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216TH JUDICIAL DISTRICT
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OPINION COMMITTEE

FILE # MI-45896-08

I.D. # 45896
(duplicate)

The Honorable Greg Abbott, Attorney General of Texas
Attn: Nancy Fuller, Chair, Opinions Committee
Office of the Attorney General of Texas
P. O. Box 12548
Austin, TX 78711

RQ-0757-GA

Dear Ms. Fuller:

At the request of the Kerrville Police Department, this office is respectfully seeking a formal written Attorney General's Opinion concerning the use of asset forfeiture funds (Code of Criminal Procedure, Chapter 59).

Chapter 59 of the Code of Criminal Procedure, Article 59.06 (c)(2) authorizes the use of said funds "solely for law enforcement purposes, such as...items used by officers in direct law enforcement purposes." The Kerrville Police Dept. desires to use funds derived from Chapter 59 forfeitures, previously awarded to the Kerrville Police Dept., to install carpet and/or tile in the Criminal Investigation Division and the Special Crimes Unit offices of said police department. Both offices are located at the Kerrville Police Department headquarters and are used as offices for investigators of said police department.

Extensive research has failed to reveal any cases directly on point.

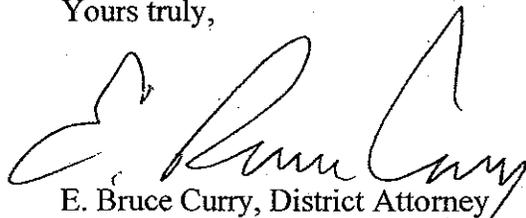
Question presented:

Is carpet or tile, purchased and installed in offices owned or rented by a police department, considered a "law enforcement purpose" if said offices are used to office investigators during the course and in the scope of their employment as investigators with said police department?

This office respectfully request an opinion as soon as possible as time is of the essence; as remodeling of said offices is almost completed, but funds were not budgeted for said carpet or tile.

Thank you in advance for your prompt response.

Yours truly,

A handwritten signature in black ink, appearing to read "E. Bruce Curry". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

E. Bruce Curry, District Attorney

Enclosures: brief

Brief

Question presented: Is carpet or tile, purchased and installed in offices owned or leased by a police department, considered a “law enforcement purpose” if said offices are used to office investigators during the course and in the scope of their employment as investigators with said police department?

Background facts:

The Kerrville Police Department is regularly awarded funds which said department seizes pursuant to Chapter 59 of the Code of Criminal Procedure. Recently, the Police Department began renovations at said police department. However, the budget for said renovations does not include funds for the cost to purchase and install carpet or tile in the offices used by the Criminal Investigation Division and the Special Crimes Unit (both office investigators of the police department). A local agreement exists between the attorney representing the State and the Kerrville Police Department.

Relevant Legal Authority:

There is no caselaw or Attorney General’s Opinion directly on point on this issue. However, as discussed below, it appears that the use of Chapter 59 forfeiture funds for the purchase and installation of carpet or tile for offices at the police department is considered a “law enforcement purpose.”

Article 59.06 of the Code of Criminal Procedure

Article 59.06 provides as follows:

- (c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money....shall be deposited after the deduction of court costs to which a district clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:
 - (2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes, such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies, and items used by officers in direct law enforcement duties (emphasis added).

Thus the issue relevant to the question presented is does this carpet qualify as a law enforcement purpose under Article 59.06?

Opinion No. JC-0005

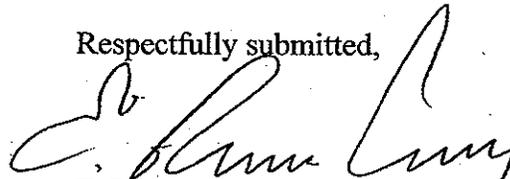
In an opinion requested by Senator Judith Zaffirini (RQ-1160) in 1999, Senator Zaffirini asks: may Chapter 59 forfeiture funds be used by the Laredo Police Department to purchase vehicles in light of the fact that, employing the rule of *ejusdem generis*, purchase of vehicles is not similar to the enumerated purposes for which said funds can be used pursuant to the language in Article 50.06(c)(2).

The Attorney General agreed that the purchase of vehicles, in the abstract, is not similar to salaries, training, or specialized equipment, but then went on to opine that it is in fact a permissible law enforcement purpose to purchase vehicles for the use of the Laredo Police Department. The Attorney General reached this conclusion based on an analysis of the legislative intent. In discussing said intent, the opinion specifically points out that, originally, an amendment to 59.06 contained in House Bill 1185 of the Seventy-second Legislature in 1991 contained language expressly forbidding the purchase of "facilities (emphasis added), vehicles, office supplies, or office equipment." At a public hearing pertaining to House Bill 1185, Senator Eddie Lucio proposed striking the aforementioned quoted language forbidding the use of forfeiture funds for those specific purposes. This quoted language was struck from the bill and not included in the enacted amendment. The Attorney General opined that the excision of the language indicates the legislature's intent that forfeiture funds may be used for the purchase of vehicles.

Conclusion:

Clearly, this would mean that, since the language forbidding the use of forfeiture funds for the purchase of facilities was also struck, the Legislative intent was to allow the use of Chapter 59 forfeiture funds for the purchase of facilities. It follows that if it is lawful to purchase facilities, it is lawful to purchase carpet or tile with Chapter 59 forfeiture funds.

Respectfully submitted,



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