



**LAWS GOVERNING THE  
ACCOUNTING FOR PROPERTY SEIZED AND  
FORFEITED, CONFISCATED  
AND OTHERWISE OBTAINED  
(COUNTY AND MUNICIPAL LAW  
ENFORCEMENT)**

**OFFICE OF THE STATE AUDITOR  
Division of Technical Assistance**

**August 1, 2006**

# **ACCOUNTING FOR PROPERTY SEIZED AND FORFEITED, CONFISCATED AND OTHERWISE OBTAINED**

## **(COUNTY AND MUNICIPAL LAW ENFORCEMENT)**

### **Property seized and forfeited in connection with controlled substances**

Property seized and forfeited in connection with criminal cases is usually disposed of as the court orders; however, State statutes (Sections 41-29-176 et seq.) provide specific procedures for handling and distributing property seized and forfeited in connection with drug related cases.

1. Property must be forfeited by virtue of a county or circuit order or by the administrative procedure provided in Section 41-29-176 of the Miss. Code.
2. Property must, after deducting court and other costs, be divided among law enforcement agencies as required by law or court order.  
Division of property is made as follows:
  - A. First deduct court cost and expenses of liquidation.
  - B. Second, distribute the balance:
    - (1). If only one law enforcement agency is involved:  
80% goes to the law enforcement agency's budget.  
20% goes to the State Treasurer (state's general fund).
    - (2). If more than one law enforcement agency is involved:  
80% goes to the law enforcement agency initiating the case.  
20% is divided among other participating law enforcement agencies. In case law enforcement agencies cannot agree, the court shall make an equitable distribution.
    - (3). If the criminal case is initiated by the Bureau of Narcotics, and more than one law enforcement agency participates, proceeds shall be divided equally between the Bureau of Narcotics and other participating law enforcement agencies. In case law enforcement agencies cannot agree, the court shall make an equitable distribution.
  - C. According to the order authorizing forfeiture, property other than real property may be retained by the agency for its use or sold at a public auction. The chief law enforcement officer, or his designee, of the initiating agency shall sell at a public auction all personal

property that has been forfeited if not retained for use by the law enforcement agency (41-29-181). Procedures are as follows:

- (1). The sale of property shall be to the highest and best bidder.
  - (2). The sale shall be only for cash.
  - (3). The sale shall be advertised in a newspaper having a general circulation in the jurisdiction for at least once each week for three consecutive weeks, the last notice to appear not more than ten days and not less than five days prior the such sale.
  - (4). The notice shall contain a description of the property to be sold and a statement of the time and place of the sale.
  - (5). Proceeds of the sale should be distributed as outlined above.
- D. Real property must be sold at auction by the initiating law enforcement agency as provided by law. Proceeds of the sale must:
- (1). First, pay the cost of the sale.
  - (2). Second, pay liens, etc. on property.
  - (3). Third, settle balance per above percentages.
- E. These funds must be considered as an additional budget for the law enforcement agency and must be re-budgeted each subsequent year until the funds are expended. These funds may be expended for any law enforcement purpose.
- F. The funds should be additional funds to the law enforcement agency and should not replace the agency's normal operating budget.
- G. Forfeited property that is retained for use by the agency must be placed on the inventory of the agency and accounted for according to guidelines for accounting for fixed assets under regulations promulgated by the Office of the State Auditor.
- H. Property forfeited to a county or municipality should be used by the law enforcement agency of that entity for official business and not used by other employees for other county or municipal purposes. However, forfeited property that has been duly placed on inventory may be transferred by the governing authority of the county or municipality to other departments for use by that department.

**Lost, stolen, abandoned or misplaced personal property recovered**

Lost, stolen, abandoned or misplaced personal property recovered by a county or municipality may be disposed of in accordance with Section 19-3-85 for counties and Section 21-39-21 for municipalities.

**1. Counties (Section 19-3-85)**

- A. Notice that property has been received or recovered must be posted in three public places in the county.
- B. The notice shall contain an accurate and detailed description of the property. If advised as to the owner of the property, a copy of the notice shall be mailed to the person or persons in addition to posting the notice.
- C. The owner may recover the property by filing a proper claim with the board of supervisors. Bond may be required by the board.
- D. If the property is not claimed:
  - (1). If property is not claimed within one hundred twenty days from date of notice, the board shall cause the property to be sold at public auction for cash to the highest bidder.
  - (2). Notice of the sale shall be posted in three public places in the county ten days prior to the date of the sale.
  - (3). The notice shall contain a detailed and accurate description of the property.
  - (4). The notice shall set forth the date, time and place the sale is to be conducted and shall designate the sheriff to make the sale.
  - (5). Lost, abandoned, stolen or misplaced motor vehicles and bicycles may be sold in the manner provided after expiration of ninety days from their receipt or recovery.
  - (6). The sheriff, upon completion of the sale, shall deliver to the chancery clerk a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold and all monies received from the sale.
  - (7). After paying the cost of the sale, the remainder shall be placed in a supplement budget for the sheriff to be expended for any law enforcement purpose by the sheriff upon approval by the board.

**2. Municipalities (Section 21-39-21)**

- A. Notice shall be posted by the marshal, police or other officers of the municipality in three public places in the municipality that such property has been received or recovered.
- B. The notice shall contain an accurate and detailed description of the property. If advised as to the owner of the property, a copy of such notice shall be mailed to such person or persons.
- C. The owner may recover the property by filing a claim with the governing authorities of the municipality. Bond may be required.
- D. If the property is not claimed.
  - (1). If the property is not claimed within one hundred twenty days, same may be sold at a public auction to the highest bidder for cash.
  - (2). Notice of the sale must be posted in three public places in the municipality at least ten days preceding the date of the sale.
  - (3). The notice shall contain a detailed and accurate description of the property.
  - (4). The notice shall set forth the date, time and place of the sale and shall designate the official of the municipality who is to make the sale.
  - (5). Lost, stolen, abandoned or misplaced motor vehicles and bicycles may be sold in the manner provided after expiration of ninety days from their receipt or recovery.
  - (6). The person making the sale shall upon completion of the sale deliver to the clerk a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold and all moneys received from such sale.
  - (7). The clerk shall deposit the monies in the general fund of the municipality and file the information concerning the sale.

## **Confiscated property (Section 25-1-51)**

All officers seizing any property shall turn the same over to the sheriff of the county in which said property was seized. All properties confiscated under authority of law and subject to sale as contraband shall be sold by the sheriff of the county in which said property was confiscated or is stored as follows:

1. Published notice shall be given not less than one week in a newspaper in the county.
2. The notice shall contain at a minimum a description of the property.
3. The proceeds of the sale shall be deposited in the general fund of the county.
4. The sheriff shall keep a public record identifying the property seized, the disposition and the amount of proceeds from the sale.

## **Additional requirements for seized firearms**

In addition to the guidelines for accounting for seized and forfeited, confiscated and other acquired property, there are additional requirements that apply when accounting for firearms.

1. Docket of deadly weapons seized (Section 45-9-151)
  - A. The docket shall contain the following information:
    - (1). Name of arresting officer
    - (2). Date of arrest
    - (3). Charge upon which the seizure is based
    - (4). Name of person from whom weapon seized
    - (5). Physical description of weapon
    - (6). Serial number of weapon
    - (7). Chain of custody of weapon
  - B. Entries into the docket shall be made within ten days of seizure.
  - C. If the court orders any seized weapon to be forfeited and disposed of by sale, the proceeds shall be deposited into the general fund of the governmental entity and budgeted to the law enforcement agency of the entity. This provision shall not apply to deadly weapons subject to forfeiture pursuant to Section 41-29-153 of the Mississippi Code.
  - D. Law enforcement officers who knowingly fail to comply with the docketing requirements of Section 45-9-151 shall be guilty of a misdemeanor and subject to a fine of up to one thousand dollars.

2. Firearms seized and forfeited under the Uniform Controlled Substances Law

A. Any weapon confiscated should be held as evidence until a court of competent jurisdiction orders one of the following methods of disposal. Note: An exception would occur if an administrative forfeiture procedure is available under Section 41-29-176. (Refer to pages 2 and 3.)

- (1). The weapon should be disposed of by public sale or auction in accordance with Section 41-29-181 as outlined above.
- (2). The weapon is placed on the governmental entity's inventory and placed in service.
- (3). The weapon is destroyed. A record of destruction should include:
  - a. A sworn statement from the officer that the weapon was destroyed in accordance with the order.
  - b. Photographs of the destroyed weapon or affidavits by witnesses evidencing the destruction
  - c. The order of the court requiring the destruction of the weapon

3. Deadly weapons seized under Section 97-37-3 (concealed weapons or weapons used in commission of any other crime)

Any weapon used in violation of Section 97-37-1, or used in the commission of any other crime, shall be seized by the arresting officer, may be introduced in evidence, and in the event of a conviction, shall be ordered to be forfeited and shall be disposed of as ordered by the court having jurisdiction of such offense. In the event of dismissal or acquittal, such weapon shall be returned to the accused.

4. Deadly weapons confiscated under Section 25-1-51 are subject to the procedures outlined for confiscated property under that section. (Refer to page 6.)

**Note:** Although local law enforcement agencies are not considered licensed dealers when selling deadly weapons, this office suggests that BATF be contacted for guidance when weapons are sold to other than licensed dealers. **This office recommends that weapons forfeited or confiscated under any of the sections outlined above be sold to licensed dealers only.**

**Note: Section 25-1-51.** No law enforcement officer, conservation officer, or other person charged with the duty and responsibility of enforcing the statutory laws of this state or any municipality herein, whether employed full time or part time in such capacity, or any member of his or her household can knowingly own, acquire, bid upon, or otherwise participate as a purchaser or prospective purchaser, either directly or indirectly, at a sale concerning any real, personal, or mixed property which has been confiscated and is being sold, or has been sold, or is subject to being sold pursuant to the laws and statutes of this state.