



Montgomery County Government

A DESCRIPTION AND EVALUATION OF THE DRUG ENFORCEMENT FORFEITURE FUND

	<u>Page</u>
I. SUMMARY AND CONCLUSIONS/RECOMMENDATIONS	1
II. AUTHORITY, SCOPE, METHODOLOGY AND ACKNOWLEDGEMENT	2
A. Authority	2
B. Scope	2
C. Methodology	2
D. Acknowledgment.	2
III. DESCRIPTION OF THE DRUG ENFORCEMENT FORFEITURE FUND	2
A. Overview.	2
B. Legislative Bases	3
1. Maryland Annotated Code	3
2. Montgomery County Code.	4
C. Executive Regulations	4
D. Operational Uses of the Fund.	4
E. Forfeiture and Expenditure.	5
1. Appropriation Process	5
2. Expenditure Process	6
F. Accounting, Records and Audits.	6
G. Reports	7
IV. EVALUATION OF THE DRUG ENFORCEMENT FORFEITURE FUND	8
A. Overview.	8
B. Intent of the Legislation Fulfilled	8
C. Expenditures in Accordance With Legislation	9
D. Approval and Control Procedures Adequate.	10
E. Continue Fund Beyond Sunset Date	10
V. OTHER MATTERS	11
VI. CONCLUSIONS	12
VII. RECOMMENDATIONS	12
VIII. AGENCY COMMENTS	12



I. SUMMARY AND CONCLUSIONS/RECOMMENDATIONS

A. Summary

In recent years the drug problem in Montgomery County has increased steadily and the cost of deterring violations of the laws related to controlled dangerous substances (CDS) by law enforcement officers have likewise increased. In the course of enforcing the drug laws, the Department of Police often seizes money which either has been used or was intended for use in connection with the illegal manufacture, distribution, dispensing or possession of CDS. Under provisions of the Annotated Code of Maryland, the money seized by the Montgomery County Police can, through court proceedings, be forfeited to Montgomery County. Until early 1986, funding for narcotics enforcement in the Police Department was requested, budgeted and appropriated through the normal annual budgetary process.

In January 1986, the Council enacted legislation creating the Drug Enforcement Forfeitures Fund (Fund) in the Department of Police. The Fund is an expendable trust fund into which money seized and forfeited to the County under the Maryland Annotated Code can be appropriated by the Council for the exclusive use by the Police in enforcing laws relating to controlled dangerous substances. In addition, the legislation, codified as Section 35-13B of the Montgomery County Code, prescribes the uses of the Fund and requires that an Executive Regulation to administer the Fund be adopted.

Between November 1986 and April 1989, the Fund has received \$570,972 in forfeited monies. During the same period, \$461,082 has been expended from the Fund. The expenditures have been in three major categories: support of investigations (drug buys, payment to informants, "flash" money), training in drug investigating methods and procedures, and purchase and leasing of equipment (cameras, night vision devices, vehicles and laboratory equipment).

B. Conclusions/Recommendations

1. The legislative purpose for creating the Fund, namely, to authorize the Department of Police the exclusive use of forfeited money seized in the course of enforcing laws dealing with controlled dangerous substances for certain expenditures relating to narcotics investigations, has been fulfilled.
2. Except for the purchase of furniture and related office equipment from the Fund's liquid assets account, expenditures have scrupulously adhered to the legislation and regulation governing the use and administration of the Fund.
3. Section 35-13B, Drug Enforcement Forfeiture Fund, of the Montgomery County Code and its implementing Executive Regulation, No. 23-86, provides for reasonable and adequate administrative procedures, internal accounting controls, and auditing and reporting requirements.
4. The Drug Enforcement Forfeiture Fund should be continued beyond the December 31, 1989, sunset date, and no new sunset date should be established.

II. AUTHORITY, SCOPE, METHODOLOGY AND ACKNOWLEDGMENT

A. Authority

Council Resolution No. 11-1360, adopted April 4, 1989, subject: CY 1989 Work Program of the Office of Legislative Oversight.

B. Scope

The purpose of this evaluation is to evaluate the need to continue a separate drug enforcement fund beyond the legislated December 31, 1989 sunset date.

C. Methodology

This evaluation was conducted using the following fact-finding techniques: document review (State and County Codes, Executive Regulations, policies, and operating procedures); and interviews with staff members of the Police and Finance Departments, the County Attorney's Office, the Office of Management and Budget and other appropriate Executive agencies.

D. Acknowledgment

The Office of Legislative Oversight (OLO) acknowledges the prompt and courteous support from the management and staff of the various Executive agencies, especially the Department of Police. Throughout the course of this review, OLO was repeatedly impressed with the high dedication of all personnel to the cause of reducing the flow of controlled and dangerous substances in the County. Also, Mr. David Kubacki, OLO Public Administration Intern, assisted in the conduct of the evaluation and preparation of the report.

III. DESCRIPTION OF THE DRUG ENFORCEMENT FORFEITURES FUND

A. Overview

In recent years the drug problem in Montgomery County has increased steadily and the cost of deterring violations of the laws related to controlled dangerous substances (CDS) by law enforcement officers have likewise increased. In the course of enforcing the drug laws, the Department of Police often seizes money which either has been used or was intended for use in connection with the illegal manufacture, distribution, dispensing or possession of CDS. Under provisions of the Annotated Code of Maryland, the money, coins and currency* seized by the Montgomery County Police can, through court proceedings, be forfeited to Montgomery County. Until early 1986, funding for narcotics enforcement in the Police Department was requested, budgeted and appropriated through the normal annual budgetary process.

* The Maryland Annotated Code, Article 27, Section 297(a)(6) specifically refers to money, coin and currency. In this report, OLO will use the single term, "money".

In January 1986, the Council enacted legislation creating the Drug Enforcement Forfeitures Fund (Fund) in the Department of Police. The Fund is an expendable trust fund into which money seized and forfeited to the County under the Maryland Annotated Code can be appropriated by the Council for the exclusive use by the Police in enforcing laws relating to controlled dangerous substances. In addition, the legislation, codified as Section 35-13B of the Montgomery County Code, prescribes the uses of the Fund and requires that an Executive Regulation to administer the Fund be adopted.

In subsequent sections of this report, the legislative basis for the Fund will be reviewed; the operational uses and administration of the Fund will be discussed, as will the forfeiture and expenditure processes; and the accounting, auditing and reporting requirements will be examined. Finally, the report will make recommendations concerning the continuation of the Fund beyond its December 31, 1989 sunset date.

B. Legislative Bases

1. Maryland Annotated Code*

Article 27, Section 297, Forfeitures and Seizures Generally; Motor Vehicles, defines which property is subject to seizure and forfeiture in connection with drug enforcement activities, and sets forth the process whereby seized property can be forfeited. Section 297(a)(6) of the Article specifically addresses the seizure of money. Specifically, the Code states that, "All money, coin and currency which is found in close proximity to contraband controlled dangerous substances, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are presumed to be forfeiture under this paragraph". The law further states that "the burden of proof is upon a claimant of the property to rebut this presumption". Finally, the law stipulates that "close proximity" is decided by the courts on a case-by-case basis.

Section 297A of the same Article requires that seized money must be photographed and the serial numbers recorded so that the photos can be used as evidence in the criminal proceedings. However, after photographing and recording, the money can be deposited in an account of the seizing jurisdiction. In Montgomery County, the seized money is deposited into an escrow account until the court decides on the final disposition of the money.

A proceeding for forfeiture of seized money must be filed by the County within 90 days of final disposition of criminal proceedings by the court. In Montgomery County, cases for forfeiture are filed by the County Attorney, in the name of the Director of Finance, in either the District Court or the Circuit Court depending on the dollar amount involved (under \$5000 is filed in the District Court). The County Attorney as the representative of the seizing agency has to show "close proximity", at which point the other party has to refute the legal presumption that the money is linked to controlled dangerous substances.

* The 1989 Maryland General Assembly enacted Senate Bill No. 419 which repealed Article 27, Section 297, and reenacted a new Section 297 with amendments. The amended version of Section 297 primarily addresses the seizure of property, and does not change the money forfeiture process of the original Section 297 described herein. (Also see comments by the Director, OMB, at page 15.)

If forfeiture is decided upon by the court, the defendant has a 30-day period to appeal, after which the forfeited money is deposited into the Fund. If the court decides against forfeiture, and the County chooses not to appeal that decision, the money must be returned promptly to the person from whom it was seized.

2. Montgomery County Code

The State Code provides the authority and specifies the process for the County to claim money seized in the course of enforcing laws relating to controlled dangerous substances. However, in 1985, as the problems with illegal drugs in the County increased, the Police Department looked for a way to gain direct and exclusive use of seized and forfeited money. In June 1985, the Council introduced Bill No. 23-85, which would create a drug enforcement forfeiture fund into which seized and forfeited money would be deposited for the exclusive use of the Police Department in drug enforcement activities.

The official position of the Executive on Bill No. 23-85 was to support the need to increase funding of police drug enforcement activities. However, the Executive opposed the creation of a separate fund on public policy grounds. Specifically, the Executive did not want to establish the precedent of special, dedicated funds. Partly to address this opposition, the Council amended Bill No. 23-85 prior to final enactment to add an audit requirement and a three-year sunset provision. The Council enacted Bill No. 23-85, with amendments, on January 14, 1986, and forwarded it to the Executive for signature. The Bill was returned unsigned by the County Executive, and became effective on April 29, 1986, as Section 35-13B, Drug Enforcement Forfeitures Fund, of the Montgomery County Code.

C. Executive Regulations

Although the law was enacted in January 1986, with an effective date of April 29, 1986, the Fund did not become operational until the Council approved the Executive Regulations and appropriated funds in late 1986. In October 1986, the Council approved Executive Regulations No. 23-86, Drug Enforcement Forfeiture Fund, under Method (2) of Section 2A-15 of the County Code; and in November 1986, the Council, by resolution, appropriated \$150,000 to the Fund.

Executive Regulation 23-86 identifies the source of money for the Fund, specifically, money seized in drug enforcement activities and forfeited under the Maryland Annotated Code. In addition, the Regulation requires that the Council must appropriate forfeited money to the Fund before it can be expended. Finally, the Regulation enumerates the operational uses of the Fund, the accounting and record-keeping procedures, and the required reports on Fund activities.

D. Operational Uses of the Fund

Within the Police Department, the following operational elements, in descending order of the chain-of-command, are involved in the use of the Fund:

- Director, Department of Police (Chief of Police)
- Chief, Investigative Services Bureau (ISB)
- Director, Special Investigations Division (SID)

Section 35-13B of the County Code specifies that the Fund can be used for expenses related to narcotics investigations, to include:

- payment of informants;
- purchase or lease of equipment; or
- any other expense related to narcotics investigations.

Executive Regulation 23-86 discusses in more detail the uses of the Fund. The Regulation states that the intent of the law is to allow the Police Department the discretion to use the Fund for narcotics enforcement in the broad areas of investigations, training and equipment procurement. The specific language of the Regulation for the use of the Fund in these three categories is as follows:

- Investigations. Fund monies can be used for the controlled purchase of drugs, to pay informants, and to conduct investigations which require undercover officers to assume the roles indicative of a major drug dealer. Expenditure of monies from the Fund is limited to the amount currently available in the Fund; however, no amount greater than \$5000 can be spent on any single investigation unless specifically authorized by the Chief of Police.

- Training. To remain current with investigative techniques and to maintain the technical expertise required for narcotics investigations, Fund monies can be used to permit officers to attend, participate in, and conduct training programs. Authorized expenditures include travel, lodging, registration, materials and per diem.

- Equipment. To allow the Police Department to utilize the most recently developed equipment and state-of-the-art technology in the enforcement of narcotics laws, Fund monies may be used to purchase or lease surveillance or other equipment. Specifically permitted is the use of the Fund to lease equipment which will increase or supplement the Police Department's capabilities in individual cases, to include the lease of motor vehicles. Leases or rentals that do not exceed \$500 or 30 days are within the discretionary authority of the Director, Special Investigations Division (SID). It should be noted that the Regulation specifically requires that expenditures for equipment be made in accordance with the County's procurement regulations.

E. Forfeiture and Expenditure

1. Appropriation Process

For a given fiscal year, the appropriation level for the Fund is determined by the amount of money that is forfeited during the previous fiscal year. The initial appropriation to the Fund of \$150,000 was approved by Council resolution in November 1986. In subsequent fiscal years (FY88, FY89 and FY90) the Council's Appropriation Resolution has included in the miscellaneous provisions a statement that the unencumbered balance of the Fund is reappropriated.

2. Expenditure Process

The Chief of Police has the final authority on expenditures from the Fund; however, decisions are generally made at lower levels in the Police chain-of-command, primarily by the Director, SID.

The Director is responsible for the overall administration of the Fund. Under Executive Regulation 23-86, the Director is authorized to maintain an amount not to exceed \$5000 in cash to be used primarily for expenses related to investigations. Access to these liquid assets are restricted to the Director and his supervisor, the Chief, Investigative Services Bureau (ISB).

The Chief, ISB, is involved in the use of the Fund in three areas:

- Investigations. In those cases where a single investigation requires expenditures in excess of the \$5000 limit, recommend the expenditure to the Chief of Police who has final authority to approve the request.

- Training. Approve expenditures from the Fund for training purposes.

- Equipment. Approve the leasing/renting of equipment which exceeds the \$500 or 30 day approval authority limit of the Director, SID. The Chief, ISB, presides over a committee composed of the Chief, ISB, the Director, SID, and the Director, Police Management and Budget Division. This Committee has responsibility for making recommendations to the Chief of Police on the purchase of equipment and for determining the method of procuring the equipment.

Two Executive branch agencies are involved in the expenditure process. The Finance Department's Division of Procurement and Materiel Management is responsible for the procurement of equipment, supplies, and services for the Police Department from the Fund. Also, the Finance Department's Division of Accounting is responsible for processing payments from the Fund and maintaining supporting documentation for all expenditures from the Fund.

At Table 1 (page 7) is a summary of Fund appropriations and expenditures for fiscal years 1987 through 1989.

F. Accounting, Records and Audits

Within the Police Department, the Director, SID, maintains various accounting records for the Fund, to include: a cash control log, an expenditure control log, a drug enforcement fund replenishment log, a file of approved training and equipment requests, Fund deposits, cash expenditure sheets, and various memoranda relating to notifications from the County Attorney on forfeitures and Fund replenishment.

The County's Division of Accounting utilizes the standard FAMIS system of reports to maintain financial information and prepare the financial statements for the Fund. In addition, the Division of Accounting maintains a record of the fixed assets of the Fund.

Table 1

Drug Enforcement Forfeiture Fund
Appropriations and Expenditure Since Creation of the Fund
FY87, FY88 and FY89^a

<u>Fiscal Years</u>	<u>Appropriations</u>	<u>Expenditures</u>
1987	\$150,000	\$ 56,873
1988	164,419	164,912
<u>1989^a</u>	<u>256,553</u>	<u>239,297^b</u>
Total: (Thru 4/30/89)	\$570,972	\$461,082

^a Thru 4/30/89.

^b Includes encumbrances.

Source: Department of Police Management and Budget Division

The Auditing Section of the Department of Finance has responsibility for the internal audit of the Fund. The most recent audit, performed in March 1988, revealed no material deficiencies in the operation or documentation of the Fund. Specifically, the audit "disclosed no existing conditions that...would constitute a material weakness in internal accounting controls." In addition to the internal audit, the Fund is audited annually as part of the Council's independent audit of the County's financial statement.

G. Reports

Executive Regulation 23-86 requires the following three reports relating to the Fund:

- Monthly report. The Director, SID, is required to submit a monthly financial status report to the Chief, ISB. Copies of the monthly report are also circulated within the Police Department to the Director, Police Management and Budget Division and the Assistant County Attorney assigned to the Police Department.

- Year-end report. The Director, SID, also submits a year-end report through the chain-of-command to the Chief of Police, with copies provided to other entities in the Police Department and to the Director of Finance.

- Report to the County Council. Executive Regulations 23-86 requires that a report be submitted annually to the Council on April 30th. Councilmembers received reports in 1987 and 1988; however, there is no record that the reports were discussed by a Council Committee or by the Council as a whole.

IV. EVALUATION OF DRUG ENFORCEMENT FORFEITURE FUND

A. Overview. So far this report has examined the Maryland Annotated Code authorizing the forfeiture through court proceedings of money seized in the course of enforcing laws relating to controlled dangerous substances. In addition, this report has described the creation of a Drug Enforcement Forfeiture Fund (Fund) and examined Executive Regulation 23-86 which covers the use and administration of the Fund.

In this section of the report, the Fund will be evaluated through an examination and discussion of the following four questions.

- Has the intent of the Council legislation creating the Drug Enforcement Forfeiture Fund been fulfilled?
- Have expenditures from the Drug Enforcement Forfeiture Fund been in accordance with the legislation creating the Fund (Section 35-13B, Montgomery County Code) and the Executive Regulation (No. 23-86) governing the use and administration of the Fund?
- Are the various provisions in the legislation and regulation relating to the approval process, internal accounting controls, and auditing and reporting requirements adequate?
- Should the Drug Enforcement Forfeiture Fund be continued beyond the December 31, 1989, sunset date currently specified in Section 35-13B(e) of the County Code?

B. Has the intent of the Council legislation creating the Drug Enforcement Forfeiture Fund been fulfilled?

1. Evaluation. The legislative purpose for creating the Fund, namely, to authorize the Department of Police the exclusive use of forfeited money seized in the course of enforcing laws dealing with controlled dangerous substances for certain expenditures relating to narcotics investigations, has been fulfilled.

2. Discussion. The universal opinion of all personnel interviewed by OLO who are involved with the County's narcotics enforcement efforts is that the Fund has been extremely valuable. The Fund has provided the Police with the resources to carry out successful, but expensive, investigations, enabled Police officers to take advantage of training on the latest drug investigating techniques, and has permitted the Police to purchase sophisticated equipment to conduct more thorough investigations.

Examples of training opportunities available to the Police because of the Fund include attendance by three members of the Police Special Investigations Division at an International Drug Conference. At this conference, the officers received advanced training from the U. S. Department of Justice on three types of drug-related investigations: diversion, conspiracy, and clandestine laboratories. Other training programs that officers were able to attend with Fund monies were a training program focusing on traffickers and drug organizations and a narcotics officers seminar sponsored by the Council of Governments.

Examples of equipment purchased with monies from the Fund included improved night vision systems for use in undercover narcotics investigations. In addition, the Fund monies purchased equipment which allows the night vision systems to be used with sophisticated camera systems also purchased by the Fund. Finally, the Police used the Fund monies to purchase twenty pairs of advanced binoculars.

A more recent example is a recent Council supplemental appropriation to the Fund to purchase a device known as a gaschromatograph interface with a mass spectrometer. This equipment is used for analysis of CDS samples. Currently such equipment is only available through the Drug Enforcement Administration (DEA) in Washington, D.C., and the County's access to the equipment is limited. The effect of this limited access is that the Police are not able to analyze all the CDS samples that they need to analyze. Having their own equipment will enable the Police technicians to analyze all CDS samples and will eliminate the requirement to travel to the DEA laboratory in the District.

C. Have expenditures from the Drug Enforcement Forfeiture Fund been in accordance with the legislation creating the Fund and the Executive Regulation governing the use and administration of the Fund?

1. Evaluation. Except for the purchase of furniture and related office equipment from the Fund's liquid assets account, expenditures have scrupulously adhered to the legislation and regulation governing the use and administration of the Fund.

2. Discussion. There are two parts to this question: the propriety of the expenditure and the method of procurement.

● Propriety of the expenditure. Except for one category of equipment purchases, all expenditures have adhered to the authorized uses of the Fund in that they were directly linked to drug enforcement activities, that is, investigations, training, and the purchase of equipment. However, one category of expenditure, the purchase of office furniture and related office equipment, appears to be less directly linked to drug enforcement activities. Over a two-month period in October and November 1988, the Police made a series of purchases of furniture and related office equipment at a cost of approximately \$14,000. The furniture was for the newly assigned officers to the rapidly expanding Special Investigations Division, the unit responsible for enforcement of drug laws.

Through interviews of personnel involved in the purchasing process within the Police Department, it is the opinion of OLO that the approving authorities judged that the furniture and equipment were needed for the efficient operation of the Special Investigations Division (SID). Because the officers and staff of the SID were exclusively involved in drug enforcement operations, there is a rationale for using the Fund for purchases to support SID. It must also be noted that the decision to purchase the furniture was made in accordance with the internal Police approval process established in Executive Regulations 23-86 concerning the expenditure from the Fund for equipment purchases.

● Method of procurement. The furniture and related office equipment was paid for in cash from the liquid assets account of the Fund. In OLO's opinion, this was not an appropriate method of procurement. Interviews

with Police personnel involved in the approval process for the purchases indicate that they considered it to be expedient to directly purchase the furniture with cash from the Fund's liquid asset account, citing the fact that the police officers and staff were "on board" in the Special Investigations Division, but had no desks, chairs or related office equipment on which to work.

Executive Regulations 23-86 specifies the procedures to be followed by the Police in utilizing monies forfeited to the Fund. Section 1.3, Use of Funds, directs that expenditures from the Fund for equipment purchases be made in accordance with the County procurement regulations. Those purchasing regulations provide for emergency procurements when time is a factor. It would appear that the intent of the requirement in Executive Regulation 23-86 to follow County procurement regulations when Fund monies are used to purchase equipment is to balance the flexibility of using Fund resources with the control mechanisms built into the procurement process. In OLO's opinion, the emergency procurement procedures in the County's procurement regulations should have been followed when purchasing the furniture and related office equipment for the Special Investigations Division, rather than the liquid assets of the Fund.

D. Are the various provisions in the legislation and regulation relating to the approval process, internal accounting controls, and auditing and reporting requirements adequate?

1. Evaluation. Section 35-13B, Drug Enforcement Forfeiture Fund, of the Montgomery County Code and its implementing Executive Regulation, No. 23-86, provides for reasonable and adequate administrative procedures, internal accounting controls, and auditing and reporting requirements.

2. Discussion. OLO reviewed the various Fund accounting records, documents and reports to include the annual reports to the Council. Interviews with Police personnel indicates a high level of management control of the Fund. Even the purchase of furniture and related office equipment with liquid assets of the Fund discussed above was approved through the Police chain-of-command and detailed logs and records were maintained for each transaction.

OLO would offer one comment concerning the Police Department's annual report to the Council on the Fund which is required by Executive Regulation No. 23-86. The two reports which have been submitted to the Council as of April 1989, were distributed to individual Councilmembers. However, because these reports were received at a time when the Council was engaged in budget deliberations (April 1987 and May 1988), the annual Fund reports were never formerly discussed by either the Council or a Council Committee. To ensure Council attention to the Fund reports, Council staff should, as a minimum, schedule a discussion before the Government Structure, Automation and Regulation (GSA) Committee of future reports.

E. Should the Drug Enforcement Forfeiture Fund be continued beyond the December 31, 1989, sunset date currently specified in Section 35-13B(e) of the County Code?

1. Evaluation. The Drug Enforcement Forfeiture Fund should be continued beyond the December 31, 1989, sunset date, and no new sunset date should be established.

2. Discussion. As stated previously in this report, when the Council created the Drug Enforcement Forfeiture Fund in January 1986, the Executive branch did not support the creation of a special fund on public policy grounds. Primarily to address this concern, the Council included a three-year sunset provision in the legislation. The original sunset date of April 30, 1989 was extended by the Council to December 31, 1989 to permit an OLO evaluation of the Fund. The evaluation by OLO indicates that the Executive branch is no longer concerned about the existence of a separate Drug Enforcement Forfeiture Fund. There is near universal support for the continuation of the Fund and the removal of any sunset provision.

V. OTHER MATTERS

In the course of this examination, the following matters relating to the scope of the evaluation was considered sufficiently important to be presented here for information and possible action.

A. Share Agreements

When the County Police is involved in multi-jurisdictional drug operations that involves federal agencies, an agreement is reached on the distribution of seized and forfeited money. The share agreement involves the percentage each jurisdiction or agency will receive of the money forfeited, relative to the individual agency's contribution to the operation.

Section 35-13B of the County Code has no provision to permit the County Police to enter into a similar share agreement with municipalities, the Park Police, or other local jurisdictions in drug operations where the federal authorities are not involved. There would appear to be a need for such an agreement.

B. Park Police Retention of Funds Seized on Park Property

Currently, there is no provision in either the Maryland Annotated Code or the Montgomery County Code to allow Park Police to retain funds which they have seized on Park property in connection with enforcing laws relating to controlled dangerous substances.

The County Executive's recommended FY90 budget included a statement that it is reasonable to support an amendment to County legislation so that the Park Police could keep funds from seizures on Park property.

During budget deliberations on the Park Police's FY90 operating budget, the Council's Committee on Planning, Housing and Economic Development (PHED) and the full Council indicated support for an amendment to the Drug Enforcement Forfeiture Fund section of the County Code to allow Park Police to retain seized and forfeited funds.

VII. CONCLUSIONS

- A. The legislative purpose for creating the Fund, namely, to authorize the Department of Police the exclusive use of forfeited money seized in the course of enforcing laws dealing with controlled dangerous substances for certain expenditures relating to narcotics investigations, has been fulfilled.
- B. Except for the purchase of furniture and related office equipment from the Fund's liquid assets account, expenditures have scrupulously adhered to the legislation and regulation governing the use and administration of the Fund.
- C. Section 35-13B, Drug Enforcement Forfeiture Fund, of the Montgomery County Code and its implementing Executive Regulation, No. 23-86, provides for reasonable and adequate administrative procedures, internal accounting controls, and auditing and reporting requirements.
- D. The Drug Enforcement Forfeiture Fund should be continued beyond the December 31, 1989, sunset date, and no new sunset date should be established.

VIII. RECOMMENDATIONS

It is recommended that the County Council:

- A. Amend Section 35-13B, Drug Enforcement Forfeiture Fund, Montgomery County Code, to remove the December 31, 1989 sunset date, and not establish a new sunset date.
- B. Approve OLO Report 89-1 for public release.

IX. AGENCY COMMENTS

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer, the Director of Police, the County Attorney, the Director of the Office of Management and Budget, and the Chief, Division of Accounting. Comments of a technical nature have been included in this final report. Other comments are presented in their entirety beginning on the next page.



Montgomery County Government

ROCKVILLE, MARYLAND 20850

June 9, 1989

MEMORANDUM

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Lewis T. Roberts, Chief Administrative Officer *L. T. Roberts*

SUBJECT: Draft OLO Report No. 89-1, A Description and Evaluation of the Drug Enforcement Forfeiture Fund

Thank you for the opportunity to review the draft copy to the above mentioned report. As always with your reports, this report is both thorough and constructive.

The Executive Branch concurs with your recommendation that the County Council amend Section 35-13B, Drug Enforcement Forfeiture Fund, Montgomery County Code, to renew the December 31, 1989 sunset date and not establish a new sunset date. However, this should not be interpreted that the Executive Branch has changed its position with regard to the establishment of dedicated special funds. Drug enforcement activities have and will continue to require exceptional measures for the protection of our community. As such, the Executive Branch sees the continuation of this fund as a special exception to the County Executive's policy of not dedicating specific sources of general revenues to specific programs.

Attached for your consideration are comments from Police, Finance, Management and Budget, and the County Attorney.

Thank you again for your excellent report.

Enclosures



Montgomery County Government

1989 JUN -5 PM 4: 30

June 5, 1989

MEMORANDUM

TO: Mr. Andrew Mansinne, Jr., Director, Office of Legislative Oversight
VIA: Mr. Lewis T. Roberts, Chief Administrative Officer
FROM: Colonel Donald E. Brooks, Chief of Police *D. E. Brooks*
SUBJECT: OLO's Report No. 89-1 Concerning Evaluation of the Drug Enforcement Forfeiture Fund

We have reviewed your memorandum dated May 22, 1989, concerning the Police Department's administration of the Drug Enforcement Forfeiture Fund. The overall excellent evaluation is very pleasing to me particularly with respect to the control and accounting procedures being utilized by my staff. As you pointed out specifically in Section IV A and IV B of your report, the original intent of the Executive's Office and the County Council has been fulfilled resulting in a very positive law enforcement benefit for the citizens of this county.

I have noted your concerns with furniture purchases that became necessary due to a physical move and expansion of the Special Investigations Division's personnel. It should be pointed out that the county was in a reactionary position in the drug crisis and was moving quickly to regain the "upper hand." As a result, less than the most appropriate purchasing procedures were employed to ensure that newly authorized officers could begin their assignment productively immediately upon reporting to the Special Investigations Division. Unfortunately, other budgeted funds were not available for this equipment and it was imperative that the procurement go forward. As stated in Section IV C of your report, it would have been a better process to utilize the emergency procurement procedures. We have instructed our staff that the appropriate methods of procurement will be utilized in the future.

It is pleasing to see the scope of your office's support for the continuation of this fund and I wholeheartedly agree with and endorse that position. The Drug Enforcement Forfeiture Fund has allowed the Department of Police to make great strides in the enforcement of the drug laws in this state and I look forward to continued successes with this program.

DEB/pnr
cc: William P. Garrett, Director, Office of Personnel

Office of the Chief of Police, Department of Police

2350 Research Boulevard, Rockville, Maryland 20850-3294, 301/217-4050, TDD 762-7619

MEMORANDUM

June 14, 1989

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Robert K. Kendal, Director *RK*
Office of Management & Budget

SUBJECT: OMB Comments on DRAFT OLO Report No., 89-1, A Description and Evaluation of the Drug Enforcement Forfeiture Fund

OMB has reviewed the above-named DRAFT report and appreciates the opportunity to comment. OMB agrees with the conclusions in the DRAFT report, and concurs with the recommendations that County Code Section 35-13B, Drug Enforcement Forfeiture Fund should be amended to remove the December 31, 1989 sunset date, and that no new sunset date should be established.

OMB notes the discussion on page 11 of both the issue of share agreements on multi-jurisdictional drug operations and the issue of Park Police retention of funds seized on Park property. OMB is willing to work with Montgomery County Police, Park Police, other jurisdictions, and the Council to discuss share agreements and related issues. Any potential changes to the existing legislation should include a fiscal impact analysis, including whether costs of Park Police drug enforcement operations could be offset by funds seized through operations on Park property.

We would also like to suggest that at the appropriate time further exploration be made into the matter of how the County could obtain even more forfeiture funds than have been garnered to date. For example, the upcoming changes to State law presumably offer expanded opportunities to gain access to convicted persons' real and personal property, compared to the access now available. In addition, we should explore with the U.S. Attorney's Office, and other Federal agencies, how we might obtain funds from forfeitures that the County cannot reach under even the amended State law.

Thank you for the opportunity to comment.

RKK:djb/9260A

MEMORANDUM

June 5, 1989

TO: Andrew Manşinne, Director
Office of Legislative Oversight

VIA: Lewis T. Roberts
Chief Administrative Officer

FROM: Clyde H. Sorrell
County Attorney

RE: Comments on Draft OLO Report No. 89-1, Description and
Evaluation of the Drug Enforcement Forfeiture Fund

This Office has received for comment your draft report regarding the drug enforcement forfeiture fund. Based on the review of the draft report by the Assistant County Attorneys who are most familiar with the drug enforcement forfeiture fund and money forfeiture actions, this Office has the following comments on your report.

First, the second sentence of the last paragraph, page 3, of the report is incorrect in describing the disposition of seized monies when a forfeiture petition filed by the County is denied. The sentence states:

If the court decides against forfeiture, the defendant has one year to petition for the return of the money.

In the event the court decides against a forfeiture and the County chooses not to appeal that decision, the money must be returned promptly to the person from whom it was seized. The person whose money was seized does not have to make a specific demand for the money at that point. The County does not have the right to hold the money after the court has made its determination.

Under the statutory scheme of Article 27, Section 297, the County is required to file a forfeiture petition within 90 days after final disposition of the criminal proceedings. If the County fails to file such a petition within the 90-day period, the owner of the funds can demand the return of the monies at any time within one year. Section 297 does not define the term petition, but explicitly provides in subparagraph (b)(2)(i) that the County treasurer, i.e., the Director of Finance in Montgomery County, must file a petition, affidavit and show cause order in either the District Court or the Circuit Court when seeking a forfeiture of money seized in connection with controlled dangerous substances. However, Section 297(b)(3)(i) and (ii) provide that in the event the County does not institute a forfeiture proceeding in either the District Court or the Circuit Court, the person from whom the money was seized may petition for the return of the money within one year from the date of the final disposition of the criminal charges. Therefore, unlike the County which must file its petition in court, the owner of seized money is not under a statutory obligation to do so. An attempt to close this loophole failed during the last legislative session.

Please feel free to call me if you have any questions with respect to these comments.

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Montgomery County Government *MLH 32*, 1989

To: Keith E. Kolodgie, Assistant to the
Chief Administrative Officer

From: G. Peter Mech, Chief, Division of Accounting *G. Peter Mech*

Subject: OLO #89-1 A Description and Evaluation of the Drug
Enforcement Forfeiture Fund

Pursuant to your May 23, 1989, memoranda concerning the above referenced matter, we hereby submit our response to this matter.

Although this fund has been classified and accounted for as an Expendable Trust Fund in the past, we are compelled to change the classification for this fund to a Special Revenue Fund. This does not necessarily effect the way Montgomery County, Maryland is currently appropriating spending authority for this fund. However, it might require further scrutiny by the Office of Management and Budget for their concurrence.

Originally, we thought the use of this fund would be temporary in nature and best presented in an innocuous part of our financial statements. However, owing to the more permanent nature of this fund as well as our more recent intensive review of the accounting literature, we are compelled to revise our classification from a fiduciary fund type to a governmental fund type. The accounting for an expendable trust fund and a special revenue fund are very similar, in that they both use the modified basis of accounting and focus on the flows of resources. However,

"the use of the term 'trust fund' implies to financial statement users that amounts reported in such funds are restricted as to use by *some outside third party*. All too often, governments use expendable trust funds to report their own restrictions upon asset use. Such a use of the trust fund classification is inappropriate and potentially misleading. Instead, governments should consider using either a special revenue fund or a designation of general fund balance in such cases." (GAAFR REVIEW, April 1989 - a publication of the GFOA.)

It is our firm belief that this change in accounting classification as to fund type has no adverse impact on the activities of the fund. It will however be displayed in a separate fund and have greater visibility than heretofore.

Should this matter require further discussion, we are available for further discussion. Best regards

cc: OMB - Tim Firestone *Department of Finance, Division of Accounting*

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