft and that has been, is being, or is intended to be used in violation of division (A) of section 2933.42 of the Revised Code only if the

divisions (B)(1) and (C) of this section, the property shall be kept in the custody of the law enforcement agency responsible for its seizure.

Pending a hearing pursuant to division (C) of this section, and notwithstanding any provisions of division (B)(1) or (C) of this section to the contrary, any property lawfully seized pursuant to division (A) of this section because it was contraband of a type described in division (M)(1) or (3) of section 2901.01 of the Revised Code shall not be subject to replevin or other action in any court, and shall not be subject to release upon request of the owner, and no judgment shall be enforced against the property. Pending the hearing, and notwithstanding any provisions of division (B)(1) or (C) of this section to the contrary, the property shall be kept in the custody of the law enforcement agency responsible for its seizure. (Emphasis and footnote added.)

In ascertaining whether R.C. 2933.43(B)(2) creates an exception to the issuance of writs of execution, pursuant to R.C. 2949.15, for unpaid costs of prosecution, I am guided by the rule that a special law excepts an earlier general law to the extent of any irreconcilable conflict between their provisions. *Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 158 N.E. 81 (1927); *State ex rel. Crabbe v. City of Cleveland*, 115 Ohio St. 484, 154 N.E. 738 (1926); *Thomas v. Evans*, 73 Ohio St. 140, 76 N.E. 862 (1905). Thus, the special law operates as an exception to the general law to the extent of the conflict. This rule of statutory construction is codified in R.C. 1.51, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Clearly, the language of R.C. 2933.43(B)(2) prohibits any court action or enforcement of judgments against seized contraband prior to a forfeiture hearing under R.C. 2933.43(C). The executions required by R.C. 2949.15 are civil proceedings for the enforcement of judgments. *Lash v. Mann*, 141 Ohio St. 577, 582, 49 N.E.2d 689, 691 (1943) ("[a] writ of execution...is a civil proceeding for the enforcement of a judgment against such property"). Hence, there is an irreconcilable conflict between R.C. 2933.43(B)(2) and R.C. 2949.15, in that R.C. 2949.15 requires a clerk of the court of common pleas to pursue a course of action which is prohibited by R.C. 2933.43(B)(2).

I note that R.C. 2949.15 is a general provision in that it requires the issuance of a writ of execution against all the property of a nonindigent person convicted of a felony. R.C. 2933.43(B)(2) is a special provision in that it specifically prohibits only court actions or the enforcement of judgments against property characterized as seized contraband. Additionally, R.C. 2933.43(B)(2), 1985-1986 Ohio Laws, Part I, 173, 185 (Am. Sub. S.B. 69, eff. Sept. 3, 1986), was enacted subsequent to R.C. 2949.15, 1929 Ohio Laws 123, 206 (Am. S.B. 8, passed April 1, 1929) (R.C. 2949.15 was originally enacted as G.C. 13455-4). It is an established principle of statutory construction that "it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation." *State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979). As such, R.C. 2933.43(B)(2) creates an exception to the general provisions of R.C. 2949.15. Therefore, I conclude that R.C.

watercraft, motor vehicle, or aircraft is contraband because of its relationship to an underlying criminal offense that is a felony.

Additionally, a law enforcement officer shall seize any watercraft, motor vehicle, aircraft, or other personal property that is classified as contraband under division (B) of section 2933.42 of the Revised Code if the underlying offense involved in the violation of division (A) of that section that resulted in the watercraft, motor vehicle, aircraft, or personal property being classified as contraband, is a felony.

2933.43(B)(2) precludes execution, pursuant to R.C. 2949.15, against contraband seized, pursuant to R.C. 2933.43(A), pending a forfeiture hearing held pursuant to R.C. 2933.43(C).

Question number three asks what is the most appropriate method of establishing an understanding or agreement between the prosecutor's office and law enforcement agencies in his jurisdiction for the equitable distribution of proceeds to their respective law enforcement trust funds. After certain statutorily provided expenses are paid,⁴ proceeds from the sale of forfeited contraband are distributed "[t]o the law enforcement trust fund of the political subdivision whose agency made the seizure." R.C. 2933.43(D). Pursuant to this section, each county and each municipal corporation shall establish a law enforcement trust fund into which proceeds from the sale of forfeited contraband are to be deposited. I find, accordingly, that proceeds from the sale of forfeited contraband are to be deposited in the law enforcement trust fund of either the county or that of the municipal corporation whose law enforcement agency made the seizure, pursuant to R.C. 2933.43(A).

Furthermore, where the law enforcement agencies of a county and one or more municipal corporations are involved, R.C. 2933.43(E) provides, in part, that:

If more than one law enforcement agency is substantially involved in the seizure of contraband that is forfeited pursuant to this section, *the court ordering the forfeiture shall equitably divide the proceeds*. The proceeds shall be equitably divided *among the board of county commissioners and any legislative authority of a municipal corporation* whose law enforcement agency is determined by the court to be substantially involved in the seizure. Such proceeds shall be deposited in the respective law enforcement trust funds of the county and municipal corporation. (Emphasis added.)

The language of R.C. 2933.43(E) clearly mandates that the court ordering the forfeiture is to equitably divide, for distribution into the law enforcement trust funds of the county and municipal corporations, any proceeds from the sale of contraband. *See generally Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 107, 271 N.E.2d 834, 837 (1971) ("shall" is generally interpreted as imposing a mandatory duty); *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 439, 159 N.E. 823, 824-25 (1927) ("[t]here is no dispute...as to what the law specifically provides with respect to these matters. There is practically no occasion for any construction of the statutes. They are very definite and very plain, and need only to be read to ascertain their meaning"). Consequently, I further conclude that where both county and municipal corporation(s) law enforcement agencies are involved in the seizure of contraband, pursuant to R.C. 2933.43(A), the court ordering the forfeiture shall equitably divide the proceeds for deposit into the respective law enforcement trust funds of the county and municipal corporation(s).

⁴ R.C. 2933.43(D), which provides for the disposition of proceeds from the sale of forfeited contraband, provides, in part:

If the contraband is sold, the proceeds of the sale shall be disposed of in the following order:

- (1) To the payment of the costs incurred in the forfeiture proceedings;
- (2) To the payment of the balance due on any security interest preserved pursuant to division (C) of this section;
- (3) To the payment of any costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;
- (4) To the law enforcement trust fund of the political subdivision whose agency made the seizure.

Therefore, it is my opinion, and you are hereby advised, that:

1. Proceeds in a law enforcement trust fund may be expended at the discretion of the board of county commissioners for any law enforcement purpose enumerated in R.C. 2933.43(D) or for law enforcement purposes similar to those provided for in R.C. 2933.43(D).
2. R.C. 2933.43(B)(2) precludes execution, pursuant to R.C. 2949.15, against contraband seized, pursuant to R.C. 2933.43(A), pending a forfeiture hearing held pursuant to R.C. 2933.43(C).
3. Proceeds from the sale of forfeited contraband are to be deposited in the law enforcement trust fund of either the county or that of the municipal corporation whose law enforcement agency made the seizure, pursuant to R.C. 2933.43(A). Where both county and municipal corporation(s) law enforcement agencies are involved in the seizure of contraband, pursuant to R.C. 2933.43(A), the court ordering the forfeiture shall equitably divide the proceeds for deposit into the respective law enforcement trust funds of the county and municipal corporation(s).