

March 28, 2025

The Honorable Anneka P. Collins
Highland County Prosecuting Attorney
112 Governor Foraker Place
Hillsboro, Ohio 45133

SYLLABUS: 2025-005

1. When real or personal property is forfeited to the county pursuant to a court order under R.C. Chapter 2981, the board of county commissioners must receive clear title to the forfeited property before any sale by auction.
2. Depending on the type of property and the specifics of the court order, a law enforcement agency may physically possess and use the forfeited property even though the commissioners hold title to it as county property.
3. The board of county commissioners must follow R.C. 2981.11 to 2981.13, as well as the court's forfeiture order, in disposing of forfeited property. The proper disposition depends on the type of property. If the property is not destroyed, sold by auction, or used by the law enforcement agency, the county commissioners may dispose of it only in a manner the court determines appropriate.



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OPINION NO. 2025-005

The Honorable Anneka P. Collins
Highland County Prosecuting Attorney
112 Governor Foraker Place
Hillsboro, Ohio 45133

Dear Prosecutor Collins:

You have requested an opinion regarding the ownership and disposition of property forfeited to a county under R.C. Chapter 2981. I have framed your questions as follows:

1. Must property that is seized by a county law enforcement agency and forfeited under R.C. 2981.01 to 2981.13 be transferred to the name of the county commissioners before sale?
2. If property does not need to be titled in the county commissioners' name prior to sale, may it be titled in the name of the county prosecutor or sheriff before sale?

3. Do the county commissioners have the right to keep property, whether real or personal, without the approval of the law enforcement agency that seized the property and without compensating the law enforcement agencies involved in the seizure and forfeiture?

Before I answer your questions, I first note that this opinion does not address every technicality of title transfers, whether for forfeited vehicles or real property. Generally stated, “title” means “[t]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself.” Black’s Law Dictionary (11th Ed. 2019). In another sense, “title” may be defined as “[l]egal evidence of a person’s ownership rights in property; an instrument (such as a deed) that constitutes such evidence.” *Id.* In this opinion, my primary concern is to resolve your questions regarding the county’s ownership, possession, and use of forfeited property.

I

A

First, you ask whether property, real or personal, that is seized by a county law enforcement agency

and forfeited under R.C. 2981.01 to 2981.13 must be transferred to the name of the county commissioners before sale. To answer this question, I must briefly review the basis in Ohio law for criminal and civil forfeitures.

R.C. Chapter 2981 governs criminal and civil forfeiture under Ohio law, and the statutory procedures for forfeiture are mandatory. *See State v. Christian*, 2016-Ohio-516, ¶31 (2d Dist.). As the Ohio Supreme Court once explained, “Proper legal proceedings are always necessary to adjudge a forfeiture or confiscation, and to permit officers or private persons to seize, sell or appropriate private property without legal proceedings, under a claim of confiscation, would be inconsistent with the principles of constitutional government, and would soon lead to fraud, corruption, oppression and extortion.” *Edson v. Crangle*, 62 Ohio St. 49, 66 (1900); *see also Rice v. Bd. of Comms.*, 114 Ohio App.3d 198, 202 (3d Dist. 1996). Furthermore, “Ohio courts have consistently acknowledged forfeitures are not favored in law or equity, and forfeiture statutes must be strictly construed against the state.” *State v. Howze*, 2024-Ohio-5447, ¶67 (7th Dist.), *citing State v. Lilliock*, 70 Ohio St.2d 23, 26 (1982), *superseded by statute on other grounds*.

A law enforcement officer may seize property associated with a crime when the officer has probable cause to believe the property is subject to civil or

criminal forfeiture. R.C. 2981.03(A)(2). “If a law enforcement officer seizes property that is titled or registered under law, the officer or the law enforcement agency that employs the officer shall notify the property owner of the seizure.” *Id.* If the property to be seized is real property, the owner must receive notice and a preliminary hearing before the property is seized. *See* R.C. 2981.03(A)(3); *see also* *Culley v. Marshall*, 601 U.S. 377 (2024) (regarding due process rights and forfeiture hearings).

There are three categories of property that may be forfeited under R.C. Chapter 2981: contraband, proceeds, and instrumentalities of a crime. R.C. 2981.02(A). The statutory definitions of these terms help us understand the scope of forfeiture:

- “**Contraband**” is “any property that is illegal for a person to acquire or possess,” such as an illegal drug or paraphernalia, an illegal gambling device, a “dangerous ordnance,” or “obscene material.” R.C. 2901.01(A)(13).
- “**Proceeds**” are defined, in part, as “any property derived directly or indirectly from an offense . . . [which] may include, but is not limited to, money or any other means of exchange.” R.C. 2981.01(B)(11)(a).
- An “**instrumentality of a crime**” is “property otherwise lawful to possess that is used in or intended to be used in an offense,”

including firearms, vehicles, computers, phones, or money used or intended to be used for illicit purposes. R.C. 2981.01(B)(6). It could also include a building used for illegal activity, such as drug trafficking. *See, e.g., State v. Adams*, 2013-Ohio-1603, ¶66 (11th Dist.).

After a law enforcement agency seizes contraband, proceeds, or instrumentalities of a crime, a prosecutor may seek permanent forfeiture of criminal assets by either a criminal proceeding under R.C. 2981.04, a civil forfeiture action under R.C. 2981.05, or both. *See* R.C. 2981.03(F). Although there are substantial differences between criminal and civil forfeiture, those differences are not essential to resolving your questions. There are several procedural steps common to both criminal and civil forfeiture.

First, the prosecuting attorney must identify and give notice to parties with an interest in the property. R.C. 2981.04(D) and 2981.05(F). Then, in most cases, the trial court must conduct a forfeiture hearing. R.C. 2981.03 and 2981.05(B) and (C).

Second, parties to a forfeiture action have a right to trial by jury, and the trier of fact must find that the property is subject to forfeiture. R.C. 2981.08. And third, if the property to be forfeited is an instrumentality of a crime (rather than contraband or

proceeds), the trial court must determine that the amount or value of the property subject to forfeiture is proportionate to the severity of the offense. R.C. 2981.04(B), 2981.05(H), and 2981.09. This “proportionality review” is meant to ensure that the forfeiture does not equate to “an ‘excessive fine’ prohibited by the Excessive Fine Clauses of the Ohio and United States Constitutions.” *State v. Hill*, 70 Ohio St.3d 25, 34 (1994); *see also State v. Howze*, 2024-Ohio-5447, ¶65 (7th Dist.).

B

According to R.C. 2981.03, “[t]he state or political subdivision acquires provisional title to property subject to forfeiture under [R.C. Chapter 2981] upon a person’s commission of an offense giving rise to forfeiture, subject to third party claims and a final adjudication under section 2981.04 or 2981.05 of the Revised Code. Provisional title authorizes the state or political subdivision to seize and hold the property, and to act to protect the property.” R.C. 2981.03(A)(1). Third parties (such as lienholders or innocent family members) have an opportunity to claim a lawful interest in the property subject to forfeiture. R.C. 2981.03; *see, e.g., State v. Lawless*, 2018-Ohio-1471, ¶5 (5th Dist.). Clear title is granted to “the state or political subdivision” only after the trial court issues a forfeiture

order and resolves any third-party claims. R.C. 2981.04(G), 2981.05(I), and 2981.06(E).

To answer your first question, we must determine the meaning of “political subdivision” in the context of criminal and civil forfeiture. The term “political subdivision” is defined in many ways throughout the Revised Code, but there is no statutory definition specific to R.C. Chapter 2981. *See, e.g.*, R.C. 133.01(MM) (securities law); R.C. 2744.01(F) (sovereign immunity law); R.C. 3501.01(T) (election law); and R.C. 5705.01(A) (tax levy law). Those definitions typically include, at a minimum, counties, townships, school districts, and municipalities. *Id.* In *Fair v. School Emp. Retirement System of Ohio*, the Tenth District Court of Appeals examined multiple statutory definitions, law dictionaries, and legal treatises, and concluded that a political subdivision may be generally understood as “[a] geographic or territorial portion of the state to which there has been delegated certain local governmental functions.” 44 Ohio App.2d 115, 119 (10th Dist. 1975).

Several courts of appeals have used this definition of “political subdivision” for purposes of criminal and civil forfeiture. For example, the Second District Court of Appeals held that a municipal police department is not a political subdivision and therefore cannot petition for civil forfeiture. *In re Forfeiture of Property of Louis*, 2010-Ohio-1792, ¶29 (2d Dist.).

Similarly, the Third District Court of Appeals concluded that a joint police task force “is not a political subdivision” entitled to pursue forfeiture. The court reasoned:

R.C. 2981.05(A) is explicit that prosecuting attorneys are only empowered to bring actions on behalf of political subdivisions. Thus, there is no question that the Marion County Prosecuting Attorney is unable to bring an action on behalf of the Marmet Drug Task Force, as it did in this matter. Rather, for the Marion County Prosecuting Attorney to comply with the dictates of R.C. 2981.05(A) and to leave no question as to its authority, it must bring civil forfeiture actions on behalf of Marion County.

Marmet Drug Task Force v. Paz, 2012-Ohio-4882, ¶46 (3d Dist.). This case law makes clear that a county prosecutor pursues forfeiture on behalf of the county, not the county sheriff or any other law enforcement agency. Similarly, a federal district court has concluded that “a county prosecutor’s office is not a political subdivision but a subunit of the county.” *Simmons v. Sigler*, 2020 U.S. Dist. LEXIS 88702, at *6 (S.D. Ohio May 20, 2020). Thus, the county is the political subdivision entitled to

forfeited property for purposes of R.C. Chapter 2981. Unless a court orders forfeiture to the state or another political subdivision, forfeited property becomes county property.

As a rule, county commissioners hold title to county property. See 2020 Ohio Atty.Gen.Ops. No. 2020-005, Slip Op. at 3; 2-22. As the Ohio Supreme Court once explained, “[t]he board of county commissioners is the body – the quasi-corporation – in whom is vested by law the title of all the property of the county . . . A devise to the county is a devise to the commissioners of the county, and vests the title in them, for the uses of the county.” *Carder v. Bd. of Commrs. of Fayette County*, 16 Ohio St. 353, 369-70 (1865).

“When the General Assembly intends for a public board or agency to have authority to own or acquire title to real property, it confers that authority expressly and unambiguously.” 2016 Ohio Atty.Gen.Ops. No. 2016-030, Slip Op. at 4; 2-352 (citing specific examples in statute); see also 2011 Ohio Atty.Gen.Ops. No. 2011-042, 2-342 to 343. No provision in R.C. Chapter 2981 or anywhere else in the Revised Code provides that title to forfeited property vests with the county prosecutor or law enforcement agency that seized the property. Therefore, the default rule applies. As agents of the county, the county commissioners hold title to forfeited

property, whether real or personal, prior to sale or any other disposition.

II

Contingent upon the answer to your first question, you asked, “If property does not need to be titled in the county commissioners’ name prior to sale, may it be titled in the name of the county prosecutor or sheriff before sale?” Based on the analysis above, the county prosecutor or county sheriff may not hold title to forfeited property. However, the law enforcement agency may physically possess the forfeited property and, depending on the type of property and forfeiture order, use the property for law enforcement purposes.

In some cases, a court may conditionally release property subject to forfeiture to a person with a “possessory interest in the property.” R.C. 2981.03(D)(3)(a). Otherwise, a law enforcement agency generally must maintain physical possession, control, and care of lawfully seized or forfeited property until it is disposed of pursuant to R.C. 2981.12 or 2981.13. *See* R.C. 2981.11(A)(1). The law enforcement agency must keep detailed records of any seized or forfeited property, its disposition, and the agency’s use of money acquired from the sale of forfeited property. *See* R.C. 2981.11(B); *see also* 1994 Ohio Atty.Gen.Ops. No. 94-064, at 2-310 to 2-313.

The criminal forfeiture law prescribes methods of disposal for forfeited property that depend on the type of property. R.C. 2981.12. In some cases, the law allows for law enforcement agencies to use the forfeited property. *See* R.C. 2981.12(A)(2) (regarding firearms and dangerous ordnance), (A)(6) (vehicles and other mobile instrumentalities), and (A)(7) (computer equipment). In other cases, the property must be destroyed. *See* R.C. 2981.12(A)(3) (obscene material) and (A)(4) (alcohol that is unfit for sale); *see also* R.C. 3719.11 (controlled substances).

Except with respect to categories of forfeited property that must be destroyed or otherwise disposed, if a law enforcement agency does not use the property, “it may be sold without appraisal at a public auction to the highest bidder for cash or disposed of in another manner that the court considers proper.” R.C. 2981.12(B). When forfeited contraband or instrumentalities of a crime are sold, the money acquired from the sale and any forfeited proceeds must be distributed according to the following order:

- (1) First, to pay costs incurred in the seizure, storage, maintenance, security, and sale of the property and in the forfeiture proceeding;
- (2) Second, in a criminal forfeiture case, to satisfy any restitution ordered to the

victim of the offense or, in a civil forfeiture case, to satisfy any recovery ordered for the person harmed, unless paid from other assets;

(3) Third, to pay the balance due on any security interest preserved under [R.C. Chapter 2981];

(4) Fourth, apply the remaining amounts as follows:

(a) If the forfeiture was ordered by a juvenile court, ten per cent to one or more community addiction services providers as specified in division (D) of section 2981.12 of the Revised Code;

(b) If the forfeiture was ordered in a juvenile court, ninety per cent, and if the forfeiture was ordered in a court other than a juvenile court, one hundred per cent to the law enforcement trust fund of the prosecutor and to the [subsequently described] fund supporting the law enforcement agency that substantially conducted the investigation.

R.C. 2981.13(B).

“After the state or political subdivision is granted clear title” to forfeited property, the law requires the

prosecutor to “direct disposition of the property . . . making due provisions for the rights of innocent persons.” R.C. 2981.06(E). Neither the county sheriff nor the county prosecutor holds title to property forfeited to the county, even though a law enforcement agency may at times have custody and control of forfeited property and proceeds that are deposited to the prosecutor’s law enforcement trust fund.

“The Ohio Supreme Court has recognized that even though statutes may require personal property to be acquired by and to remain in the custody of another county officer, the board of county commissioners holds title to all property owned by the county.” 2017 Ohio Atty.Gen.Ops. No. 2017-018, Slip Op. at 4; 2-188; *see also* 2006 Ohio Atty.Gen.Ops. No. 2006-001, at 2-4. This common law principle dates back to at least the 19th century. In *Christy v. Comms. of Ashtabula Cty.*, the Court held that “[c]ounty commissioners may take and hold title to anything that a county may hold or own, although in the actual custody or expenditure the county must, under some statute, act by an officer, or officers, other than its commissioners.” 41 Ohio St. 711, 717 (1885).

* * *

As a secondary matter, you asked about the proper procedure for auctioning forfeited property. To sell county property, boards of county commissioners

ordinarily follow the procedures in R.C. 307.09 and 307.10 (with respect to real property) or R.C. 307.12 (for unneeded personal property). As explained by one of my predecessors, “R.C. 307.09 and R.C. 307.10 set forth comprehensive and integrated requirements for the sale of ‘real property belonging to the county.’ R.C. 307.09(A). In addition to requiring that sales of real property be accomplished by public auction or competitive bidding, R.C. 307.10(A) specifies that real property belonging to the county cannot be sold absent an authorizing resolution by the board of county commissioners.” 2011 Ohio Atty.Gen.Ops. No. 2011-042, at 2-343. In a similar fashion, R.C. 307.12 requires that county commissioners pass a resolution to sell personal property that is not needed for public use.

According to R.C. 2981.13(A), if forfeited property is to be sold by auction, “the prosecutor shall cause notice of the proposed sale to be given *in accordance with law*.” *See also* R.C. 2981.06(E) (requiring the prosecutor to direct disposition of the property). To the extent the procedures in R.C. 307.09, 307.10, and 307.12 are compatible with R.C. Chapter 2981, the county commissioners should follow those procedures when the county sells forfeited property. That includes authorizing the sale by resolution and giving public notice of the sale by auction.

There are at least three critical differences between selling forfeited property and selling other forms of county property:

1. According to R.C. Chapter 2981, if the property is to be sold, the property may only be sold by auction and without appraisal. Forfeited real property may not be leased out by the county nor may it be transferred to another governmental entity without advertising for bids as is otherwise permitted by R.C. 307.10.
2. R.C. 307.12 applies only to the extent it provides for sale by public auction. No other method of sale or transfer (such as by sealed bid, private sale, or donation) is permitted by R.C. Chapter 2981.
3. Proceeds from the sale of forfeited property must be applied in the manner prescribed by R.C. 2981.13, not as provided by R.C. 307.09(C) nor to the county's general fund. *See* 2000 Ohio Atty.Gen.Ops. No. 2000-039, at 2-240 to 2-241 (describing permissible uses of proceeds from forfeiture).

Where the general provisions of R.C. 307.09, 307.10, and 307.12 conflict with R.C. Chapter 2981, the board of county commissioners must follow the

statutes governing forfeiture. This conclusion is rooted in R.C. 1.51: “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.”

III

Third, you ask whether the county commissioners have the right to keep property, whether real or personal, without the approval of the law enforcement agency that seized the property and without compensating the law enforcement agencies involved in the seizure and forfeiture.

Ohio law does not expressly permit any agency of the political subdivision other than a law enforcement agency to use forfeited property. “Except as otherwise provided in [R.C. 2981.13], property ordered forfeited as contraband, proceeds, or an instrumentality pursuant to this chapter shall be disposed of, used, or sold pursuant to section 2981.12 of the Revised Code.” R.C. 2981.13(A). We must bear in mind that “forfeitures are not favored in law or equity, and forfeiture statutes must be strictly construed

against the state.” *State v. Howze*, 2024-Ohio-5447, ¶67.

R.C. 2981.12 and 2981.13 comprehensively describe how forfeited property may be disposed of, used, or destroyed. *See State v. Brimacombe*, 2011-Ohio-5032, ¶33 (6th Dist.). Thus, I cannot conclude that county commissioners have an implied right to keep or dispose of forfeited property in any manner other than that prescribed by R.C. 2981.12 and 2981.13. *See* 2000 Ohio Atty.Gen.Ops. No. 2000-039, at paragraph four of the syllabus (similarly concluding that “neither a board of county commissioners nor a board of township trustees may retain and use for general governmental purposes, unrelated to law enforcement, proceeds from the sale of forfeited property and forfeited moneys . . . unless . . . a court orders that unclaimed or forfeited moneys be distributed to, and used by, a board of county commissioners or a board of township trustees”).

The board of county commissioners must follow R.C. 2981.11 to 2981.13, as well as the court’s forfeiture order, in disposing of forfeited property. If the property is not destroyed, sold by auction, or used by the law enforcement agency, the county commissioners may only dispose of the property “in another manner that the court considers proper.” R.C. 2981.12(B). Because I conclude that the law does not authorize keeping the forfeited property for a public use other

than law enforcement purposes, it is not necessary to resolve whether law enforcement agencies are entitled to compensation if county commissioners keep the forfeited property for their own use. Ultimately, if public money held by the county is misused or “any property, real or personal, belonging to the county is being illegally used or occupied,” a county prosecutor may bring a civil action for an injunction or damages against the appropriate party engaged in such misuse. R.C. 309.12.

Conclusion

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

1. When real or personal property is forfeited to the county pursuant to a court order under R.C. Chapter 2981, the board of county commissioners must receive clear title to the forfeited property before any sale by auction.
2. Depending on the type of property and the specifics of the court order, a law enforcement agency may physically possess and use the forfeited property even though the commissioners hold title to it as county property.
3. The board of county commissioners must follow R.C. 2981.11 to 2981.13, as well as the

court's forfeiture order, in disposing of forfeited property. The proper disposition depends on the type of property. If the property is not destroyed, sold by auction, or used by the law enforcement agency, the county commissioners may dispose of it only in a manner the court determines appropriate.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "Y".

DAVE YOST
Ohio Attorney General