



**Comptroller General
of the United States**

Washington, D.C. 20548

B-225008

February 24, 1987

The Honorable David L. Boren
United States Senator
621 N. Robinson
Oklahoma City, OK 73102

Dear Senator Boren:

This is in response to your letter dated December 30, 1986, forwarding to this Office a suggestion you received from Mr. Dick Rudolph, Secretary for the Oklahoma Tourism and Recreation Department. Mr. Rudolph asks if goods seized by Federal agents and customs personnel can be donated to non-profit organizations for legal fund-raising activities. You sought our views regarding the possibility of using this property in this manner.

It has uniformly been held in the decisions of the courts and the opinions of the Comptroller General and the Attorney General that Article IV, section 3, clause 2 of the Constitution of the United States gives the Congress exclusive jurisdiction to dispose of real or other property of the United States.^{1/} This includes property forfeited to the United States as a result of the conduct of its various law enforcement activities. Therefore, without express or reasonably implied statutory authorization, the head of a department or agency of the Government is powerless to dispose of the property of the United States.

Prior to 1984, under the authority of sections 303 and 304 of the act of August 27, 1935, as amended, 40 U.S.C. §§ 304h and 304i (1982), law enforcement agencies seizing property, or

^{1/} See e.g., United States v. [redacted], 27 Fed. Cas. 149, No. 15,879 (C.C.D. N.Y., 1826); [redacted] v. Marshall, 61 U.S. (20 How.) 558 (1857); Wisconsin R. Co. v. County, 133 U.S. 496 (1890); [redacted] v. United States, 220 U.S. 523 (1911); Royal Indemnity Co. v. United States, 313 U.S. 289 (1941); 34 Op. Atty. Gen. 320 (1924) and opinions cited therein; and B-191943, Oct. 16, 1978; 50 Comp. Gen. 63 (1970); 44 id. 824 (1965); 38 id. 36 (1958); 25 id. 909 (1946); 22 id. 563 (1942); 15 id. 96 (1935); and 14 id. 169 (1934).

having custody of forfeited property, could either retain it for official use or dispose of it as otherwise authorized by law. Disposal is authorized under the surplus property provisions of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484 (1982), either by sale or in limited circumstances by donation for specified purposes which do not include legal fund-raising.

The Comprehensive Crime Control Act of 1984, title II of Public Law 98-473, amended various provisions of law to give Federal law enforcement agencies such as the Drug Enforcement Administration, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Customs Bureau, and the Coast Guard, increased authority to seize and obtain forfeiture of assets used in the commission of crimes or acquired with the proceeds from those crimes. The act also gave Federal law enforcement agencies increased options depending on the crime, for the disposition of the forfeited property, which now include:

- retaining the property for official Government use;
- selling the property and depositing the proceeds in asset forfeiture funds (28 U.S.C. § 524(c) and 19 U.S.C. § 1613a), which are used to finance management of the seized property programs;
- sharing the property with the state and local law enforcement agencies that participated in the investigation that led to seizure of the property;
- sharing the property with state agencies for medical or scientific research; or
- transferring the property to the appropriate Government agency for disposition in accordance with law.^{2/}

None of the authorized uses or dispositions of the seized or forfeited property would seem to include donating the property or the proceeds from its sale to states or to non-profit organizations for legal fund-raising activities. Thus, unless the law is amended to authorize this use of seized or

^{2/} See, for example, 18 U.S.C. § 1963(h), (i) (Supp. III 1985); 19 U.S.C. §§ 1616(a) and 1616a (Supp. III 1985); 21 U.S.C. § 853(h), (i) (Supp. III 1985); and 21 U.S.C. § 881(e) (1982 and Supp. III 1985).

forfeited property, we are unaware of a legal basis upon which such action would be authorized.

We trust the foregoing is of benefit to you.

Sincerely yours,

Milton J. Fowler

for

Comptroller General
of the United States