



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 21, 1990

Honorable David T. Garcia
Brooks County Attorney
P. O. Box 557
Falfurrias, Texas 78355

LO-90-28

Dear Mr. Garcia:

Your question involves the construction of former section 5.08(f) of article 4476-15, V.T.C.S. Section 5.08 related to disposition of money and various types of property forfeited in controlled substances cases. Subsection (f) provided:

(f) All money, securities, certificates of deposit, negotiable instruments, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property 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. Except as otherwise provided by this subsection, expenditures from this fund shall be used solely for the investigation of any alleged violations of the criminal laws of this state. The director of an agency of the state may use not more than 10 percent of the amount credited to the fund for the prevention of drug abuse and for treatment of persons with drug-related problems. The director of an agency or office of a political subdivision that has received funds under this section shall comply with the request of the governing body of the political subdivision to deposit not more

than 10 percent of the amount credited to the fund into the treasury of the subdivision. The governing body of the subdivision shall use the funds received for the prevention of drug abuse and for treatment of persons with drug-related problems. Nothing in this subsection shall be construed to decrease the total salaries, expenses, and allowances which an agency or office is receiving from other sources at or from the time this subsection takes effect. (Emphasis added.)

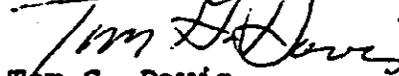
The 71st Legislature, in a nonsubstantive revision, codified section 5.08 as section 481.158 of the Health and Safety Code. H.B. 678, Acts 1989, 71st Leg., ch. 678, § 1, at 2947. Subsequently, Health and Safety Code section 481.158 was repealed. H.B. 65, Acts 1989, 71st Leg., 1st C.S., ch. 59, § 6, at 21 (eff. Oct. 18, 1989). As originally introduced, House Bill 65, section 7, provided that a portion of the proceeds from forfeitures be allocated to the Central Education Committee to pay for programs to reduce the rate of students leaving public school and to provide drug abuse prevention or drug rehabilitation services. However, upon final adoption, this provision of House Bill 65 was omitted. See article 59.06 of the Code of Criminal Procedure (now contains remaining provisions of forfeited property statute).

You advise that an account was opened by the sheriff in 1985 for the depositing of money, along with the proceeds from the sale of forfeited property, seized in controlled substances cases. On April 10, 1989, the commissioners court by resolution asked for 10 percent "of all eligible funds" pursuant to then section 5.08(f) of article 4476-15. You ask whether the 10 percent is to be calculated on the balance in the account at the time of the request or whether it is limited to funds deposited following the date of the request.

Section 311.011 of the Government Code addresses the matter of construction of words and phrases. Subsection (a) of section 311.011 states that "words and phrases shall be read in context and construed according to the rules of grammar and common usage." The provision in question provides that the office that has received funds "shall comply with the request of the governing body of the political subdivision to deposit not more than 10 percent of the amount credited to the fund into the treasury of the subdivision."

We believe that the request of the commissioners court is not limited to funds deposited following the request since the statute provides that it is applicable to an amount of not more than 10 percent of the amount credited to the fund. We believe the phrase "amount credited to the fund" includes the amount on deposit at the time of the request.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

Sarah Woelk, Chief
Letter Opinion Section

TGD/mc

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