



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 23, 1989

Honorable Carlos Valdez
County Attorney
Nueces County Courthouse
901 Leopard, Room 206
Corpus Christi, Texas 78401-3680

LO-89-30

Dear Mr. Valdez:

This is to reaffirm the opinions expressed in Attorney General Letter Opinion 88-112 (LO-88-112), which was withdrawn by Attorney General Letter Opinion 88-114 (LO-88-114).

The questions addressed in LO-88-112 were:

1. Do the provisions of the County Purchasing Act (Local Government Code, sections 262.021 et seq.) apply to purchases made with funds generated by forfeitures under section 5.08 of article 4476-15 V.A.T.C.S.?
2. Are the funds generated by forfeitures under section 5.08 of Article 4476-15 V.A.T.C.S. required to be deposited in the county depository established pursuant to the authority expressed in sections 116.002 et seq. of the Local Government Code?

That opinion answered the first question in the negative and the second question in the affirmative. As indicated in LO-88-114, LO-88-112 was withdrawn in order to consider whether a provision of article 4476-15 V.T.C.S., which was not directly addressed in LO-88-112, required a different answer to the second question.

LO-88-112 concluded in response to the second question that funds generated by forfeitures under section 5.08 of article 4476-15 were required to be deposited in a county depository established pursuant to Chapter 116 of the Local Government Code. That opinion first pointed to section 5.08(f) of article 4476-15, which states in pertinent part:

All money, securities, certificates of deposit, negotiable instruments, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property

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and other things of value, and the proceeds from the sale of an item described in this subsection that are forfeited to the seizing agencies of the state or an agency or office of a political subdivision of the state authorized by law to employ peace officers shall be deposited in a special fund to be administered by the seizing agencies or office to which they are forfeited.

LO-88-112 then noted that subsection (a) of section 116.002 of Chapter 116 of the Local Government Code, providing for the establishment of county depositories, states:

This chapter applies to money collected or held by a district, county, or precinct officer in a county and by the officers of a defined district or subdivision in the county, including the funds of a municipal or quasi-municipal subdivision or corporation that has the power to select its own depository but has not done so. The money shall be deposited under this chapter, and the money shall be considered in fixing, and is protected by, a county depository's bond.

The opinion then reasoned:

Since the funds generated by forfeitures under section 5.08 of article 4476-15 are held by the district, county or precinct officer in the county to which they are forfeited in an official capacity, it follows that such funds must be deposited in a county depository.

After LO-88-112 was issued, we received a suggestion that section 5.082 of article 4476-15 might require a different result. That section states:

(a) If money is seized by a law enforcement agency in connection with a violation of this Act, the state or the political subdivision of the state that employs the law enforcement agency may deposit the money in an interest-bearing bank account in the jurisdiction of the agency that made seizure or in the county in which the money was seized until a final judgment is rendered concerning the violation.

(b) If a final judgment is rendered concerning a violation of this Act, money seized in connection with the violation that has been placed in an interest-bearing bank account shall be distributed according to this Act, with any interest being distributed in the same manner and used for the same purpose as the principal.

Section 5.082 was added by Acts 1987, 70th Leg., ch. 167, § 4.02, at 1356. The caption stated that it related "to nonsubstantive additions to and corrections in enacted codes." The act indicates that the addition of section 5.082 was made "to conform with Chapter 547, Acts of the 69th Legislature, Regular Session 1985." The 1985 enactment made essentially the same provisions as section 5.082, except that it also applied to money seized in connection with offenses under Penal Code chapter 47 (gambling offenses). The 1987 act accordingly also added article 18.182 to the Code of Criminal Procedure in order "to conform with chapter 547," making the same provisions as section 5.082, but with respect to money seized in connection with chapter 47 Penal Code violations.

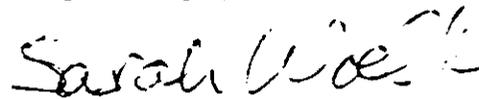
We think that the purpose of chapter 547, and thus the purpose of section 5.082, which was added to conform with the former enactment, was to provide that money seized could be deposited in an interest-bearing bank account and that any interest earned must be distributed with and used for the same purposes as the principal. We do not think that the purpose of chapter 547 was to provide an exception to the requirement of chapter 116 of the Local Government Code that money collected or held by district, county, or precinct officers must be deposited in a county depository. County depositories are banks selected by the commissioners courts. See Local Gov't Code § 116.021. Both chapter 116 and section 5.082 can be applied without conflict to "money seized in connection with a violation of" article 4476-15, with the result that the money must be deposited in the county depository, and that any interest earned "stays with" the principal upon distribution. Acts are presumed to be in harmony with each other and will be so construed unless their provisions are so antagonistic that both cannot stand. See e.g., 53 Tex. Jur. 2d Statutes § 102, and authorities cited there.

We do note that, while we do not believe section 5.082 affects the conclusion reached in response to the second question in LO-88-112, we query to what extent, if at all, section 5.082 applies to the "funds generated by forfeitures" referred to in your question. The "money seized in connection with a violation of this Act" referred to in

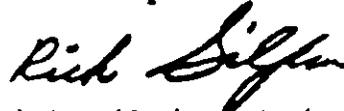
section 5.082 would not be forfeited until so ordered by a district court under the procedures described in sections 5.03 through 5.08. Section 5.082 provides that any seized money deposited in an interest-bearing account may be kept there until "a final judgment is rendered concerning the violation" and shall thereafter be distributed together with any interest earned. This language accords more readily with the provisions of the Code of Criminal Procedure, to which it also applies under 18.182 of that code, for the forfeiture of money seized in connection with chapter 47 (Penal Code gambling offenses). Forfeitures under the latter provisions do not occur until after a final conviction for the offense. See Code of Criminal Procedure art. 18.18. Forfeitures under article 4476-15, on the other hand, may be ordered after a "forfeiture hearing," which, it would appear, may occur prior to the rendering of "a final judgment concerning the violation." However, we do not perceive such issues -- as to such possible discrepancies between section 5.082 and the forfeiture provisions of sections 5.03-5.08 -- as falling within the scope of the question you asked, and we therefore do not address them here.

Again, we reaffirm the opinion expressed in LO-88-112 that funds generated by forfeitures, under article 4476-15 are required to be deposited in a county depository pursuant to chapter 116 of the Local Government Code.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

Prepared by: William Walker

APPROVED: OPINION COMMITTEE

SW/RG/WW/mc

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