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DEPARTMENT OF JUSTICE
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OPINION 11-0166

10—Clerk of Court
46—A—Fees and Costs
62—B—Acts & Bills

R.S. 40:2601, et seq.; R.S. 40:2612; R.S. 40:2616; R.S. 13:4521.

The 1997 legislative changes to R.S. 40:2612 provide that a claimant in a forfeiture procedure is no longer required to file or post a bond. Court costs assessed and related to a forfeiture and sale proceedings authorized by R.S. 40:2616(A) should be paid as a priority as set forth in R.S. 40:2616(B)(2), or paid by a claimant if included in a final judgment pursuant to R.S. 40:2612E.

Honorable Tammy Foster
Sabine Parish, Clerk of Court
11th Judicial District Court
Many, Louisiana 71449

Dear Honorable Foster:

Your request for an opinion has been forwarded to me for research and reply. In your request, you have explained that the 1997 Louisiana Legislative session amended R.S. 40:2612. Based upon these amendments, you would like to know if La. Atty. Gen. Op. 97-159, as it pertains to court costs collected by the Clerk of Court (i.e., Clerk of Court's fees, Judge's Supplemental Fund, Judicial Expense Fund, Sheriff's costs), is still accurate. You raise the following questions:

1. Considering the effect of Act 1334 of 1997 [which removed portions of subsection E of R.S. 40:2612], is La. Atty. Gen. Op. 97-159 still accurate?
2. When distributions are made from the Special Asset Forfeiture Fund in accordance with R.S. 40:2616(B), should court costs be distributed pursuant to the order of priority?
3. Does the judgment need to specifically include or address court costs under the foregoing provisions?
4. Who shall pay court costs in a forfeiture proceeding under R.S. 40:2616?

I. Louisiana Attorney General Opinion 97-159 and Act 1334 of the 1997 Louisiana Legislative Session

In La. Atty. Gen. Op. 97-159, our office analyzed R.S. 40:2616 to determine what action the Clerk of Court's office could take in a forfeiture proceeding to ensure payment of court costs. We opined that R.S. 40:2616(B), the particular subsection that enables the

Clerk of Court to collect court costs, must be read within the context of the Louisiana's Forfeiture Act, R.S. 40:2601 *et seq.*, as well as other applicable provisions. Specifically our office stated as follows:

LSA R.S. 40:2616(B) is invoked only where there is a claimant contesting the forfeiture proceedings. The clerk of court may collect the costs incurred in the proceeding if the presiding judge casts the claimant with those costs after the satisfaction of a bona fide security interest or lien. See LSA R.S.[40:]2616(B)(1). *Furthermore, the allotted costs would reasonably come from the bond that the claimant must file along with his answer pursuant to LSA R.S. [40:]2612(E).*

La. Atty. Gen. Op. 97-159 (emphasis added).

Our office further noted that if the claimant is not cast with court costs, then neither the State of Louisiana nor any of its political subdivisions are responsible for paying the cost pursuant to the exemption set forth in R.S. 13:4521. Furthermore, in the event a claimant either failed to file an answer and bond, or failed to make such a filing within the permissible time period, then the presiding judge could not allot or assess court costs against the claimant.

Our office then concluded that the Clerk of Court would be entitled to payment of court costs incurred in forfeiture proceedings from either the bond filed by the claimant; from claimant who had been ordered to pay the court costs in a final judgment or as a priority payment from the proceeds of any sale of forfeited property conducted in accordance with R.S. 40:2616(A) and (B). In a sale of forfeited property, the District Attorney's office would distribute the sale proceeds in the order of priority as set forth in R.S. 40:2616(B) which places court costs as a priority two payment.

The foregoing opinion was released before Act 1334 ("Act") of the 1997 Louisiana Legislative Session became law. The Act amended R.S. 40:2612(E), which was cited in La. Atty. Gen. Op. 97-159.

II. How Did the 1997 Louisiana Legislative Amendments Impact R.S. 40:2612(E)?

As it was originally enacted, R.S. 40:2612(E) required a claimant in a *civil in rem* action to file a bond when he or she filed his or her answer to the petition. The statute also authorized the submission of sureties with district court approval in forfeiture cases, upon the mandatory condition that the claimant pay all costs and expenses as provided in R.S. 40:2615. Now, R.S. 40:2612(E) simply requires the following:

The answer shall be filed within fifteen days after service of the civil in rem petition. No claimant shall be required to pay court costs to contest a forfeiture proceeding, **except in a final judgment.**

(West 2012)(emphasis added).

Statutory interpretation begins with the language of the statute.¹ Where a statute is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.² In statutory construction the word "shall" is mandatory.³

At the outset it should be noted that a bond is no longer required to be filed by the claimant to contest the forfeiture of property. Applying the standard rule for statutory interpretation to R.S. 40:2612(E), as amended, it is clear that a claimant in a forfeiture proceeding shall not be required to pay any court costs to contest a forfeiture proceeding. The statutory language does, however, authorize the court to require a claimant to pay costs in a final judgment.

Due to the legislative amendment to R.S. 40:2612(E), the conclusion of La. Atty. Gen. Op. 97-159, strictly as it pertains to any requirement that a claimant file a bond in a forfeiture proceeding, should no longer be relied upon.

III. Should Court Costs Be Distributed in the Order of Priority When Distributions are Made From the Special Asset Forfeiture Fund Pursuant to R.S. 40:2616(B)?

Yes. R.S. 40:2616(A) outlines the process for the sale and deposit of forfeited property and R.S. 40:2616(B) establishes the Special District Attorney Asset Forfeiture Fund and the process for the distribution of forfeited property or sale proceeds of forfeited property and states as follows:

A. (1) Except as provided in Paragraph (2) of this Subsection, when property is forfeited under the provisions of this Chapter, the district attorney shall authorize a public sale or an auction sale conducted by a licensed auctioneer without appraisal of that which is not required by law to be destroyed and which is not harmful to the public. The proceeds of any sale and any monies forfeited or obtained by judgment or settlement under this Section shall be deposited in the Special Asset Forfeiture Fund as established herein until disposed of pursuant to court order.

¹ *State v. Benoit*, 2001-2712(La. 2002), 817 So.2d 11, 13.

² *Id.*; C.C. art. 9.

³ R.S. 1:3; *Trahan v. Trahan*, 2010-0109 (La.App. 1 Cir. 6/11/10), 43 So.3d 218.

(2) If the property seized is a motor vehicle, the seizing agency may retain use of the motor vehicle for use in the course and scope of undercover surveillance and investigation of violations of the Louisiana Controlled Dangerous Substances Law. All other property forfeited under the provisions of this Chapter shall be sold as provided in Paragraph (1) of this Subsection.

B. A Special Asset Forfeiture Fund is hereby established within the Special District Attorney Asset Forfeiture Trust Fund. All monies obtained under the provisions of this Chapter shall be deposited in the fund. The court shall ensure the equitable distribution of any forfeited property, or of monies under and subject to the provisions of this Subsection, to the appropriate local, state, or federal law enforcement agency so as to reflect generally the contribution of that agency's participation in any of the activity that led to the seizure or forfeiture of the property or deposit of monies under and subject to the provisions of this Subsection. The office of the district attorney shall administer expenditures from the fund. The fund is subject to public audit. Money in the fund shall be distributed in the following order of priority:

(1) For satisfaction of any bona fide security interest or lien.

(2) Thereafter, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.

* * * *

(West 2012).

Pursuant to R.S. 40:2616(B), all proceeds from the sale of the forfeited property or monies collected to satisfy a forfeiture proceeding must be deposited within the Special Asset Forfeiture Fund. The statute specifically ranks court costs second in priority after the "satisfaction of any bona fide security interest or lien" on the forfeited property. In other words, court costs are on the second level or tier of distribution from the Special Asset Forfeiture Fund.

IV. Who Shall Be Responsible for Courts Costs?

Our office's response to this inquiry will depend upon whether a claimant contests the forfeiture of property by filing an answer in a forfeiture proceeding, and if so, whether the claimant is cast with court costs in a final judgment.

It should be noted that if there is no challenge by a claimant to a forfeiture proceeding, then all proceeds collected through the sale of the forfeited property or monies collected must be deposited with the Special Asset Forfeiture Fund. Then, funds will be

distributed according to the levels of priority as set forth in R.S. 40:2616(B). Court costs would be recovered second in priority to any security interests or liens.

In the event a claimant challenges the forfeiture of property and the judge casts the claimant with costs per R.S. 40:2612(E) in the judgment, then the claimant is individually responsible for such costs.

It remains our opinion that if a claimant who challenges the forfeiture of property is *not* cast with costs in the final judgment by the court, then neither the State of Louisiana nor any political subdivision, including the District Attorney's Office, shall be liable for payment (R.S. 13:4521).

V. Should the Judgment Specify Court Costs?

Yes. For those reasons addressed earlier, a claimant may be assessed with court costs in a forfeiture proceeding, but this assessment should be included in a final judgment. Therefore, if the claimant is cast in judgment, our office suggests that the district attorney involved in the case specifically include and identify the court costs in the final judgment to ensure that these costs are, in fact, included for payment from the claimant.

We hope that this information sufficiently answers your inquiries. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

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By: 
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