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Disposition of Controlled Substances and Related Property

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Once property has been forfeited under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

Regardless of any other method of disposition of the property, the sheriff may, with the permission of the court and under such terms and conditions as are approved by the court, use the property taken or detained in the drug enforcement program of the county. In addition, with the approval of the court having jurisdiction over the property, the sheriff may sell the property and use the proceeds for the drug enforcement program of the county. T.C.A. § 53-11-451(d)(4). If goods are seized by a combination of the Tennessee Bureau of Investigation and the sheriff's office, the court ordering their disposal shall determine the allocation of proceeds upon disposition of the goods. In all other cases, fines, forfeitures, and goods and their proceeds shall be disposed of as otherwise provided by law. T.C.A. § 39-17-420(a)(1).

Pursuant to T.C.A. §§ 39-17-420(a)(1) and 40-33-211(a), all fines and forfeitures of appearance bonds received because of a violation of any provision of Title 39, Chapter 17, Part 4, that are specifically set forth therein, that resulted from an arrest made by the sheriff's office and the proceeds of all goods seized by the sheriff and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of by the sheriff shall be paid to the county trustee and shall be accounted for in a special revenue fund. Note that pursuant to T.C.A. § 39-17-428(c)(1), only 50 percent of the fine collected pursuant to T.C.A. § 39-17-428(b) is allocated to the special revenue fund. The remaining 50 percent is paid to the county general fund. All financial activities related to funds received under Title 39, Chapter 17, Part 4, must be accounted for in the special revenue fund. T.C.A. §§ 39-17-420(a)(1) and 53-11-415(a).

Moneys in the special revenue fund may be used only for the local drug enforcement program, local drug education program, local drug treatment program, and nonrecurring general law enforcement expenditures. T.C.A. §§ 39-17-420(a)(1) and 39-17-428(c)(2). The attorney general has opined that these funds may be used for private drug education and treatment programs in addition to county drug education and treatment programs. Op. Tenn. Atty. Gen. 97-125 (September 2, 1997). Funds derived from drug seizures, confiscations and sales may not be used to supplement the salaries of any public employee or law enforcement officer. T.C.A. § 40-33-211(b). However, the attorney general has opined that T.C.A. §§ 39-17-420 and 53-11-451 authorize the sheriff to use funds obtained from fines and appearance bond forfeitures and proceeds derived from the sale of property seized and forfeited in connection with illegal drug activities to pay the salaries of staff personnel who are employed in drug enforcement, education and treatment programs and only for work performed for such programs. Op. Tenn. Atty. Gen. 99-202 (October 6, 1999).

Note: All fines and forfeitures of appearance bonds received from the violation of the provisions of Title 39, Chapter 17, Part 4, and which are specifically set forth therein, the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of according to law that arise from the activities of a judicial district drug task force are paid to an expendable trust fund maintained by the county mayor in a county designated by the district attorney general and can be used only in a drug enforcement or drug education program of the district as directed by the board of directors of the judicial district drug task force. All requests for disbursement from the expendable trust fund maintained by the county mayor for confidential purposes must be by written request signed by the drug task force director and the district attorney general. T.C.A. §§ 39-17-420(c) and 40-33-211(a).

Cash transactions related to undercover investigative operations of the county drug enforcement program must be administered in compliance with procedures established by the comptroller of the treasury. T.C.A. § 39-17-420(a)(1). The comptroller of the treasury and the Department of Finance and Administration, in consultation with the Tennessee Bureau of Investigation, the Tennessee Sheriffs' Association and the Tennessee Association of Chiefs of Police, were required to develop procedures and guidelines for handling cash transactions related to undercover investigative operations of county or municipal drug enforcement programs. These procedures and guidelines are applicable to the disbursement of proceeds from the drug enforcement program. T.C.A. § 39-17-420(e).

The sheriff is required to recommend a budget for the special revenue fund, to be approved by the county legislative body. T.C.A. § 39-17-420(a)(2). Upon the demand of the sheriff, the county trustee must pay to the sheriff's office the funds demanded for use in cash transactions related to undercover investigative drug enforcement operations. T.C.A. § 53-11-415(a). Expenditures from the special rev-

enue fund are subject to the availability of funds and budgetary appropriations for the expenditure. T.C.A. §§ 39-17-420(a)(2) and 53-11-415(a). Any purchase made with moneys from the fund must be made in accordance with all existing purchasing laws applicable to the particular county, including private acts, that establish purchasing provisions or requirements for the county. T.C.A. §§ 39-17-420(a)(2) and 40-33-211(b). Special rules apply to Davidson County. See T.C.A. §§ 39-17-420(a)(3) and (b) and 53-11-415(b).

The sheriff is accountable to the county legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451, and for the fines imposed by T.C.A. § 39-17-428. An annual audited report of these funds must be submitted by the sheriff to the county legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, it shall satisfy this requirement. If no audit is conducted by the comptroller, then an audit must be performed by a certified public accountant in order to satisfy this requirement. T.C.A. § 39-17-429.

Pursuant to T.C.A. § 39-17-420(f), if the sheriff's office receives proceeds from fines, forfeitures, seizures or confiscations under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, the sheriff may set aside a sum from such proceeds to purchase supplies and other items to operate and promote the DARE program, created by Title 49, Chapter 1, Part 4, or any other drug abuse prevention program conducted in the school system or systems within the county served by the sheriff's office. The local school board must approve the program before the program may become eligible to receive funds under T.C.A. § 39-17-420(f). Supplies and items that may be purchased with such proceeds include, but are not limited to, workbooks, T-shirts, caps and medallions.

In order to comply with state and federal fingerprinting requirements, except in Davidson County, 20 percent of the funds received by a sheriff's office pursuant to T.C.A. § 39-17-420 must be set aside and earmarked for the purchase, installation, maintenance of and line charges for an electronic fingerprint imaging system that is compatible with the Federal Bureau of Investigation's integrated automated fingerprint identification system. Prior to purchasing the equipment, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's and Federal Bureau of Investigation's integrated automated fingerprint identification system. Once the electronic fingerprint imaging system has been purchased, the sheriff's office may continue to set aside up to 20 percent of the funds received pursuant to T.C.A. § 39-17-420 to pay for line charges and maintaining the electronic fingerprint imaging system. T.C.A. § 39-17-420(g)(1).

Instead of purchasing the fingerprinting equipment, a local law enforcement agency may enter into an agreement for use of the equipment with another law enforcement agency that possesses the equipment. The agreement may provide that the local law enforcement agency may use the fingerprinting equipment for identifying people arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment. If no agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so. T.C.A. § 39-17-420(g)(1). See *also* Op. Tenn. Atty. Gen. 01-088 (May 24, 2001).

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