

OPINION NO. 2000-039**Syllabus:**

1. County sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property and forfeited moneys that are deposited into their law enforcement trust funds pursuant to R.C. 2925.42-.44 and R.C. 2933.43(D)(1)(c).
2. County sheriffs and township law enforcement agencies are entitled to use unclaimed or forfeited moneys that a court orders disbursed to them pursuant to R.C. 2933.41(D)(8).
3. County sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property that are deposited into county and township general funds pursuant to R.C. 2933.41(E).
4. 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 disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43, unless, pursuant to R.C. 2933.41(D)(8), 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.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio

By: Betty D. Montgomery, Attorney General, September 20, 2000

You have requested an opinion addressed to the following questions:

1. Are county sheriffs and township law enforcement agencies entitled to use proceeds from the sale of forfeited property and forfeited moneys disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43?

2. May boards of county commissioners and township trustees retain and use for general governmental purposes, unrelated to law enforcement, proceeds from the sale of forfeited property and forfeited moneys disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43?

I. The Use of Forfeited Moneys and Proceeds from the Sale of Forfeited Property by Law Enforcement Agencies

Your questions reference several statutory schemes that the General Assembly has enacted in R.C. Title 29 with respect to the use and disposition of forfeited moneys and proceeds from the sale of forfeited property by local law enforcement agencies. Let us examine each of these statutory schemes in order to determine the extent to which local law enforcement agencies are entitled to make use of such moneys and proceeds.

A. Disposition of Contraband Pursuant to R.C. 2933.43

With respect to your first question, we will examine first the provisions of R.C. 2933.43, which provides for the disposition of contraband that has been, is being, or is intended to be used in violation of R.C. 2933.42(A).¹ Pursuant to R.C. 2933.43(D)(1), contraband that is not disposed of pursuant to R.C. 2933.41(D)(1)-(7) or used by the law enforcement agency that seized the contraband must be sold at a public auction. All proceeds from the sale and any moneys forfeited pursuant to R.C. 2933.43 are applied first to the payment of the costs incurred in connection with the seizure, storage, forfeiture, and sale of the contraband, then to the payment of the balance due on any security interest preserved pursuant to R.C. 2933.43(C). R.C. 2933.43(D)(1). Any proceeds or forfeited moneys that remain are then paid in accordance with R.C. 2933.43(D) to one or more alcohol and drug addiction treatment programs and law enforcement trust funds.

Pursuant to R.C. 2933.43(D)(1)(c), a law enforcement trust fund must be established by, *inter alia*, each county sheriff and by the board of township trustees of each township that has a law enforcement agency. Proceeds or forfeited moneys distributed to a township law enforcement trust fund must be allocated from the fund by the board of township trustees only to the township's law enforcement agencies. R.C. 2933.43(D). Moreover, no proceeds or forfeited moneys in a law enforcement trust fund may be allocated to or used by a law enforcement agency unless the agency has adopted a written internal control policy that addresses the agency's use of the proceeds or forfeited moneys in its law enforcement trust fund and the expenditure is made in accordance with the provisions of R.C. 2933.43(D).

In addition, any county sheriff who receives proceeds or forfeited moneys pursuant to R.C. 2933.43(D) during any calendar year is required to file a report with the county auditor verifying that the proceeds and forfeited moneys were expended by the sheriff only for the purposes authorized by R.C. 2933.43(D) and specifying the amounts expended by the sheriff for each authorized purpose. R.C. 2933.43(D). Similarly, any township law enforcement agency that is allocated proceeds or forfeited moneys from a township law enforcement trust fund during any calendar year is required to file a report with the board of township trustees verifying that the proceeds and forfeited moneys were expended by the agency only for the purposes authorized by R.C. 2933.43(D) and specifying the amounts expended by the agency for each authorized purpose. *Id.* A county sheriff or township law

¹R.C. 2933.42(A) provides that, "[n]o person shall possess, conceal, transport, receive, purchase, sell, lease, rent, or otherwise transfer any contraband."

enforcement agency that uses any proceeds or forfeited moneys in a law enforcement trust fund in any calendar year also must prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the sheriff or township law enforcement agency for that calendar year and send a copy of the report to the Attorney General. *Id.*

A review of R.C. 2933.43 thus discloses that, subject to the requirements specified in R.C. 2933.43(D), moneys in a county sheriff's or township's law enforcement trust fund are to be used by the sheriff or township law enforcement agency, respectively, for those law enforcement purposes expressly provided for in R.C. 2933.43(D), or for other law enforcement purposes that the sheriff or board of township trustees determines to be appropriate. See 1998 Op. Att'y Gen. No. 98-023 at 2-125; 1989 Op. Att'y Gen. No. 89-078 at 2-362. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, the "statute is to be applied, not interpreted." *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Accordingly, county sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property and forfeited moneys that are deposited into their law enforcement trust funds pursuant to R.C. 2933.43(D)(1)(c).

B. Civil and Criminal Forfeiture of Property Used in a Felony Drug Abuse Offense or Act, Pursuant to R.C. 2925.42 and R.C. 2925.43

The next two statutes you are concerned about are R.C. 2925.42 and R.C. 2925.43, which provide for the criminal and civil forfeiture, respectively, of any right, title, or interest in property used in connection with a felony drug abuse offense or act. Pursuant to these statutes, a person's right, title, or interest in property may be forfeited to the state. If property is forfeited to the state pursuant to these statutes, the disposition of the property is governed by R.C. 2925.44. R.C. 2925.42(E); R.C. 2925.43(B).

Pursuant to R.C. 2925.44(B), after complying with any requirements imposed by a court pursuant to R.C. 2925.42 or R.C. 2925.43 and the requirements imposed by those statutes, property forfeited to the state under R.C. 2925.42 or R.C. 2925.43 that is not disposed of pursuant to R.C. 2925.44(B)(1)-(7) must be sold at a public auction. Proceeds from the sale and moneys forfeited pursuant to R.C. 2925.42 and R.C. 2925.43 are required to be disbursed first to the payment of the costs incurred in connection with the seizure, storage, forfeiture, and sale, and then to the payment of the value of any legal right, title, or interest in the property that is possessed by a person who has complied with R.C. 2925.42(F) or R.C. 2925.43(E). R.C. 2925.44(B)(8). Any remaining proceeds or forfeited moneys are then paid in accordance with R.C. 2925.44(B)(8) to one or more alcohol and drug addiction programs and to the appropriate law enforcement trust funds in accordance with R.C. 2943.33(D). *Id.*

As explained previously, subject to the requirements specified in R.C. 2933.43(D), moneys in a county sheriff's or township's law enforcement trust fund are to be used by the sheriff or township law enforcement agency, respectively, for those law enforcement purposes expressly provided for in R.C. 2933.43(D), or for other law enforcement purposes that the sheriff or board of township trustees determines to be appropriate. Because R.C. 2925.44(B)(8) requires proceeds and forfeited moneys that are deposited into a law enforcement trust fund pursuant to R.C. 2925.44 to be used only in accordance with the provisions of R.C. 2933.43(D), such proceeds and moneys may be used only in the manner prescribed in R.C. 2933.43(D). See generally *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1913) (where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provision). Accordingly, county

sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property and forfeited moneys that are deposited into their law enforcement trust funds pursuant to R.C. 2925.42-.44.

C. Disposition of Property Other than Certain Categories of Contraband Pursuant to R.C. 2933.41

The final statute you have asked about is R.C. 2933.41. This statute controls the disposition of property, other than contraband that is subject to the provisions of R.C. 2913.34 or R.C. 2933.43, other than property that is subject to R.C. 3719.141, other than property that is forfeited under R.C. 2923.44-.47 or R.C. 2925.41-.45, other than a vehicle that is criminally forfeited pursuant to R.C. 4503.233 or R.C. 4503.234, other than property that has been lawfully seized under R.C. 2933.71-.75, in relation to a Medicaid fraud case, and other than property that has been lawfully seized in relation to a violation of R.C. 2923.32, that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency.

Under R.C. 2933.41(B), a county sheriff or township law enforcement agency that has property in its possession that is required to be disposed of pursuant to R.C. 2933.41 must make a reasonable effort to return the property to the person entitled to its possession at the earliest possible time. If a county sheriff or township law enforcement agency is unable to return property to its owner or if the property is forfeited, the sheriff or township law enforcement agency, after obtaining a court order, must dispose of the property in accordance with the provisions of R.C. 2933.41(D)(1)-(8). R.C. 2933.41(D). If unclaimed or forfeited property is not disposed of pursuant to R.C. 2933.41(D)(1)-(7) or used by a county sheriff or township law enforcement agency that has possession of the property, the property may be sold at a public auction or, in the case of other unclaimed or forfeited moneys, disposed of in a manner that a court considers proper. R.C. 2933.41(D)(8).

In accordance with R.C. 2933.41(D)(8), if a court considers it proper, the court may order that unclaimed or forfeited moneys be distributed to, and used by, a county sheriff or township law enforcement agency. If this occurs, it is axiomatic that a county sheriff or township law enforcement agency is entitled to use these moneys. Conversely, if a court orders that unclaimed or forfeited moneys be disbursed to another entity, then that entity may use and expend those moneys, in accordance with the terms, if any, specified in the court's order.²

In regard to the disposition of proceeds from the sale of unclaimed or forfeited property, R.C. 2933.41(E)(1)(b) states that, except as provided in R.C. 2933.41(D)(4), (5), (E)(1)(a), and (E)(2), these proceeds must be deposited into a county's general fund if the property was in the custody of the county sheriff prior to its sale, or into a township's general fund if the property was in the custody of a township's law enforcement agency prior to its sale.³ R.C. 2933.41(E)(1)(b). Although proceeds from the sale of unclaimed or forfeited

²Pursuant to R.C. 2933.41(D)(8), a court may order that unclaimed or forfeited moneys be distributed to, and used by, a board of county commissioners or a board of township trustees. In such a situation, the board of county commissioners or the board of township trustees would be entitled to use the moneys.

³None of the exceptions listed in R.C. 2933.41(E)(1) authorize the disbursement of any proceeds from the sale of property disposed of pursuant to R.C. 2933.41 to county sheriffs or township law enforcement agencies.

property are deposited into the general fund of a county or township, it appears that county sheriffs and township law enforcement agencies are entitled to use these proceeds.

R.C. 2933.41(A) provides that each law enforcement agency that has custody of any property that is to be disposed of pursuant to R.C. 2933.41 is required to adopt a written internal control policy that addresses, *inter alia*, the keeping of detailed financial records of the amount and disposition of any proceeds of a sale of the property and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount expended on each general type of expenditure. Also, any law enforcement agency that receives in any calendar year any proceeds of a sale pursuant to R.C. 2933.41(D)(8) must prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency for that calendar year and send a copy of the report to the Attorney General. R.C. 2933.41(A).

Reading the provisions of R.C. 2933.41 as a whole, it is apparent that the General Assembly intended that law enforcement agencies are entitled to use the proceeds from property sold under R.C. 2933.41. *See generally Humphrys v. Winous Co.*, 165 Ohio St. 45, 49, 133 N.E.2d 780, 783 (1956) (a statute must be read and construed as a whole in order to give effect to the intention of the General Assembly). If this had not been the General Assembly's intention, it would have been unnecessary for the General Assembly to have included language in R.C. 2933.41 requiring law enforcement agencies to keep records and prepare reports concerning the use of proceeds from the sale of property under R.C. 2933.41. *See generally* R.C. 1.47(B) (it is presumed that every part of a statute's language is to be given effect). Therefore, in accordance with the language of R.C. 2933.41, proceeds from the sale of property disposed of pursuant to R.C. 2933.41 must be deposited into an account within a county's or township's general fund for use by the county's or township's law enforcement agencies. *See* 2 Ohio Admin. Code 117-1-02 (establishing accounts within a county's general fund); *See generally* 1986 Op. Att'y Gen. No. 86-100 at 2-558 ("[a]n 'account' is a procedural device which segregates revenue within a 'fund,' for a particular purpose"); 1981 Op. Att'y Gen. No. 81-035 at 2-134 and 2-135 (moneys in a county's general fund that are required by statute to be used for a specific purpose may not be used for any other purpose); 1969 Op. Att'y Gen. No. 69-015 at 2-22 ("[w]here general fund monies are appropriated to a specific use, it is only necessary to establish an account within the general fund for the purpose intended").

II. Except as Provided in R.C. 2933.41(D)(8), the Revised Code Does Not Authorize the Use of Forfeited Moneys and Proceeds from the Sale of Forfeited Property for Purposes Unrelated to Law Enforcement

Your second question asks whether boards of county commissioners and township trustees may retain and use for general governmental purposes, unrelated to law enforcement, proceeds from the sale of forfeited property and forfeited moneys disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43. It is a long-established principle that where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions. *State ex rel. Walton v. Edmondson*, 89 Ohio St. at 363-64, 106 N.E. at 45; *see* R.C. 5705.10 ("[m]oney paid into any fund shall be used only for the purposes for which such fund is established"). *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951) ("when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner"). Because R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43 set forth provisions for the disbursement and expenditure of proceeds from

the sale of forfeited property and forfeited moneys, such proceeds and forfeited moneys must be disbursed and expended in accordance with these provisions.

As explained previously, county sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property and forfeited moneys that are either deposited into their law enforcement trust funds, disbursed to them pursuant to R.C. 2933.41(D)(8), or deposited into the county and township general funds pursuant to R.C. 2933.41(E). Except as provided in R.C. 2933.41(D)(8), which authorizes a court to order that unclaimed or forfeited moneys be distributed to, and used by, a board of county commissioners or a board of township trustees, *see note two, supra*, none of the statutes you have asked us about authorize a board of county commissioners or a board of township trustees to retain and use for general governmental purposes, unrelated to law enforcement, forfeited moneys or proceeds from sales conducted under these statutes. Accordingly, 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 disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43, unless, pursuant to R.C. 2933.41(D)(8), 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.

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. County sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property and forfeited moneys that are deposited into their law enforcement trust funds pursuant to R.C. 2925.42-.44 and R.C. 2933.43(D)(1)(c).
2. County sheriffs and township law enforcement agencies are entitled to use unclaimed or forfeited moneys that a court orders disbursed to them pursuant to R.C. 2933.41(D)(8).
3. County sheriffs and township law enforcement agencies are entitled to use proceeds from the sale of forfeited property that are deposited into county and township general funds pursuant to R.C. 2933.41(E).
4. 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 disposed of pursuant to R.C. 2925.42, R.C. 2925.43, R.C. 2933.41, and R.C. 2933.43, unless, pursuant to R.C. 2933.41(D)(8), 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.