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JUN 25 2007

**OPINION COMMITTEE**

FILE # ML-45245-07

I.D. # 45245

June 21, 2007

**RQ-0595-GA**

Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Request for an opinion on Texas Code of Criminal Procedure Article 59.08

Dear Attorney General Abbott:

I am requesting an Attorney General's written opinion pursuant to Government Code §402.043 on the following question:

*Pending a final judgment, may a law enforcement agency deposit seized money pursuant to Chapter 59 of the Code of Criminal Procedure in an interest-bearing account, or is the authority to deposit such money limited to the Attorney representing the State?*

Texas Code of Criminal Procedure Article 59.08(a) provides:

- (a) If money that is contraband is seized, the attorney representing the state may deposit the money in an interest bearing account in the jurisdiction of the attorney representing the state until a final judgment is rendered concerning the contraband.**

Article 59.08(a) only names *the attorney representing the State* as the entity that may deposit seized funds into an interest bearing account. One could take the position that since Art. 59.08 specifically names *the attorney representing the state* as the entity able to deposit said funds into an interest bearing account and not the law enforcement agency that the legislature meant to put the attorney representing the state in a fiduciary relationship with the seizing agency establishing a check and balance measure. However, pursuant to the rules of statutory construction, the word "may" creates discretionary authority or grants permission or a power. That would imply that the attorney

representing the state has the choice of whether or not to place the proceeds in an interest bearing account. If the attorney representing the state chooses not to place said funds in an interest bearing account would that then permit the seizing law enforcement agency to do so? If not, may the law enforcement agency simply secure the seized funds in its secure evidence room or in a non-interest bearing account for safekeeping pending disposition? Article 59.03(c) states that *a peace officer who seizes property has custody of the property, subject only to replevy....* This article also requires the law enforcement agency that seized the property provide the attorney representing the state a sworn statement containing a schedule of the property seized. It can be said that Article 59.03 implies that the law enforcement agency can keep the property in its custody pending final disposition.

A review of legislative history of Article 59 reveals that there were only discussions about agency accountability over the seized property *after* final judgment was rendered. Specifically, who would have discretion as to how forfeited property would be utilized and reported. All of these concerns were addressed in Texas Code of Criminal Procedure Article 59.06. More specifically in Articles 59.06(a) which requires that forfeited property be administered by the attorney representing the state and 59.06(b) which requires the attorney representing the state transfer the forfeited property pursuant to local agreement. There was no discussion whatsoever about accountability over the property *prior to* final judgment.

I appreciate your help in this matter. If you have any questions regarding this request, feel free to give my office a call.

Sincerely,



John R. Roach  
Criminal District Attorney  
Collin County, Texas