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May 31, 2007

Attorney General's Office
J.B. Van Hollen, Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

via facsimile to: 608-267-2779

RE: Request for an opinion regarding money seized as contraband

Dear Attorney General:

Under the W.S.A. Const. Art. 10 § 2 it states that, "...all moneys and the clear proceeds of all property that may accrue to the state by forfeiture... shall be set apart as a separate fund to be called "the school fund". Further, your office issued an opinion in 1987 which surmised that money resulting from a state forfeiture action under sections 161.555 and 973.075(4), Stats., must be deposited in the state school fund. This opinion was issued in light of the difference between what happens to moneys when they result from a federal forfeiture pursuant to the Uniform Controlled Substances Act. 1987 WL 341131 (Wis.A.G.).

In 1999 the Wisconsin Supreme Court reasoned that money could be contraband and not returnable to the person claiming ownership. *State v. Jones*, 226 Wis2d 565, 594 N.W.2d 738 (1999).

The situation I would like to ask about is when money is not returned because the circuit court deemed the money contraband, as in *Jones*, is it "forfeited" for purposes of Article 10 sec. 2, when it did not go through the regular forfeiture process outlined in 968.20? The practical side of this question is where the money goes. If the seized contraband money is deemed "forfeited," then the money would go to the school fund. If it were not deemed forfeited, would it go to the agency that seized the property?

J.B. Van Hollen, Attorney General

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Thank you in advance for any insight you may be able to provide.

Very truly yours,

A handwritten signature in black ink that reads "Malia T. Malone". The signature is written in a cursive style with a large initial "M".

Malia T. Malone
Assistant Corporation Counsel

/mtm