

SEP 24 2018

Acknowledged in CC

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Dale Hanna TODAY'S DATE: 9-17-18

DEPARTMENT: X District Attorney

SIGNATURE OF DEPARTMENT HEAD: X M. Cary Cashion

REQUESTED AGENDA DATE: X 9-24-18

SPECIFIC AGENDA WORDING:

District Attorney seeks to donate funds to the Texas District and County Attorney Foundation for
PERSON(S) TO PRESENT ITEM: Training Purposes

Dale Hanna

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: _____ ACTION ITEM: _____

WORKSHOP: _____

(Anticipated number of minutes needed to discuss item) CONSENT: _____

Acknowledgement EXECUTIVE: _____

STAFF NOTICE:

COUNTY ATTORNEY: _____ ISS DEPARTMENT: _____

AUDITOR: _____ PURCHASING DEPARTMENT: _____

PERSONNEL: _____ PUBLIC WORKS: _____

BUDGET COORDINATOR: _____ OTHER: _____

*****This Section to be Completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____

March 20, 2018

TO: Bill Moore, County Attorney
FROM: Christopher Boedeker

Question Presented: What procedure must be used before the District Attorney may donate forfeiture funds to a nonprofit organization?

Answer: The forfeiture of property is governed by Chapter 59 of the Texas Code of Criminal Procedure. Property that is seized during the course of a criminal investigation may be forfeited to the State under certain circumstances, and, after a court of competent jurisdiction enters an order and the property is disposed, a portion of the proceeds from the sale of the property are deposited into a fund controlled by the "attorney representing the state."¹ The "attorney representing the state" is the prosecuting attorney with jurisdiction over felony cases for the purposes of this statute.

The disposition of forfeiture funds is controlled by Article 59.06 of the Texas Code of Criminal Procedure. The Article also addresses the manner in which forfeiture funds are shared between different agencies. This memo addresses only funds that are under the control of the Johnson County District Attorney.

Forfeiture funds may be used only for an official purpose of the District Attorney's Office. Further, the use of funds is limited to specific categories of expenditure. In the current case, the Johnson County District Attorney seeks to donate funds to the Texas District and County Attorney Foundation for training purposes. The TDCAF is a nonprofit organization dedicated to assisting Texas prosecutors by providing training and other resources as needed. Pursuant to the statute, the District Attorney may donate forfeiture funds to "an entity that assists in...the detection, investigation, or prosecution of ...criminal offenses..."² Generally, training expenses are considered to be incurred for the official purpose of the District Attorney's Office.³ Therefore, the donation to the TDCAF would likely satisfy both of these criteria.

The statute also contains a list of prohibited expenditures, none of which appear to apply to the proposed expenditure.⁴ It is important to note that the statute does impose additional restrictions on the expenditure of funds by a District Attorney who has lost an election or not filed to run for re-election but still holds office.⁵ Because those restrictions do not apply here, there will not be discussed further. Therefore, the proposed donation would likely be authorized by the statute.

Expenditures of forfeiture funds do not require the approval of the Commissioners Court except in specific circumstances.⁶ Typically, these restrictions deal with using the forfeiture funds to supplement employee salaries. For the current expenditure, Commissioners Court approval would not be required.

¹ Texas Code of Criminal Procedure Art. 59.01

² Texas Code of Criminal Procedure Art. 59.06 (d-2)

³ *Id.* at 59.06 (d-4)

⁴ *Id.* at 59.06 (d-1)

⁵ *Id.*

⁶ Op. Tex. Att'y Gen. No. KP-0126 (2017)

However, the statute does require the District Attorney to submit a budget to the Commissioners Court prior to spending forfeiture funds “clearly list[ing] and defin[ing] the categories of expenditures....”⁷ The Commissioners Court has a duty to review the budget and, annually, audit the forfeiture funds.⁸ No funds may be expended unless first included on a budget provided to the Commissioners Court, but, in regard to this expenditure, the Commissioners Court does not have the authority to disallow the expenditure.

⁷ *Id.* at 59.06 (d)

⁸ § 21.12A. Forfeiture fund, 36 Tex. Prac., County And Special District Law § 21.12A (2d ed.)