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ATTORNEY GENERAL
STATE OF ILLINOIS

December 15, 1992

FILE NO. 92-029

CRIMINAL LAW AND PROCEDURE:
Use of Asset Forfeiture Proceeds

Honorable Miguel del Valle
State Senator, 5th District
3507 West North Avenue
Chicago, Illinois 60647

Honorable Robert Leflore
State Representative, 15th District
5947 West Chicago Avenue
Chicago, Illinois 60651

Gentlemen:

I have your letter wherein you inquire whether local law enforcement agencies have the authority to fund community drug crime prevention efforts from the proceeds of narcotics profit forfeitures. For the reasons discussed more fully below, it is my opinion that narcotics profit forfeiture proceeds may properly be used to fund such programs, as long as the programs are designed to enforce or support the enforcement of the State's cannabis and controlled substances laws.

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Three statutes provide for the forfeiture and sale of assets related to drug crimes and the distribution of the proceeds of those sales to local law enforcement agencies. Section 505 of the Illinois Controlled Substances Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1505) authorizes the seizure and forfeiture of property which is related to violations of the Controlled Substances Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1101, et seq.) and provides for the disposition of the forfeited property. Any item of forfeited property that is not harmful to the public or required by law to be destroyed, or that is not retained for official use in the enforcement of laws relating to cannabis or controlled substances, is to be sold by the Director of State Police. (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1505 (f).) Subsection 505(g) provides that 65% of the proceeds of such sales are to be distributed to the metropolitan enforcement group or the local, municipal, county or state law enforcement agency that conducted or participated in the investigation resulting in the forfeiture. Amounts distributed to such agencies "shall be used for the enforcement of laws governing cannabis and controlled substances". (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1505(g)(1).) Section 12 of the Cannabis Control Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 712) is virtually identical to section 505, but applies to the forfeiture of property related to violations of the Cannabis Control Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 701 et seq.).

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The third forfeiture statute is section 5 of the Narcotics Profit Forfeiture Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1655), which provides for forfeiture of property which has been acquired, maintained or used in relation to the offense of narcotics racketeering or violations of section 3 of the Drug Paraphernalia Control Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 2103). Under the Narcotics Profit Forfeiture Act (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1651 et seq.), the Attorney General may be authorized judicially to seize such property and, where not harmful or subject to destruction, to sell property which has been forfeited. If the investigation or indictment leading to the forfeiture occurred under the provisions of the Statewide Grand Jury Act (Ill. Rev. Stat. 1991, ch. 38, par. 1701 et seq.), the Attorney General is required to distribute 60% of the proceeds of such sales to the metropolitan enforcement group or the local, municipal, county or State law enforcement agency or agencies that conducted or participated in the investigation resulting in the forfeiture, to "be used for the enforcement of laws governing cannabis and controlled substances". (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1655 (h).) In the case of other property seized and forfeited pursuant to the Narcotics Profit Forfeiture Act, the Attorney General is required to distribute 50% of the proceeds to the unit of local government whose officers or employees

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conducted the investigation and caused the arrest and prosecution; these amounts "shall be used for enforcement of laws governing narcotics activity". (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1655(g).) "Narcotics activity" is defined as conduct which is punishable as a felony under the Cannabis Control Act, the Controlled Substances Act or similar laws of the United States or any other State. (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1653.)

As is apparent from the express language of these statutes, the proceeds of sales of forfeited assets which are distributed to local law enforcement agencies pursuant thereto may be used only for the enforcement of laws governing cannabis and controlled substances; assets obtained under the Narcotics Profit Forfeiture Act are further restricted to use only for the enforcement of felony cannabis and controlled substances laws unless the assets were obtained through Statewide Grand Jury cases.

You have posed this inquiry to me as officers of a task force established pursuant to Senate Joint Resolution No. 113 (87th General Assembly), which has been directed to study the issue of the utilization of narcotics forfeiture proceeds or alternative funding sources for the funding of bona fide community drug crime prevention programs. Although you have provided no specifics about the community drug crime prevention

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programs you are considering, it appears that the task force is focusing on "the concept of community policing, which is picking up steam throughout the State and throughout the country". (Remarks of Sen. del Valle, June 30, 1992, Senate Debate on Sen. J. Res. No. 113, at 4 (first proof).)

Community policing is an approach to police work that has been developed in response to a perception that the practice of preventive patrolling and responding to emergency calls by automobile has been ineffective in controlling crime. (See, Chicago Tribune, Feb. 6, 1992, sec. 1 at 22, col. 1; National Journal, Dec. 7, 1991, at 2982) In such programs, police officers are assigned to foot beats on a long-term basis where they can get to know residents and business people, attempt to defuse tense situations and stop crimes before they occur. (National Journal, Dec. 7, 1991, 2982.) Officers trained in problem solving and community policing techniques could work with community task forces to identify problem areas - areas where drug sales, prostitution or robberies are common, for example - and devise strategies to combat the problems. (Chicago Tribune, Sept. 13, 1992, sec. 1 at 19, col. 2.) Police forces may be assisted by civilian patrol groups.

I note, in this regard, that the statutory provisions providing for the distribution of forfeiture proceeds are not independent grants of authority to law enforcement agencies to enforce laws governing cannabis and controlled substances. Each of the acts referred to above establishes drug related offenses that are to be enforced by law enforcement officers in

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the same way as other criminal statutes. The phrase "for the enforcement of laws governing cannabis and controlled substances" gives law enforcement agencies no additional powers with respect to narcotics crimes; rather it acts as a limitation on the uses to which forfeiture proceeds may be put.

It is necessary, therefore, to determine whether the funding of community drug crime prevention programs is within the power of local law enforcement agencies to enforce laws. For purposes of this discussion, I will consider the powers of the two principal local law enforcement agencies, county sheriffs' departments and municipal police departments.

Section 2 of "An Act to revise the law in relation to criminal jurisprudence" (Ill. Rev. Stat. 1991, ch. 125, par. 82) provides:

"It shall be the duty of every sheriff, coroner, and every marshal, policeman, or other officer of any incorporated city, town or village, having the power of a sheriff, when any criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, * * *."
(Emphasis added.)

Section 3-6021 of the Counties Code provides:

"Conservator of the peace. Each sheriff shall be conservator of the peace in his or her county, and shall keep the same, suppress riots, routs, affrays, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination."
(Emphasis added.)

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It has been recognized that both sheriffs and municipal police officers have a responsibility to prevent and detect crime.

People ex rel. Rexses v. Cermak (1925), 239 Ill. 195, 199;

People v. Watkins (1960), 19 Ill. 11, 19.

In People ex rel. Rexses v. Cermak (1925), 239 Ill. App. 195, the court considered whether patrolling the highways of the county was properly a part of the sheriff's duties. Considering the statutory powers of the sheriff now codified at section 3-6021 of the Counties Code, the court stated at pages 199-201:

" * * *

That such duties are in their very nature police duties is not open to question. (Scougale v. Sweet, 124 Mich. 311; State v. Reichman, 135 Tenn. 653; South v. State of Maryland, 59 U.S. 401.) Discussing the duties of a sheriff in the Tennessee case the court said: 'His duties are not merely to apprehend those who have committed offenses but to prevent such offenses. * * * The duties imposed cannot be performed without some degree of activity and diligence to inform himself of conditions in his county.' * * * [The court held] that it is the duty of the sheriff and his deputies to keep their eyes open for evidence of public offenses, * * *.

But while conditions in the past may not have required, or afforded precedents for, patrolling the highways of a county to maintain peace and prevent crime, as is generally required in the denser population of cities, it does not follow that under changed conditions incident to modern social and economic developments such a necessity may not arise; and if it does, it can hardly be questioned that the police function of patrolling would attach to the duties of the sheriff. It is, after all, a mere method of performing police duties, and we see no reason

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why the sheriff may not adopt it, where it is most practicable to enable him to perform his duties. Indeed, the conditions described in the petition suggest that in certain portions of the county the necessity for police patrol is just as imperative as in cities under like conditions. By reason of the modern facilities afforded by automobiles and paved roads, large numbers are able to congregate in remote places of the county, where the necessity of suppressing disorder, and to prevent more serious violations of the law, demand the presence and continued vigilance of the sheriff's deputies. This is best accomplished, it appears, by detailing deputies along the highways on motorcycles, or in automobiles. Shall it be said, then, that the sheriff may not employ such means of police protection as are commensurate with the necessities of such a situation, and assign deputies to patrol the highways with motorcycles or in the most practicable way to enable him to perform his duties under such circumstance?

That the necessity for patrolling county highways has arisen only recently, as an incident to modern development and changed conditions, presents no valid argument why such method may not be employed in county districts where needed. The police power 'is not circumscribed by precedents arising out of past conditions, but is elastic and capable of expansion in order to keep pace with human progress.' City of Aurora v. Burns, 319 Ill. 84. With his knowledge of the prevalence of crime and disorder along county highways in consequence of these changes it is unquestionably the duty of the sheriff as conservator of the peace to exercise such power as he possesses to suppress them, and if patrolling highways is the most practicable or desirable method of exercising it we know of no legal restriction upon his adoption of it, * * *.

* * *

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(Emphasis added.)

The same conclusion may be reached with respect to the utilization of community policing. If law enforcement officers believe that community policing is an effective method of

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performing police duties, including the prevention and detection of crime, it is my opinion that they may adopt it and fund it to the extent that they are not otherwise limited by law. Furthermore, if a particular community policing program is directed specifically to preventing and detecting crime relating to cannabis and controlled substances, it is my opinion that drug related asset forfeiture proceeds may be used to fund the program.

I caution, however, that there may be a wide range of views concerning what constitutes a "community drug crime prevention program". Programs or components of programs designed, for example, to provide social or athletic outlets for children to keep them "off the streets" or to provide jobs, job-training education or psychological counseling, may be an important means of attacking the problems underlying drug abuse and crime generally, but they do not involve enforcement duties and would not properly be funded from the asset forfeiture proceeds of local law enforcement agencies. On the other hand, payment for the costs of police officers to participate in community policing programs, for training them and the community members with whom they will work and for stationing and equipping them could properly be funded with such proceeds as long as the specific program is targeted to the enforcement of laws governing cannabis and controlled substances. Because

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there are many possible programs which would fall between these extremes, your task force may wish to consider addressing this issue by recommending the enactment of legislation to define the parameters of this authority.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL