



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

Statement of Position Forfeiture Proceeds and County Attorney Checking Accounts

The Office of the State Auditor (OSA) is aware that some county attorneys' offices have separate bank accounts for forfeiture proceeds. In these situations, the county attorney's office receives distributed proceeds, deposits them in the bank account and then writes checks to spend the money. The money is never turned over to the county treasurer or recorded in the county's financial records, and expenditures are not subject to county board approval. The question has arisen as to whether the existence and use of these separate bank accounts to handle forfeiture proceeds is authorized by law.

Forfeiture Proceeds

Various Minnesota laws provide for the forfeiture of property that has been used in the commission of a crime or that represents the proceeds of crime.¹ Once property is forfeited, it can generally be sold, and the proceeds distributed. Some forfeiture laws provide that a percentage of the proceeds from the sale of forfeited property must be distributed to the county attorney or to another prosecuting authority for deposit as a supplement to the county attorney's operating fund or to a similar fund to be used for prosecutorial purposes.²

The requirement that the forfeiture proceeds supplement the county attorney's operating budget does not mean that the county attorney's office does not have to account for the money in the county's financial system or that it can set up its own bank accounts and spend the money by writing its own checks.

Under Minnesota law, county boards have control of all county property and responsibility for the management of county funds.³ County attorneys are specifically required by law to annually account to the county auditor for all money they receive.⁴ The law mandates that county attorneys must, at least annually, pay over all money they

¹ See, e.g., Minn. Stat. §§ 169A.63; 297E.16; 297F.21; 349.2125; 609.531-.5318; 609.762; 609.856; 609.905; and 609.907-.908.

² See, e.g., Minn. Stat. §§ 169A.63, subd. 10; 297E.16, subd. 2(d); 297F.21, subd. 3(d) (3); 349.2125, subd. 4(a); and 609.5315, subd. 5.

³ See Minn. Stat. § 375.18.

⁴ See Minn. Stat. § 388.13.

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This Statement of Position is not legal advice and is subject to revision.

receive “by virtue of office” to the county treasurer.⁵ There is no exception to this requirement for forfeiture proceeds.

The county treasurer is required to deposit all county funds in the designated county depository.⁶ Money received from forfeitures must be turned over to the county treasurer and accounted for as a supplement to the county attorney’s operating fund subject to the proper statutory procedures for accounting, approving expenditures and paying claims. The OSA recommends using special revenue funds or segregated accounts within the general fund.

Forfeiture proceeds should be spent using standard county procedures. County money is generally spent by issuance of a warrant -- either a warrant of the county board chair or an auditor’s warrant.⁷ Statutory requirements for the disbursement of county funds must also be followed for warrants spending forfeiture proceeds. Without warrants, county attorneys are not authorized to issue checks or warrants to spend county funds.

Contingency Fund

Minnesota law allows a county board to designate up to \$7,500 (\$10,000 in counties containing cities of the first class) each year as a contingency fund “for defraying necessary expenses not especially provided for by law, in preparing and trying criminal cases, conducting investigations by the grand jury, making contributions to a statewide county attorney's organization, and paying the necessary expenses of the county attorney incurred in the business of the county.”⁸ Disbursements from this contingency fund must be made “upon written request of the county attorney by auditor's warrant, countersigned by a judge of the district court.”⁹ Finally, any balance remaining at the end of the year must be transferred to the county’s “revenue fund.”¹⁰

The county attorney’s contingency fund is usually not funded with forfeiture proceeds because forfeiture proceeds are treated differently than other money deposited by the county. Forfeiture proceeds must be spent for prosecutorial purposes only and can accumulate from year to year.

County boards are not required to fund a contingency fund. For counties with a contingency fund, the best practice is to keep forfeiture proceeds out of the contingency fund by placing them in a separate special revenue fund or segregated account within the general fund.

⁵ *Id.*

⁶ Minn. Stat. §385.07.

⁷ Minn. Stat. § 385.31.

⁸ Minn. Stat. § 388.14.

⁹ *Id.*

¹⁰ *Id.*