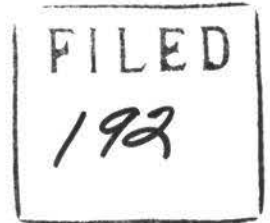


NARCOTICS:  
CONTROLLED SUBSTANCES:  
CONSTITUTIONAL LAW:  
PENAL LAWS:  
SCHOOLS:

The proceeds of the sale of any property forfeited to the state pursuant to Section 195.145, RSMo 1969, and sold at public or private sale, should, after payment of the cost of storage, if any, and the cost of the proceedings of the case, be paid into the county school fund.

OPINION NO. 192

April 26, 1974



Honorable A. J. Seier  
Prosecuting Attorney  
Cape Girardeau County  
721 North Sunset  
Cape Girardeau, Missouri 63701

Dear Mr. Seier:

This official opinion is issued in response to your request for a ruling involving the construction of Section 195.145, RSMo 1969, and Article IX, Section 7, of the Constitution of Missouri. Your request reads as follows:

"Where a vehicle, vessel, or aircraft shall be declared to be forfeited to the State of Missouri pursuant to Section 195.145, RSMo 1969, and sold at public or private sale, should the proceeds of such sale, after payment of all costs involved, be paid into the general revenue fund of the State of Missouri or into the county school fund?"

Section 195.025, RSMo 1969, prohibits the use of any vessel, vehicle, or aircraft to facilitate the transportation or concealment of any controlled substance. Section 195.145 provides that any vehicle, vessel, or aircraft which has been used or is being used in violation of any provision of Section 195.025 shall be forfeited to the state.

Section 195.145(4), reads in pertinent part:

". . . the court shall order the officer who seized the property to sell the property at public or private sale, subject to the approval of the court and out of the proceeds

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of this sale shall be paid the cost of storage, if any, the cost of the proceedings of the case and the balance thereof shall be paid into the general revenue fund of the state of Missouri."

Clearly, then, the intent of this section is that the proceeds of such sales after all costs have been paid, should go into the general revenue fund of the state.

However, Article IX, Section 7 of the Constitution of Missouri reads, in pertinent part:

". . . All interests accruing from the investment of the county school fund, the clear proceeds of all penalties, forfeitures, and fines collected hereafter for any breach of the penal laws of this state, the net proceeds from the sale of estrays, and all other monies coming into said funds shall be distributed annually to the schools of the several counties according to law."  
(Emphasis added).

The Missouri Supreme Court has held that the words "penal laws of the state," as used in Article IX, Section 7 of the Constitution refer to statutory enactments fixing or providing for penalties, forfeitures and fines, and for their assessment and collection. New Franklin School Dist. No. 28, Howard County v. Bates, 225 S.W.2d 769, 774 (Mo. 1950). Since the Narcotic Drug Act, Section 195.010 et seq., RSMo 1969, sets forth penalties for the unlawful possession, transportation and concealment of controlled substances, one of which is the forfeiture and sale of vehicles, vessels, or aircraft which are used in such transportation or concealment, it is clear that the monies derived from such a forfeiture are proceeds collected for breach of the penal laws of this state.

Therefore, it is our opinion that the amount received from the sale of property so seized, after the payment of the cost of storage, if any, and the cost of the proceedings of the case amounts to "clear proceeds" as that term is used in Article IX, Section 7, of the Missouri Constitution and should be placed in the county school fund, notwithstanding the contrary language of Section 195.145(4).

This conclusion is reinforced by opinions of this office construing a similar statute, Section 311.840, RSMo 1969. That section provides that the balance of funds derived from the sale

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of contraband liquors forfeited to the state pursuant to Section 311.830, shall, after the payment of storage and costs of the proceedings, be paid into the general revenue fund of the state of Missouri. In Opinion Letter No. 576, issued December 24, 1970, to William P. Wright, this office held that Article IX, Section 7, required that these monies be paid into the county school fund. A similar conclusion had been reached in Opinion No. 10, issued June 24, 1949, to Joseph M. Bone. (Copies of these opinions have been enclosed).

CONCLUSION

It is, therefore, the conclusion of this office that the proceeds of the sale of any property forfeited to the state pursuant to Section 195.145, RSMo 1969, and sold at public or private sale, should, after payment of the cost of storage, if any, and the cost of the proceedings of the case, be paid into the county school fund.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Philip M. Koppe.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 576  
12-24-70, Wright

Op. No. 10  
6-24-49, Bone