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DEPARTMENT OF
FINANCE

BUDGET DIVISION

CITY OF SACRAMENTO
CALIFORNIA
June 7, 1991

CITY HALL
ROOM 14
915 I STREET
SACRAMENTO, CA
95814-2696

916-449-5845

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: REPORT BACK ON USE OF ASSET SEIZURE FUNDS FOR PROGRAMS
ADMINISTERED BY COMMUNITY BASED ORGANIZATIONS OR THE DRUG
COORDINATOR POSITION

SUMMARY

During the Budget Hearings Council members requested additional information on whether asset seizure funds could be used to fund programs administered by Community Based Organizations (CBOs), or for a Drug Coordinator position. This report provides a summary of the legal opinions made to date on specific uses of asset seizure funds and describes how these funds might be used by CBOs or for a Drug Coordinator position in a manner consistent with State laws.

BACKGROUND

The City Attorney has provided legal opinions on four questions about the use of asset seizure funds for education programs. These opinions are provided as Attachments 1 & 2 and are provided in summary form below.

Summary of October 24, 1989 Legal Opinion

Question: Can asset seizure funds be used for drug education under State laws? If so can the funds be transferred to an agency outside of law enforcement?

Answer: No. State law mandates that funds must be used exclusively for law enforcement purposes.

Question: Can asset seizure funds be used for drug education under Federal laws?

Answer: No. Federal law parallels state law in regards to the expenditure of funds derived from seized assets.

Summary of March 5, 1990 Legal Opinion

Question: Does State law permit the expenditure of funds derived from the seizure of drug assets on Partners in Prevention of Crime (PIP) or Police Athletic League (PAL).

Answer: PIP may use asset seizure funds if it is deemed part of the Police Department's law enforcement effort. PAL appears to be prohibited since it is not part of the Police Department.

Question: Does Federal law permit the expenditure of funds derived from the seizure of drug assets on Partners in Prevention of Crime (PIP) or Police Athletic League (PAL).

Answer: Same answer as above. Federal law parallels state law in regards to the expenditure of funds derived from seized assets.

Use of Asset Seizure Funds for CBO Activities

It is clear from the legal opinions that the intent of the state and federal laws is to expend funds on enforcement activities administered by the local law enforcement agency. In order to fund activities of CBOs, there are two basic legal criteria that must be met:

1. It must be determined that drug prevention programs are in fact a part of the Police Department's law enforcement efforts, and
2. There must be a legal arrangement whereby the CBOs are considered an agent of the Police Department in providing law enforcement services.

The first criteria, as outlined above, has already been met as the Police Department administers several drug prevention and education programs.

The second criteria can be met if a CBO administers a program according to guidelines established by the Police Department. The CBO essentially would have to be under contract by the Police Department to provide a specified service.

The City Attorney's Office concurs that it is possible that a program administered by a CBO could be eligible for funding from asset seizure funds if the criteria outlined above is met; however, the City Attorney does not want to issue a generic opinion that any CBO could receive funding. The City Attorney prefers to review specific proposals from CBO's on a case-by-case basis in order to determine if expenditure of asset seizure funds on a given activity is permitted.

Use of Asset Seizure Funds for Drug Coordinator Position

The City Attorney has determined that the Drug Coordinator position recommended by EMT Associates in the document titled Drugs and Gangs in Sacramento: Blueprint for the Future can be paid for with asset seizure funds if the Council determines that a position exclusively supports law enforcement(Attachment 3). The City Council should determine that it will exclusively support law enforcement efforts by resolution.

FINANCIAL DATA

This report is for information only. No fiscal impacts are associated with the information contained in this report.

The Proposed 1991-93 Budget includes an expenditure plan for all the available asset seizure funds (Attachment 4). This plan allocates 40% of the discretionary funds for Drug Prevention Programs. These programs are the Magnet School Program, and the Police Community Gang/Drug Prevention Coalition Program.

POLICY CONSIDERATIONS

This report is for information only. The proposed expenditure plan is consistent with the policy adopted by Council on the expenditure of asset seizure funds. The City Council established a goal of spending 25% of discretionary program funds for prevention programs. The proposed plan exceeds this goal by allocating 40% of discretionary funds for prevention programs.

MBE/WBE CONSIDERATIONS

None.

RECOMMENDATION

This report clarifies the general criteria under State law that must be met in order to use asset seizure for programs administered by CBOs or for the Drug Coordinator position. No Council action is required at this time.

Respectfully submitted,



BILL FARLEY
SENIOR MANAGEMENT ANALYST

APPROVED:


Walter J. Slupe
CITY MANAGER

July 19, 1991
All Districts

Contact Person:
Bill Farley, 449-5845



OFFICE OF THE
CITY ATTORNEY

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
GARLAND E. BURRELL, JR.

CITY OF SACRAMENTO
CALIFORNIA

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

916-449-5346

DEPUTY CITY ATTORNEYS:
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
TANARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
KATHLEEN L. MCCORMICK
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON

March 5, 1990

TO: John P. Kearns, Chief of Police
Rick Braziel, Sgt., Planning and Fiscal Section (2158)

FROM: James P. Jackson, City Attorney
Joseph McInerney, Deputy City Attorney

RE: Use of Funds from Drug Asset Forfeitures in Two Specific Programs:
the Police Athletic League (PAL) and the Police Department's Partners
in Prevention Program (PIP)

QUESTIONS PRESENTED

1. Does Health and Safety Code Section 11488, *et seq.*, permit the expenditure of funds derived from the seizure of drug assets on PIP or PAL?
2. Does 21 USC Section 853, *et seq.*, permit the expenditures of such funds on PIP or PAL?

SHORT ANSWER

1. The language of Section 11489 appears to prohibit the funding of an outside organization, such as PAL. PIP, as a part of the Police Department may receive support from the drug asset funds if deemed a part of the Police Department's law enforcement effort.
2. The federal law on the uses of distributed drug asset funds to local agencies is succinctly set forth in the attached memorandum. The basic rule is such funds are to be expended pursuant to state law.

Re: Use of Funds from Drug Asset Forfeitures in
Two Specific Programs: PAL and PIP

March 5, 1990

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BACKGROUND

The Police Department has requested an opinion relating to the use of drug asset funds for PAL and PIP. This is a follow-up to an opinion rendered by this office on the more general question of whether such funds could be used to fund outside drug prevention programs. This office issued an opinion, on October 24, 1989 (copy attached), stating that Health and Safety Code Section 11489 prohibited the use of such funds by organizations other than the local law enforcement agency, i.e. the Police Department, to whom the funds were designated. However, given the vagueness of Section 11489(d) and the general nature of the questions presented, that opinion did not address what constitutes "law enforcement efforts" of the department, which is the limiting language of the statute.

The Police Department now requests an opinion on whether the funds derived from drug asset forfeitures may be used to fund, or contribute to funding of these two specific programs.

PIP is an official drug prevention program of the Police Department. The department sends officers to local schools to speak on drug abuse and drug prevention.

PAL is not officially affiliated with the Police Department. It is supported primarily by the policemen's union and its primary emphasis is supporting youth sport leagues. Evidently, if PAL were to receive funds from the drug asset seizure funds, such funds would be utilized to institute some form of drug education program. It is not clear how formal this addition to PAL would be (i.e. a permanent part of the PAL or merely dependent upon receipt of these funds).

ANALYSIS

The specific language controlling how drug asset seizure funds are to be used is set forth in Section 11489(d) of the Health and Safety Code. It states:

"Funds so distributed shall be used by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those agencies."(emphasis added)

The agency involved is obviously the Police Department and, thus, any funds distributed out of drug asset seizure funds distributed to the City of Sacramento must be used to support the Police Department's law enforcement efforts. This limitation does not set forth a bright line on what is deemed to be the law enforcement efforts of a Police Department. No cases have interpreted this portion of the statute.

Re: Use of Funds from Drug Asset Forfeitures in
Two Specific Programs: PAL and PIP
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The Department of Justice for the State of California has set forth an asset seizure and forfeiture manual outlining the various Health and Code Sections relating to drug asset seizures. With regard to 11489(d), set forth above, on how monies shall be spent, it states:

"This is obviously a very vague direction. It deliberately does not spell out who (i.e., the sheriff, the city council, the chief administration officer) within the agency or local government entity decides or to what purpose the proceeds are put so long as it relates to law enforcement or prosecutorial efforts. This is a matter each agency must work out with its fiscal governing body, office or manager. Clearly the law does not require that the proceeds be appropriated to narcotics enforcement."

Although this is perhaps a more liberal view than the plain meaning of the words in the statute, i.e. "exclusively for" versus "relates to," it demonstrates that there is no consensus on how these funds can and cannot be used.

Turning to the specific programs, PAL and PIP, the threshold question appears to be whether either of these programs is a part of the Police Department's "law enforcement effort." The absence of court decisions and the open ended nature of this phrase makes this as much a policy question as a legal one. Conceivably any expenditure which the Police Department believes will further the public safety, under its mandate, qualifies as supporting the law enforcement efforts of the department.

The two distinctions between the programs: police department affiliation and a formal drug prevention program justify the conclusion that funding of PIP is permitted under the statute, while funding of PAL is not. The statute expressly states that the funding shall be to support the "efforts of these agencies." Thus, even if PAL were to be deemed performing a law enforcement activity, with a drug prevention program, it is not an official part of the department, thus not supporting the department's efforts.

CONCLUSION

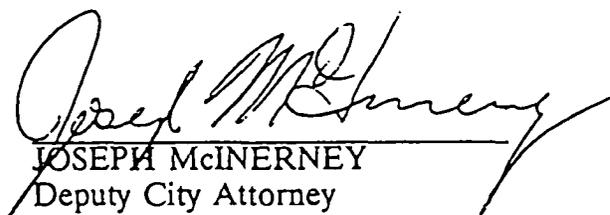
The vague language controlling what these funds may be expended on, and the absence of any case law, does not lend itself to a clear cut "laundry list" of permissible and impermissible uses of the funds. However, the plain meaning of the statute requires the funds be spent exclusively to support the law enforcement efforts of the Police Department. The fact that PAL is outside the control of the Police Department and has no plausible law enforcement role supports the conclusion that the funding of PAL would violate Section 11489(d).

Re: Use of Funds from Drug Asset Forfeitures in
Two Specific Programs: PAL and PIP

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Funding a Police Department program, such as PIP, hinges upon whether it is a part of the law enforcement effort of the department. This position is consistent with a letter from the Attorney General's office, dated February 27, 1990, to the Police Department analyzing Section 11489(d) of the Health and Safety Code.


JOSEPH McINERNEY
Deputy City Attorney

JM/jkg



OFFICE OF THE
CITY ATTORNEY

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
GARLAND E. BURRELL, JR.

CITY OF SACRAMENTO
CALIFORNIA

October 24, 1989

921 TENTH STREET
7TH FLOOR
SACRAMENTO, CA
95814-2094

916-449-5340

DEPUTY CITY ATTORNEYS:
LAWRENCE M. LUNARDINI
DIANE H. BALTER
RICHARD E. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
KATHLEEN L. MCCORMICK
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON

MEMORANDUM

TO: James P. Jackson, City Attorney

FROM: Kathleen McCormick, Deputy City Attorney

RE: USE OF FUNDS FROM DRUG ASSET FORFEITURE
FOR DRUG PREVENTION EDUCATION

QUESTIONS PRESENTED

1. Can the assets seized pursuant to the Drug Asset Forfeiture Law, Health and Safety Code §§11488 et seq., be used for drug prevention education? If so, can the assets be turned over to an agency outside of law enforcement?

2. Can the assets seized pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§853, et seq., be used for drug prevention education?

ANSWER

1. No. Health and Safety Code §11489 expressly provides for the distribution of all funds obtained through drug asset forfeiture. The bulk of the money goes to the law enforcement agencies participating in the seizure, the prosecutorial agency, and the State Asset Forfeiture Distribution Fund. The money distributed to law enforcement agencies must be used exclusively for law enforcement purposes.

2. No. Federal law at 21 U.S.C. §881 mandates that assets shall be distributed in accordance with State law.

BACKGROUND

Councilmember Lyla Ferris has requested that this office research whether or not funds obtained pursuant to the drug forfeiture statute may be used for drug prevention education programs, and whether this money may be turned over to an agency outside of law enforcement for that purpose.

ANALYSIS

A. State Law

Health and Safety Code §11489 explicitly addresses the allocation of forfeited property and money obtained from drug asset seizure. The local governmental entity must distribute the funds as follows:

- (a) To the bona fide or innocent purchaser of the property when the court orders distribution to that person.
- (b) The balance is to be distributed as follows:
 - (1) To the state or local governmental agency for all expenditures made by it in connection with the sale of the property;
 - (2) Ninety percent (90%) of the balance as follows:
 - a) Eighty-five percent (85%) to the state and/or local law enforcement agency that participated in the seizure, allocated between them to reflect the proportionate contribution of each agency;
 - b) Fifteen percent (15%) to the prosecutorial agency which processes the forfeiture action.
 - (3) The remaining ten percent (10%) of the balance goes to the State Asset Forfeiture Distribution Fund, which is administered by the Office of Criminal Justice Planning.

The funds distributed to law enforcement agencies under Paragraph (2)(a) above must be used exclusively for law enforcement purposes. §11489(d).

James P. Jackson, City Attorney
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The monies that go into the Asset Forfeiture Distribution Fund are also expressly allocated. One million dollars (\$1,000,000.00) in 1989 and 1990 goes to Los Angeles County Office of Education to fund programs for the Gang Risk Intervention Pilot Program. An amount not to exceed five percent (5%) of the Fund goes to administrative costs incurred by the Office of Criminal Justice Planning. The balance, if any, is distributed eighty-five percent (85%) to the Peace Officers Training Fund and fifteen percent (15%) for financial assistance to provide for a statewide program of education, training and research for local public prosecutors.

In 1994, another version of §11489 goes into effect. Under the 1994 statute, twenty percent (20%) of the funds will go to the State Department of Mental Health for deposit in the Mental Health Primary Prevention Fund. This fund is to be used for primary prevention programs which are controlled by §5476 of the Welfare and Institutions Code. Section 5476 states that school districts, publicly funded preschool programs, and local mental health programs may implement primary prevention projects with available funds from the State Department of Mental Health. As of 1994, this may be one way for local school districts to implement drug prevention programs with drug forfeiture funds.

B. Federal Law

Federal law on distribution of forfeited drug assets is codified at 21 U.S.C. §881. That statute provides that the assets shall be controlled by the U.S. Attorney General. The Attorney General may transfer the property "to any state or local law enforcement agency which participated directly in the seizure or forfeiture of the property." 21 U.S.C. §881(e)(1)(A). However, the Attorney General must distribute the assets in accordance with the requirements of State law. 21 U.S.C. §881(e)(3)(B). California Health and Safety Code §11489 therefore controls.

CONCLUSION

The existing drug seizure statute, Health and Safety Code §11489, does not allow for money to go directly from the local governmental entity to agencies outside of law enforcement. The money must be used for law enforcement purposes. Assets seized under federal statutes must be distributed in accordance with State law if they are distributed locally.

KATHLEEN McCORMICK



OFFICE OF THE
CITY ATTORNEY

SHARON SIEDORF CARDENAS
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO

CITY OF SACRAMENTO
CALIFORNIA

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

PH. 916-449-5346
FAX 916-449-6755

DEPUTY CITY ATTORNEYS:
EVELYN M. MATTEUCCI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON
JOSEPH McINERNEY
JOE ROBINSON
LESLIE R. LOPEZ

May 17, 1991

MEMORANDUM

TO: Jack R. Crist, Deputy City Manager

FROM: Joseph McInerney, Deputy City Attorney

RE: USE OF DRUG ASSET SEIZURE FUNDS TO PAY FOR A DRUG/GANG PROGRAM COORDINATOR

This office has previously expressed its views relating to the appropriateness of using funds received from the seizure of drug assets to fund specific programs (copies attached). The question you asked is whether Health & Safety Code § 11488, et. seq., permits the use of these funds to pay for a drug/gang program coordinator.

You indicate that the proposed position would be assigned to the Office of the City Manager and act as a liaison between city government, private citizens, and grassroots organizations, as well as heighten awareness around the issues of gangs and drugs in the Sacramento Community.

Health & Safety Code § 11489(d) limits what drug asset funds may be used for:

"... Funds so distributed shall be used exclusively by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those agencies"

No cases have interpreted the parameters of what constitutes exclusively supporting law enforcement efforts. According to the Department of Justice, the agency in charge of the drug asset seizure program on a statewide basis,

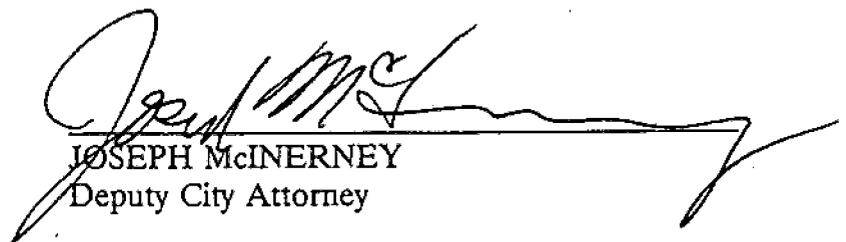
" [i]t [Sec. 11489(d)] deliberately does not spell out who . . . within the agency or local government entity decides or to what purpose the proceeds are put so long as it relates to law enforcement or prosecutorial efforts"

As currently contemplated, the proposed position will certainly include duties relating to the law enforcement efforts of the City of Sacramento. The stated rationale for this position is that the "proposed Coordinator would serve an important public service function specific to coordinating issues related to drugs and gangs". The obvious hope is that such a position will result in a decrease in drug usage and gang activity.

The purpose of § 11489(d) is to prevent local entities from using the funds generated by drug asset seizures as a source of revenue for all general fund expenditures. An argument could be made that funding the drug/gang coordinator position will not be a use of the funds exclusively supporting the law enforcement efforts of the City. The basis for this argument would be that the proposed position addresses broader societal problems, both the symptoms and the underlying causes of gangs and drug use, thus exceeding a traditional definition of what constitutes law enforcement. If a court determined that that is the case then the use of the funds in this manner would not be allowed because the funds are not being used to exclusively support law enforcement effort.

On the other hand the intent of the legislature in enacting the drug asset seizure laws was to provide a source of funds, at the local level, to be used to support the local entities specific law enforcement needs. The legislature could have set forth more specific limitations on the uses of the drug asset seizure funds. Instead the legislature left the precise uses of the funds to the local entity, subject to the limitations of § 11489(d).

Absent any clearer guidelines, from the courts or legislature, the determination of whether the funding of the drug/gang program coordinator constitutes "law enforcement efforts" is a policy issue for the governing body. Therefore, the City Council could find that the role of this position will exclusively support law enforcement efforts. Should the City Council decide to use these funds in this manner, it should make express findings on how this expenditure satisfies the requirements of § 11489(d).


JOSEPH McINERNEY
Deputy City Attorney

JM/jlb

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PROPOSED 1991-92 EXPENDITURE PLAN ASSET SEIZURE FUND

Program Admin./Enforcement (Staff, Supplies, etc.)	\$498,000
Discretionary Funds	<u>401,000</u>
Total Program	\$899,000

Allocation of Discretionary Funds

	Budget	% of Discretionary Funds
Prevention Programs		
Magnet School Program	60,000	15%
Drug/Gang Coalition	99,000	25%
Subtotal Prevention	<u>159,000</u>	40%
Equipment		
Surveillance Equipment	56,400	14%
Radio Replacements	120,000	30%
Lease Vehicles	14,000	3%
Toxic Chemical Disposal	15,000	4%
Chemical Storage Containe	1,100	0%
Bicycle Safety Equipment	6,400	2%
Tasers (10)	4,500	1%
AV Equipment	14,000	3%
Radar Units (6)	6,000	1%
Alco Sensors (10)	4,600	1%
Subtotal Equipment	<u>242,000</u>	60%
TOTAL DISCRETIONARY FUNDS	401,000	100%