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OPINION COMMITTEE



OFFICE OF THE DISTRICT ATTORNEY
216TH JUDICIAL DISTRICT
GILLESPIE AND KERR COUNTIES

FILE # ML-48256-17
I.D. # 48256

RQ-0195-KP

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November 27, 2017

Honorable Ken Paxton
Texas Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Attorney General's Opinion Concerning Use of Civil Asset Forfeiture Funds:

Is the use or expenditure of civil asset forfeiture funds by a district attorney to purchase property insurance for a property awarded to the State as contraband while the appeal of the case is pending a use for official purposes of those funds pursuant to the Texas Code of Criminal Procedure Annotated, article 59.06(c)(1)?

Dear General Paxton:

I am requesting your opinion regarding whether the use or expenditure of civil asset forfeiture funds under Texas Code of Criminal Procedure Annotated, article 59.06(c)(1) to purchase property and liability insurance for a house and real estate ordered forfeited to the State as contraband while the appeal of the case is pending is an official purpose, based upon the following facts and legal analysis as set forth in this letter.

Factual Background

A civil asset forfeiture was commenced against a certain tract of real property that has residence upon it in Kerr County, Texas (hereinafter referred to collectively as the *Property*). A notice of lis pendens concerning the Property was timely filed as required by applicable statute. The Property is also encumbered by perfected mortgage. After a trial on the merits, the court entered a judgment declaring the Property contraband as defined under the applicable provision of article 59.01 *et seq.* of the Texas Code of Criminal Procedure Annotated. The defendant timely filed a notice of appeal to perfect an appeal of the civil asset forfeiture judgment. The court also entered an order to govern the control of the Property during the pendency of the appeal, a copy of which is

attached hereto and incorporated by reference herein for all purposes. The relevant portion of the judgment states, "IT IS ORDERED that the State may insure the Property against loss for the entire period of the pendency of this appeal, and that if the Defendant is successful on appeal and regains ownership or possession of the Property, then the Defendant shall reimburse the State for all insurance premiums paid by the State with respect to the Property." The defendant was also prosecuted criminally and was sentenced to twenty years confinement in prison and is not residing at the Property. The insurance carrier has cancelled insurance coverage on the Property effective as of the date of the judgment, which is September 11, 2017.

At this time, the house and property is uninsured and vacant, so I am requesting a prompt opinion and response.

Legal Analysis

Generally, so long as a local agreement is executed, then the Texas Code of Criminal Procedure Annotated, article 59.06(c)(1) states that the forfeited funds shall be deposited into, "[A] special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney *solely for the official purposes* of his office." (emphasis added). *See also*, Texas Attorney General Opinion GA-0613 (2008 Tex. AG LEXIS 25, *10). The statute also provides in subsection (d-4), "Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for: . . . (7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities . . .". Texas Code of Criminal Procedure Annotated, article 59.06(d-4). There does not appear to be any court cases or attorney general opinions or any other similar authoritative opinions on this particular point.

Broadly speaking, once the notice of lis pendens is filed in a civil asset forfeiture case, the title to the real estate vests in the state, assuming that the state prevails in the lawsuit itself. Texas Code of Criminal Procedure Annotated, article 59.06(f). The attorney for the state is charged with administering forfeited assets. The applicable statute states, "Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies." Texas Code of Criminal Procedure Annotated, article 59.06(a). The provisions of subsection k are not relevant or applicable in this particular case.

The purchase of insurance coverage for assets owned by the state would appear to be in accordance with accepted accounting practices. The expenditure of funds for the insurance coverage does not fit squarely with the enumerated uses of article 59.06(d-4), but that particular statute is giving examples of permissible uses, not an exclusive list because of the use of the word *including* immediately preceding the list. It seems that a sound business practice would be for the state to insure its property pending its ultimate sale.

Thank you for your assistance in this matter. If you need any further information, please do not hesitate to contact me.

Sincerely yours,



Lucy Wilke,

Via email to: opinion.committee@oag.texas.gov