

**Opinion No. 77-14**

April 20, 1977

**OPINION OF:** Toney Anaya, Attorney General

**TO:** Martin E. Vigil, Chief, New Mexico State Police Department, P.O. Box 1628, Santa Fe, New Mexico 87501

CONTROLLED SUBSTANCES ACT-FORFEITED MONIES-FORFEITURES.-Monies forfeited under the Controlled Substances Act do not necessarily revert to the General Fund.

**QUESTIONS**

Once monies are forfeited under the Controlled Substances Act, may the New Mexico State Police Department take custody of the monies for use in the enforcement of the Controlled Substances Act rather than reverting the monies to the general fund?

**CONCLUSIONS**

Yes.

**ANALYSIS**

Section 54-11-33 of the Controlled Substances Act provides, in pertinent part, as follows:

FORFEITURES-PROPERTY SUBJECT.-The following are subject to forfeiture: . . .

F. Narcotics paraphernalia or money which is a fruit or instrumentality of the crime;

Section 54-11-34E of the Controlled Substances Act provides, in pertinent part, as follows:

When property is forfeited under the Controlled Substances Act, the state police shall:

1. Sell that which is not required to be destroyed by law. The proceeds shall revert to the general fund;
2. Take custody of the property for use by law enforcement agencies in the enforcement of the Controlled Substances Act. . . .
3. Forward property, the proceeds from the sale of which are not required to revert to the general fund, to the state police, bureau of narcotics for disposition.

## **OPINION**

Section 54-11-34E is phrased in the disjunctive. It is apparent the New Mexico State Police Department may proceed in one of three manners as <sup>{\*117}</sup> concerns any property that is subject to forfeiture and subsequently forfeited.

The State Police may, pursuant to Section 54-11-34E(1), sell the property and revert the funds received at the sale to the general fund. The State Police may, pursuant to Section 54-11-34E(3), forward the property to the narcotics division of the New Mexico State Police Department for sale and disposition of the proceeds, the disposition not being to the general fund but as otherwise directed. An example of the use of this alternative occurred with the enactment of the General Appropriation Act of 1976. That Act provided, in part, that proceeds obtained from sales would not revert to the general fund but rather the proceeds would be applied to the purchase of a helicopter. Finally, the New Mexico State Police Department may, pursuant to Section 54-11-34E(2), take custody of the property for use by law enforcement agencies in the enforcement of the Controlled Substances Act. The term property includes any of the properties listed under Section 54-11-33 which are subject to forfeiture. Money is listed under Section 54-11-33 as being subject to forfeiture. Monies or other properties do not have to revert to the general fund under this provision provided the monies or other properties are used by law enforcement agencies in the enforcement of the Controlled Substances Act. A proviso is that where a motor vehicle has been seized by a municipal police department or a county sheriff department, the New Mexico State Police Department shall allow the department to use it for a 12-month period in the enforcement of the Controlled Substances Act. The municipal police or county sheriff department is responsible for the costs incurred with respect to the vehicle from the date of seizure until custody reverts to the New Mexico State Police Department.

Whatever alternative the New Mexico State Police Department undertakes, an appropriate accounting and/or auditing system must be used to reflect the status and use of the property.

In summary, the answer to your question is in the affirmative.

## **ATTORNEY GENERAL**

Toney Anaya, Attorney General