



To: Diana Gomez

From: Yaneris Figueroa, Assistant City Attorney for the City of Coral Gables

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Forfeiture Funds To Pay Legal Fees

Date: March 25, 2014

You asked whether payment of legal fees incurred during forfeiture proceedings requires the City's Forfeiture Asset Fund Committee (the "Committee") or the City Commission's prior authorization. As outlined below, payment of legal fees incurred in forfeiture proceedings is appropriate without the prior approval of the Committee or the City Commission.

Florida Statute Section 932.7055 sets the framework for disposition of liens and forfeited property. Specifically, Section 932.7055(4) outlines the priority with which to disburse proceeds from the sale of forfeited property. Pursuant to the Statute, the payment of costs associated with the forfeiture is the second highest priority. Moreover, the payment of legal fees and costs is expressly authorized in Section 932.7055(4)(b). Fla. Stat. § 932.7055(4). Indeed, Section 932.7055(4)(b) states that "[t]he proceeds from the sale of forfeited property shall be disbursed [for the] payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property." Fla. Stat. § 932.7055(4)(b). Thus, the Florida Legislature expressly authorized payment of legal fees and costs without placing any limitations on that authorization. Therefore, it is not necessary to obtain approval from the Committee or City Commission to use the proceeds of the forfeited property to pay legal fees and costs.

Additionally, Florida's Attorney General analyzed this issue in 1996. In Opinion No. 96-62, the Attorney General was asked whether "[i]n the event the sheriff fails to pay legal fees

associated with the forfeiture proceedings prior to depositing the funds in the trust fund¹, may the county use trust fund monies to pay such legal fees." Fla. Att'y Gen. Op. 96-62, p.1 (August 16, 1996). In addressing the question, the Attorney General noted:

the act clearly contemplates that the payment of costs associated with the forfeiture of the contraband has priority over the payment of court costs or the enumerated purposes for which monies may have been placed in the trust fund. In light of this statutory prioritization of payment of proceeds from the sale of contraband, payment of legal fees incurred as a part of the forfeiture proceedings would appear to be appropriate even though the funds have been deposited in the forfeiture trust fund.

Id. Notably, the Attorney General did not mention any limitations to the use of the forfeited funds, despite the funds being in the forfeiture trust fund. Thus, it follows that use of proceeds from the sale of forfeited property to pay legal fees and costs, without the prior approval of the Committee or City Commission, is lawful.

¹ Fla. Stat. § 932.7055(5)(a) states that "remaining proceeds [from the forfeited property] shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality." Fla. Stat. § 932.7055(5)(a). Moreover "the[] funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality ... and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing board of the municipality." Fla. Stat. § 932.7055(5)(b).

Arias, Cristina

From: Leen, Craig
Sent: Tuesday, March 25, 2014 1:57 PM
To: Figueroa, Yeneris; Gomez, Diana
Cc: Thornton, Bridgette; Arias, Cristina; Osle, Zilma
Subject: RE: Use of Forfeiture Funds to Pay Legal Fees

This opinion was reviewed by outside counsel and me as well. I approve it and adopt it as a City Attorney Opinion. Zilma and Cristina, please place it in the opinion folder with this cover email. Thanks.

Craig E. Leen
City Attorney

From: Figueroa, Yeneris
Sent: Tuesday, March 25, 2014 12:18 PM
To: Gomez, Diana
Cc: Leen, Craig; Thornton, Bridgette; Arias, Cristina; Osle, Zilma
Subject: Use of Forfeiture Funds to Pay Legal Fees

Good Afternoon Diana,

Attached please find the opinion regarding use of forfeiture funds to pay legal fees. The opinion concludes that use of proceeds from the sale of forfeited property to pay legal fees and costs, without the prior approval of the FAF Committee or the City Commission, is lawful. Please let me know if you have any questions and/or concerns.

Best Regards,

Yeneris Figueroa
Assistant City Attorney for the City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Office: (305) 722-8625
Fax: (305) 476-7795

LEGAL MEMORANDUM

To: Diana Gomez, Finance Director

From: Yaneris Figueroa, Assistant City Attorney

RE: Payment of Legal Fees from the Proceeds of Contraband Forfeitures

Date: March 25, 2014

You asked whether payment of legal fees incurred during forfeiture proceedings requires the City's Forfeiture Asset Fund Committee (the "Committee") or the City Commission's prior authorization. As outlined below, payment of legal fees incurred in forfeiture proceedings is appropriate without the prior approval of the Committee or the City Commission.

Florida Statute Section 932.7055 sets the framework for disposition of liens and forfeited property. Specifically, Section 932.7055(4) outlines the priority with which to disburse proceeds from the sale of forfeited property. Pursuant to the Statute, the payment of costs associated with the forfeiture is the second highest priority. Moreover, the payment of legal fees and costs is expressly authorized in Section 932.7055(4)(b). Fla. Stat. § 932.7055(4). Indeed, Section 932.7055(4)(b) states that "[t]he proceeds from the sale of forfeited property shall be disbursed [for the] payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property." Fla. Stat. § 932.7055(4)(b). Thus, the Florida Legislature expressly authorized payment of legal fees and costs without placing any limitations on that authorization. Therefore, it is not necessary to obtain approval from the Committee or City Commission to use the proceeds of the forfeited property to pay legal fees and costs.

Additionally, Florida's Attorney General analyzed this issue in 1996. In Opinion No. 96-62, the Attorney General was asked whether "[i]n the event the sheriff fails to pay legal fees

associated with the forfeiture proceedings prior to depositing the funds in the trust fund^{1c}, may the county use trust fund monies to pay such legal fees.” Fla. Att’y Gen. Op. 96-62, p. 1 (August 16, 1996). In addressing the question, the Attorney General noted:

the act clearly contemplates that the payment of costs associated with the forfeiture of the contraband has priority over the payment of court costs or the enumerated purposes for which monies may have been placed in the trust fund. In light of this statutory prioritization of payment of proceeds from the sale of contraband, payment of legal fees incurred as a part of the forfeiture proceedings would appear to be appropriate even though the funds have been deposited in the forfeiture trust fund.

Id. Notably, the Attorney General did not mention any limitations to the use of the forfeited funds, despite the funds being in the forfeiture trust fund. Thus, it follows that use of proceeds from the sale of forfeited property to pay legal fees and costs, without the prior approval of the Committee or City Commission, is lawful.

¹ Fla. Stat. § 932.7055(5)(a) states that “remaining proceeds [from the forfeited property] shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality.” Fla. Stat., § 932.7055(5)(a). Moreover “the[] funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality...and only upon appropriation to the sheriff’s office or police department by the board of county commissioners or the governing board of the municipality.” Fla. Stat., § 932.7055(5)(b).