

CITY OF BALTIMORE

SHEILA DIXON, Mayor

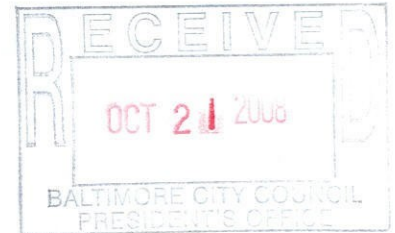


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

October 21, 2008

The Honorable President and  
Members of the Baltimore  
City Council  
c/o Karen Randle, Executive Secretary  
409 City Hall  
Baltimore, MD 21202



RE: City Council Bill 08-0118– Confiscated Assets for Neighborhoods

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 08-0118. City Council Bill 118 provides for the creation of a program referred to as the Confiscated Assets for Neighborhoods Grant Program. The program would be administered by the Mayor's Office of Criminal Justice. The bill calls for the program to be funded by money confiscated by police and forfeited to the Mayor and City Council. The money would be allocated among the police districts in proportion to the percentage that the money attributable to confiscations from a district bears to all money confiscated by the City in that year.

The bill requires neighborhood associations or other community associations to apply for funds. Applications shall be reviewed by the Police District Community Relations Council. The Community Relations Council shall submit their recommendations to the Mayor's Office of Criminal Justice. The Mayor's Office of Criminal Justice shall make all decisions approving or disapproving applications.

One concern regarding the funding called for in this bill is that it attempts to earmark general funds for a specific purpose. Section 25-2 states that "funding for the grants shall be derived from a portion of all money confiscated by the Police Department and forfeited to the City, "as appropriated in the Ordinance of Estimates." The quoted phrase acknowledges that the City Council can not mandate that funds collected by the City be dedicated legislatively for a particular program. The Board of Estimates may decline to provide for funding for the program. If the Ordinance of Estimates allocates no funds to the program, there is no violation of the City Code. In addition, depending on the dollar amount, any contracts entered into for grants under this Program by the Mayor's Office of Criminal Justice would also be subject to approval by the Board of Estimates as provided in Article VI, Sec 11 of the Charter of Baltimore City..

Finally, money seized by the Baltimore City Police Department and subsequently forfeited, must be disposed of according to applicable State and federal law. Under Maryland

*Comments*



Ann. Code, Criminal Procedure Art., Sec. 12-403(a), property forfeited for a controlled dangerous substance violation may be retained by the governing body where the property was seized and that governmental body may keep the property for official use or require the appropriate unit to take custody of the property and destroy or otherwise dispose of it or under certain circumstances, sell the property. Subject to federal law, if a law enforcement unit other than a State law enforcement unit participated with a State law enforcement unit in seizing forfeited property, under the controlled dangerous substance law, the State shall share the proceeds as agreed to by the law enforcements units. See Sec. 12-403(d). Proceeds shall be deposited in the general fund of the political subdivision of the law enforcement unit. Sec. 12-403(e).

With regard to money seized in conjunction with federal law enforcement agencies there are extensive federal guidelines and policies on the use of any funds that are shared with local law enforcement agencies. First of all, any sharing of forfeited monies is at the complete discretion of the federal government. The U.S. Justice Dept. Guide to Equitable Sharing of Forfeited Property provides guidance on this subject.

A state or local law enforcement agency or prosecutor's office may use no more than 15 percent of its shared monies for costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community based programs or activities, which are formally approved by the chief law enforcement officer (i.e., chief, sheriff or prosecutor) as being supportive of and consistent with a law enforcement effort, policy, or initiative.

Unlike the pass-through policy it replaces, the permissible use policy requires that the law enforcement agency must have direct involvement in all expenditures made for eligible programs and activities and that it may no longer transfer cash for prospective expenditures by eligible private non-profit non-law enforcement agencies. Accordingly, the permissible use policy permits eligible recipient organizations and agencies to benefit from shared funds in either of two ways: (1) the law enforcement agency may itself pay for specific expenses on behalf of a recipient (e.g., it may purchase directly equipment or supplies for delivery to the recipient); or (2) it may reimburse a recipient by check for expenditures the recipient itself has made on itemized expenses, supported by receipts, that the chief law enforcement officer has previously approved as permissible expenses. Whichever procedure the law enforcement agency uses, it must maintain records of permissible use expenditures in the same manner and for the same time period as required for procurement expenditures it makes on its own behalf. See U.S. Justice Dept. Guide to Equitable Sharing of Forfeited Property March 1994, Addendum page 6.

In addition, the Guidelines provide that applicants for the use of shared funds must also satisfy certain criteria to be eligible to receive the money. Id.

It is therefore not simply a matter of depositing forfeited funds into the general fund and allocating them via the Ordinance of Estimates to the grant program. Assuming much of the money will be seized in connection with to drug violations, at the very least, it must be established that Section 12-406(a) is complied with and the grants would qualify as an "official use." Secondly, if funds are forfeited in a matter involving a sharing arrangement with a federal agency, the federal guidelines must be followed.

To the extent that the money in question is forfeited to the City under circumstances that do not involve money be shared with the federal government, is deposited in the general fund and expended for "official use," the bill would be legally sufficient with the understanding that the Board of Estimates is under no legal obligation to include an appropriation in the Ordinance of Estimates.

Sincerely yours,



Elena R. DiPietro  
Assistant Solicitor

cc: Honorable Bill Henry  
Angela Gibson, City Council Liaison  
George A. Nilson, City Solicitor  
Linda C. Barclay, Chief Solicitor  
Deepa Bhattacharyya, Assistant Solicitor  
Ashlea Brown, Assistant Solicitor  
Hilary Ruley, Assistant Solicitor