

OPINION NO. 92-040**Syllabus:**

Moneys received pursuant to federal law that are deposited into a law enforcement trust fund created under R.C. 2933.43(D)(1)(c) are not subject to the disbursement provisions of R.C. 2933.43(D)(1)(c), but rather, pursuant to R.C. 2933.43(D)(4), these moneys are disbursed in accordance with the applicable federal law.

To: Rebecca J. Ferguson, Preble County Prosecuting Attorney, Eaton, Ohio
By: Lee Fisher, Attorney General, September 22, 1992

You have requested an opinion regarding the expenditure of moneys that constitute a law enforcement trust fund created under R.C. 2933.43(D)(1)(c). In particular, you are concerned with the disbursement of moneys received pursuant to federal law that are deposited into a law enforcement trust fund.

Law Enforcement Trust Funds

R.C. 2933.43(D)(1)(c) authorizes a county prosecuting attorney, county sheriff, legislative authority of a municipal corporation, board of township trustees, and board of park commissioners of a park district to establish a law enforcement trust fund. Proceeds from the sale of contraband and forfeited moneys that constitute a law enforcement trust fund are expended

in accordance with the written internal control policy so adopted by

the recipient,¹ and, subject to the requirements specified in division (D)(3)(a)(ii) of this section,² 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, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, or for such other law enforcement purposes that the ... prosecuting attorney, county sheriff, legislative authority, board of township trustees, or board of park commissioners determines to be appropriate. (Footnotes added.)

R.C. 2933.43(D)(1)(c). Thus, as a general rule, the proceeds from the sale of contraband and forfeited moneys that constitute a law enforcement trust fund created under R.C. 2933.43(D)(1)(c) may be expended only for those law enforcement purposes that are expressly provided for in R.C. 2933.43(D)(1)(c) or that are determined to be appropriate expenditures under R.C. 2933.43(D)(1)(c). *See* 1989 Op. Att'y Gen. No. 89-078. *See generally State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1914) (where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provision).

Moneys Received Pursuant to Federal Law that are Deposited into a Law Enforcement Trust Fund Must be Disbursed in Accordance with Federal Law

However, R.C. 2933.43(D)(4) sets forth an express exception to R.C. 2933.43(D)(1)(c), as follows:

Any law enforcement agency that receives pursuant to federal law any proceeds from a sale of forfeited contraband, any proceeds from another disposition of forfeited contraband, or forfeited contraband moneys *shall deposit, use, and account for the proceeds or forfeited moneys in accordance with, and otherwise comply with, the applicable federal law.* Divisions (D)(1) to (3) of this section do not apply to, and shall not be construed as applying to, any proceeds or forfeited moneys received pursuant to federal law. (Emphasis added.)

¹ R.C. 2933.43(D)(3)(a)(i) requires a county sheriff, county prosecuting attorney, municipal corporation police department, township police department, township police district police force, office of the constable, or park district police force or law enforcement department to adopt a written internal control policy that addresses the

sheriff's, prosecuting attorney's, police department's, police force's, office of the constable's, or law enforcement department's use and disposition of all the proceeds and forfeited moneys received and that provides for the keeping of detailed financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and forfeited moneys, the specific amount of each general type of expenditure, and the amounts, portions, and programs described in [R.C. 2933.43(D)(3)(a)(ii)].

² Division (D)(3)(a)(ii) of R.C. 2933.43 provides, in part:

The written internal control policy of a county sheriff, prosecuting attorney, municipal corporation police department, township police department, township police district police force,

The language of R.C. 2933.43(D)(4) is unambiguous and unequivocal. R.C. 2933.43(D)(4) explicitly states that moneys received pursuant to federal law that are deposited into a law enforcement trust fund are to be disbursed in accordance with the applicable federal law. Since R.C. 2933.43(D)(4) specifically exempts moneys received pursuant to federal law from the disbursement provisions of R.C. 2933.43(D)(1)(c), these moneys must be disbursed in accordance with the applicable federal law. *See generally* R.C. 2925.44(A) ("[i]f property is seized pursuant to section 2925.42 or 2925.43 of the Revised Code, it is deemed to be in the custody of the head of the law enforcement agency that seized it, and he may do any of the following with respect to that property prior to its disposition in accordance with division (A)(4) or (B) of this section: ... (4) Seek forfeiture of the property pursuant to federal law. If the head of the law enforcement agency that seized the property seeks its forfeiture pursuant to federal law, the law enforcement agency shall deposit, use, and account for any proceeds from a sale of the property upon its forfeiture, any proceeds from another disposition of the property upon its forfeiture, or any forfeited moneys it receives, in accordance with the applicable federal law and otherwise shall comply with that law. Division (B) of this section and divisions (D)(1) to (3) of section 2933.43 of the Revised Code do not apply to, and shall not be construed as applying to, any proceeds or forfeited moneys received pursuant to federal law").

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that moneys received pursuant to federal law that are deposited into a law enforcement trust fund created under R.C. 2933.43(D)(1)(c) are not subject to the disbursement provisions of R.C. 2933.43(D)(1)(c), but rather, pursuant to R.C. 2933.43(D)(4), these moneys are disbursed in accordance with the applicable federal law.

office of the constable, or park district police force or law enforcement department shall provide that at least ten per cent of the first one hundred thousand dollars of proceeds and forfeited moneys deposited during each calendar year in the sheriff's, prosecuting attorney's, municipal corporation's, township's, or park district's law enforcement trust fund pursuant to division (B)(8)(c) of section 2925.44 of the Revised Code, and at least twenty per cent of the proceeds and forfeited moneys exceeding one hundred thousand dollars that are so deposited, shall be used in connection with community preventive education programs.