



OFFICE OF THE DISTRICT ATTORNEY
220th JUDICIAL DISTRICT OF TEXAS

COUNTIES OF BOSQUE, COMANCHE AND HAMILTON

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February 24, 1999

RQ-0027

Opinion Committee
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711

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I.D. # 40691

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Re: Disposal of Forfeited Property

Opinion Committee

Ladies and Gentlemen:

I request your advice pursuant to §402.043 of the Government Code concerning the proper methods by which property forfeited in favor of the State under Chapter 59 of the Code of Criminal Procedure may be converted to cash. Please consider this letter as my brief on the subject.

I am granted authority to "administer" such property "as the agent of the state, in accordance with accepted accounting practices" as provided in art. 59.06 (a) of the Code. This broad wording evinces a legislative intent to engender considerable discretion in the District Attorneys in this regard.

A tract of almost 50 acres of land was recently declared to be contraband and ordered forfeited for the benefit of this office and the Bosque County Sheriff's Department as provided in art. 59.06 (c)(1), (3) of the Code. The property has a residence and other improvements. It is my opinion that the best manner of disposing of this property will be to list it for sale with a real estate broker. In my opinion, selling the property through a public auction under the direction of the sheriff will not yield the greatest net proceeds.

A motor vehicle (1992 Ford Mustang) has also been declared to be contraband and ordered forfeited for the benefit of this office and the Texas Department of Public Safety. It is my opinion that the best price can be obtained for this vehicle by advertising it for sale in a newspaper or similar medium or by placing it in a prominent location and soliciting bids or offers to purchase. In my opinion selling the property through a public auction under the direction of the sheriff may not yield the greatest net proceeds.

It is not clear whether the proposed means of finding buyers for these properties would meet the requirement of art. 59.06 (a). I have located no cases or prior AG

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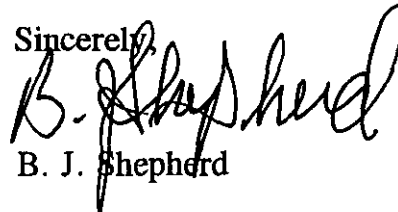
opinions interpreting this language of the statute. It does appear that the property is not to be considered as *county-owned* property, meaning that its disposition is not controlled by Chapter 263 of the Local Government Code. See Attorney General's Letter Opinion No. 97-091 (October 10, 1997).

It has been said that a sheriff's sale is specified by the statute "as a fallback method", implying this is not the exclusive method and that other reasonable methods of sale designed to achieve a fair price can be utilized. See Attorney General Letter Opinion No. 97-091, *supra*. I note the payment of a "finders fee" has been approved as a means to enhance the sale of county property. Atty. Gen. Op. JM-1262. It is also significant that the Legislature has more recently authorized sale of county real estate through a broker. §263.008, Local Government Code.

Your assistance in resolving this matter is appreciated. Your quick response will likewise be most helpful, particularly if I have only "seventy-five days in which to dispense with the forfeited property" as stated in *State v. \$1000*, 865 S.W.2d 164, 166. Obviously, if I were *required* to dispose of the property within such time frame, the methods I have proposed would likely not be feasible. I disagree, however, that such a deadline exists where the sale is to be made in accordance with a local agreement.

Finally, if the statute is construed as requested, it would be appreciated if you could describe any special procedures or record-keeping which you think necessary in order for "accepted accounting practices" to be followed under the circumstances presented.

Sincerely,

A handwritten signature in cursive script that reads "B. J. Shepherd". The signature is written in dark ink and is positioned above the printed name.

B. J. Shepherd