

## When is Abandoned Property Not Found Property?

By: Robert Giles, IAPE Board President

*Do you know what happens to money seized pursuant to drug asset forfeiture? Do you know whether or not a civil claim has been filed against an asset by state or federal prosecutors? Do you have a separate drug asset forfeiture account to deposit asset seizures? Inquiring minds want to know....*

The Star Press in Muncie, Indiana reports that the Muncie Police Department Drug Task Force began operations twenty years ago under well-defined guidelines to seize the assets of drug enterprises and divert them to offset the cost of targeted drug enforcement. At some point, money that was seized pursuant to drug related arrests stopped being sent through this well-defined process and merely became abandoned property. The abandoned property appears to have been deposited in an account that was used by the Drug Task Force without being adjudicated.

According to the Star Press, Muncie police routinely disposed of money and guns seized from criminal defendants by using abandoned property affidavits, without a court order, and in apparent violation of state law requiring those state forfeiture assets to go to the county general fund. Police routinely had the city controller deposit it in Muncie Police and Muncie- Delaware County Drug Task Force accounts that appears to create a strong conflict of interest. The more money the local police seize, the more they have to spend. (This article does not imply that the monies were misspent – only that the process may have been flawed.)

How does all this impact you, the property officer? Most property officers do not need to interject themselves into the process, but if you don't know the answer to these questions, you may not be able to adequately track and document where large sums of money are disposed of. It is important to distinguish the difference between when found property is abandoned property and when drug assets are abandoned. For example, if \$10,000 in cash is located on a park bench in a paper bag, is it drug proceeds or is it lost property?

Under federal law, the money cannot be seized as a drug asset without a preponderance of the evidence suggesting that it is linked to a crime (2000). Individual state laws may differ, some relying solely on probable cause. Once a civil claim against an asset is initiated, the property classification should be changed from Found Property to Evidence, as different disposition tracks are involved.

For all practical purposes, the property officer merely needs to record that "X" amount of money has been received and subsequently what happened to it. The signature of the narcotics officer that it was signed out to, and a copy of a receipt showing that "X" amount of cash was deposited in a specific bank account pending a civil action has been initiated should be part of the disposition record. This is the final disposition as far as the property officer is involved. Any person wishing to claim the money should be referred to the narcotics officer investigating the case. The burden of proof that the money is related to a crime rests upon the investigating officer.

Drug violators will often deny ownership of large quantities of money, knowing that a claim of ownership may result in having to declare its source, which may also lead to additional criminal charges. This denial of ownership often creates an uncontested civil claim against the asset, in which the asset may then be deposited in a forfeiture account to be spent only upon approval of the court. In order to minimize any potential conflict of interest, there should be no direct linkage between a seizure and increasing the law enforcement agency's budget.

This uncontested civil claim should not be confused with abandoned and found property statutes, that in most states, permits unclaimed items to be auctioned or diverted after a specified period of time, and the proceeds deposited in the city or county's general fund.

Another source of abandoned cash may be attributed to many officers and deputies who routinely seize smaller quantities of cash from

arrestees, who cannot prove the source of the money. This cash is most often booked as evidence of an unknown crime, and the arrestee may never obtain due process for its return if a criminal case is not heard in court. These monies might not be returned to the arrestee if no demand for its return is made. This money may eventually be deposited in the city or county's general fund as abandoned property. The property officer should always obtain approval from the investigating officer before depositing the cash. Any attempts to return the money before labeling it as abandoned should be well-documented to prevent having to return the money when a claim surfaces in the future.

The Muncie case illustrates how the Chief or Sheriff, narcotics bureau commanders, the agency's financial officer, and the property officer all need some knowledge of where money is obtained from, why it is seized, and where its ultimate disposition lies. No money should be diverted to agency use without sufficient legal authority. Well-documented records of its source (case number) and what money in any forfeiture account is spent on is also helpful to create transparency.

Failure to follow these guidelines can result in great embarrassment to the agency and loss of public confidence. The St Louis Post Dispatch reports in November 2008, that the St. Louis Police department routinely seized cash without proper authorization and is now attempting to track down many owners and return cash, with interest, that was improperly seized. If it was previously abandoned, how is it possible for them to locate the owners now? All abandoned property should have well-documented attempts to locate the owner to avoid this kind of embarrassment.

The problem in St. Louis stems partly from city prosecutors rarely filing forfeiture claims to keep what the police seized, but the department kept the money anyway. It is not clear what authority the agency was using to justify keeping the money, but abandoned property is the commonly used reason. Federal investigators are looking into the practice, which has since been stopped.

As noted previously, property officers have no control over what happens in the narcotics detail, but they have the duty to ask for receipts that document the final disposition of the cash, and to maintain a clean and transparent paper trail of when abandoned property becomes asset seizure money. Asset seizure funds should never be commingled with Lost/Abandoned funds, and the property officer should notify his/her supervisor in writing to correct any transaction that does not meet this standard. Remember, you don't want to be the only person standing without a chair when the music stops.