



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 30, 1988

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

LO-88-112

Dear Mr. Valdez:

You ask:

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?

Section 5.08(f) of article 4476-15, V.T.C.S., provides in pertinent part:

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. (Emphasis added.)

The County Purchasing Act, which is codified at section 262.021 through section 262.034 of the Local Government Code, requires competitive bidding for many county purchases. It places the commissioners court in charge of awarding bids.

In Attorney General Opinion JM-678 (1987), it was concluded that the "special fund" established by section 5.08(f) of article 4476-15 is to be administered by the law enforcement office or agency of a political subdivision and not by its governing body. See Attorney General Opinion JM-738 (1987).

In Attorney General Opinion JM-783 (1987) this office was asked whether the bidding procedures of the County Purchasing Act applied to purchases made for the operation of the county jail. The opinion noted that while article 5116, V.T.C.S., designates the sheriff as the keeper of the jail, the commissioners court as the governing body is liable for the expense of the jail and the safekeeping of the prisoners. We concluded that the County Purchasing Act is applicable to purchases made for the jail.

In Attorney General Opinion JM-783, we further noted that there are instances where purchases may be made without regard to such act. The opinion stated:

There are instances where a county officer may make expenditures at the sole discretion of the official. For example, within the limits set out in article 53.08 of the Code of Criminal Procedure, fines derived from the collection of hot checks, are expendable at the sole discretion of county attorneys, criminal district attorneys, and district attorneys. Attorney General Opinion Nos. JM-313 (1985); MW-439 (1982). Expenditures from funds generated by forfeitures [sic] under section 5.08 of article 4476-15, V.T.C.S., are administered by the seizing

agencies or the office to which they are forfeited.¹

Attorney General Opinion JM-783 (1987), at 5.

The provisions of the County Purchasing Act do not apply to purchases made with funds generated by forfeiture under section 5.08 of article 4476-15.

In your second question you ask if the proceeds from the sale of items forfeited under section 5.08 of article 4476-15 are required to be deposited in the county depository.

Chapter 116 of the Local Government Code sets out the procedure for the selection of a county depository by the commissioners court and provides that all funds held by a county officer shall be deposited in the designated county depository. Section 116.002 states:

(a) 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.

Attorney General Opinion H-1185 (1978) stated that then article 2549, V.T.C.S. (now section 116.002 of the Local Government Code), requires that all funds held by a county officer in an official capacity, including trust funds, must be deposited in the county depository. 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

1. Both articles 53.08 and section 5.08 of article 4476-15 limit expenditures of funds generated by the sale of forfeited items to purposes set forth in the respective statutes.

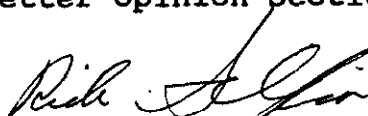
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official capacity, it follows that such funds must be deposited in a county depository.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

Prepared by: Tom G. Davis

APPROVED: OPINION COMMITTEE

SW/RG/TGD/bc

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