

## Legal Q&A

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### What are felony forfeiture funds?

Chapter 59 of the Code of Criminal Procedure allows for police seizure and forfeiture of property used in, and the proceeds gained from, the commission of certain crimes. After seizure, the criminal district attorney may, by agreement, distribute property and funds to local law enforcement agencies to be used for official purposes. TEX. CRIM. PROC. CODE ANN. §§ 59.01, 59.06. Article 59.06(c) provides, in pertinent part:

If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited...according to the terms of the agreement into one or more of the following funds:

...

(2) *a special fund in the municipal treasury* if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes, such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies, and items used by officers in direct law enforcement duties.

*Id.* § 59.06(c) (emphasis added).

### Who decides how felony forfeiture money is spent?

The police chief has sole decision-making authority about how felony forfeiture funds are spent. Article 59.06(d) provides, in pertinent part:

Proceeds awarded under this chapter to a law enforcement agency...may be spent *by the agency*...after a budget for the expenditure has been submitted to the...governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution.

Article 59.06(d) (emphasis added).

### Where must felony forfeiture money be kept?

The statute plainly provides that the forfeited funds are held in the municipal treasury. *See* Op. Tex. Att'y Gen. No. DM-192 (1992) (concluding that county forfeiture funds, which are procedurally similar to city funds, "will be deposited with the county treasurer for placement in

the county depository in the manner in which county funds are generally handled.”). *See also* Op. Tex. Att’y Gen. No. DM-247 (1993) (separate depository for county funds not proper). It would therefore be improper for the police chief to hold these funds in an institution separate from the city depository. To do so would violate the plain language of the statute and threaten the protections, such as collateralization of public funds, that are required of funds in the municipal depository.

**If the council can’t spend the money, can it at least know how the money is spent?**

Yes. The city council is entitled to receive a budget showing how the funds will be spent, but nothing in the statute requires or authorizes city approval of the actual expenditures decided upon by the police chief. *See also* Tex. Att’y Gen. Op. No. DM-72 (1991) (law enforcement agency to which funds are distributed has authority to determine purposes to which forfeiture funds are applied), Tex. Att’y Gen. Op. No. DM-246 (1993) (the commissioners court has a ministerial duty to initiate the competitive bidding process upon receipt of a request from the prosecutor or law enforcement agency and may not refuse all bids received for the purpose of preventing an expenditure out of the special forfeiture fund).

(The city is permitted to approve one type of expenditure according to the statute, however: salary, expense, or allowance increases for police department employees. *Id.*)

**May the city conduct an audit of the felony forfeiture funds?**

Yes. According to Article 59.06(d), “Expenditures are subject to audit provisions established under this article.” Loc. Gov’t Code § 59.06(d). Those audit provisions are spelled out in Section 59.06(g):

All law enforcement agencies...who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditures of all such proceeds and property in an audit, which is to be *performed annually by the commissioners court or governing body of the municipality*, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit shall be completed on a form provided by the attorney general. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the comptroller’s office and the attorney general not later than the 30<sup>th</sup> day after the date on which the annual period that is the subject of the audit ends.

*Id.* § 59.06(g) (emphasis added). Thus, not only is the city permitted to audit the police department fund and expenditures, it is required to do so annually. It would be improper for a police chief to refuse to submit the forfeiture account and expenditures to an annual audit.

**Must the police chief be given check-writing privileges over felony forfeiture funds?**

Yes. Section 105.074 of the Texas Local Government Code provides procedures for paying funds out of city depositories. Absent a local procedure to the contrary, that section provides that checks are signed by the “designated officer” of the city, typically the treasurer, after receipt of a “warrant” signed by the mayor and attested to by the city secretary. TEX. LOC. GOV’T CODE ANN. § 105.074. Most cities, however, adopt alternate procedures.

With felony forfeiture funds, however, the procedure is different. Attorney General Opinion DM-247 (1993) addressed this question with respect to county forfeiture funds. Counties and cities have similar forfeiture laws and check-writing provisions. The attorney general concluded that the sheriff had sole check-writing authority, subject only to the statutory requirement that the agency submit a budget for that category of expenditure. Because of the similarities between city and county forfeiture law and check-writing procedures, it is probable that DM-247 is applicable to city felony forfeiture funds: the police chief may be the sole signatory on checks drawn from the forfeiture fund.