

Contraband Forfeiture Funds: Are Florida's Municipalities Supplanting the Budget?

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Abstract

This research project examines whether Florida municipalities are properly utilizing contraband forfeiture funds as intended by the state legislature. Police administrators attending the California Peace Officer Standards and Training Command College in the early 1990s predicted improper utilization of contraband forfeiture funds during difficult fiscal times. This study reviewed the budgets and contraband forfeiture fund expenditures from a sample of nine large municipal police departments, in Florida, over the past decade. Interviews with the Fiscal Managers from each agency determined that the contraband forfeiture funds are utilized for large purchases. Every municipality studied utilizes a review process, including legal advisor recommendations, to insure expenditures are within the scope of applicable statutes and government policies. This research did not determine any improper trends or apparent supplanting of budgeted funds.

Introduction

Power over their victims and financial reward are the two primary reasons for criminal activity. Sex related crimes are usually committed by the offender who seeks to demonstrate power over the victim. Most other criminals seek financial rewards for their acts. Criminal organizations exist to enrich the entity itself, and those that comprise it. During the late 1970s enforcement philosophies evolved to aggressively address the issue of financial rewards for the criminal.

Contraband Forfeiture Acts were created to impose severe penalties on criminals and their organizations. These laws enable law enforcement agencies to seize anything that was used in, or acquired with proceeds of, felonious criminal actions. The seizure is accomplished through a civil process, as opposed to the underlying criminal law-based prosecution. The State of Florida created the Florida Contraband Forfeiture Act, as Florida Statutes 932.701 through 932.707, effective on July 1, 1980.

There are a number of codified restrictions and limitations to the use of the forfeited assets per Florida Statutes. One particularly significant restriction is that funds acquired from forfeited property may not be used to supplant the budget of an agency. The following study attempts to analyze budgets of somewhat similar agencies, based on type and size, to determine if there were any trends that may indicate that budgets were being supplanted. A corollary example may be found in the use of Lotto funds, which were initially proposed as a means of additional educational funding. Subsequent studies have indicated that Lotto money did indeed go to educational initiatives. However, in Florida, general fund budgeting did not continue at the levels previous to the addition of the Lotto money.

Research into this topic uncovered two futures studies completed at the Command College, Peace Officers Standards and Training (POST) in California. Freeman (1990)

discusses ethical issues facing police managers where they may be facing pressure to utilize asset forfeiture funds as a major budget source. Rowell (1992) foresaw a time where restricted budgets may encourage utilization of asset forfeiture funds for other than law enforcement purposes.

There has been minimal public scrutiny of the utilization of these assets. A federal study determined that “. . . state and local law enforcement agencies that participate in the asset sharing program need more guidance for proper use of shared assets and that the latest guidance is too vague in this respect” (GAO, 1992, p. 11). Local governments have viewed these assets as a means to minimize their expenditures for necessary or wanted equipment. Semiannual reports are required by the Florida Department of Law Enforcement to document the receipts and expenditures over the previous six months.

Research Questions

Have these budgetary issues negatively impacted Florida law enforcement agencies as well? What safeguards have been established to insure the ethical utilization of asset forfeiture funds? How has this statute been utilized by municipalities similar to the City of Fort Lauderdale? Which municipalities are comparable to the City of Fort Lauderdale? What has been the budgetary impact of this statute? These are the central questions that will be addressed in this study.

To completely research this issue, a thorough review is necessary of each expenditure from any forfeited asset. Municipal budget processes vary considerably throughout the state. The research of budgeting for capital expenditures, a main focus of this study, requires significant and detailed analysis. Time limitations prevented a complete analysis; therefore, this study examines only trends in the past decade.

Method

Previous research reviewed was found to be limited to futures discussions and a federal study. No research was identified specifically related to the utilization of asset forfeiture funds by municipalities within Florida. Municipalities (only) were chosen due to similarities in budgetary requirements, fiscal year cycles, and expenditure controls. Sheriffs' Offices, being constitutional offices, were excluded due to the differences. Municipal agencies were selected based on their geographic locations and the size of their sworn officer population: 1) a maximum of one municipal agency from each county, and 2) similarity to the author's home agency (Fort Lauderdale Police Department, 481 sworn officers).

The selection process resulted in the identification of fifteen municipal agencies with a sworn population between 200 and 999 officers, based on statistical reports (FDLE, 1995). Of these fifteen agencies, five were excluded since they were within a county of another municipal agency that was selected. The Pompano Beach and Hollywood Police Departments were excluded since they were in the same county (Broward) as Fort Lauderdale. The Clearwater Police Department was excluded due to St. Petersburg being selected from the same county (Pinellas). The selection of the Hialeah Police Department excluded Miami Beach and Miami Police Departments in Dade County.

The agencies initially selected for this study were: the Daytona Beach (216), Fort Lauderdale (481), Gainesville (246), Hialeah (322), Lakeland (220), Orlando (595), St. Petersburg (515), Tallahassee (317), Tampa (920), and West Palm Beach (242) Police Departments. One agency, Lakeland, was unable to provide the necessary equipment budget due to their accounting methods. The Lakeland Police Department was not analyzed for this reason.

The Fort Lauderdale Police Department Legal Advisor, Jeffrey Hochman, an expert in forfeiture law, was interviewed to discuss the statute and legislative intent. The fiscal managers from the selected municipalities were requested to provide statistical data for the previous ten years' general fund (only) budgets. This data includes: total annual personnel expense budget, total annual operating expense budget, total annual capital (also labeled as equipment) expense budget, and the total cumulative expense budget.

The supplied raw budgetary data for each agency was then analyzed graphically, both individually and cumulatively with all others. This study attempts to analyze the individual rates of growth (decrease) in capital funding relative to the overall budget growth (decrease). Analysis was also conducted cumulatively to examine the overall budgetary trends throughout the state. These trends were further examined relative to the Florida Contraband Forfeiture Semiannual Report (FDLE, form # FCF-1) amount totals reported by each agency. The analysis was intended to determine whether trends in budgeting could be ascertained.

The fiscal managers were then interviewed (telephonically and in person) to discuss budgeting requirements and accounting practices specific to their agency. Fiscal managers were asked the following questions regarding the asset forfeiture funds: 1) Are there routine audits of the fund? 2) Is there a review process involving the legal advisor prior to utilizing funds? 3) Have the funds been used to supplant the budget? 4) Has there been pressure to utilize the fund for non-law enforcement purposes or to supplant the budget? 5) Has the fund had a major impact on large purchases?

The general budgeting practices of each agency determined from which area funds were expended for specific uses. Therefore, difficulties may be encountered in comparing budgeted versus actually expended funds for capital items.

Results

Analytical review of the raw budgeted data reveals that total general fund budgets grew annually during fiscal years 1988 through 1996. The cumulative average of the nine municipalities grew steadily from \$22,801,594 (1988) to \$38,800,016 (1996). Funding for planned capital spending also grew from \$371,212 (1988) to \$436,673 (1996), however, this growth was not a steady annual increase as was the total budget. Cumulative average capital budget declined beginning in fiscal year 1990. The capital budgets did not recover, as evidenced by increasing budgets, until fiscal year 1995.

An examination of the cumulative average percentage of annual budget attributed to each budget category (personnel, operating, and capital) indicates that the budgeting has remained somewhat consistent over this period. Personnel budgeting accounts for approximately 85% annually, operating budgets average approximately 13%, and capital budgeting accounts for approximately 1.3%. Personnel costs have accounted for a

range of 83.32% (1988) to 86.40% (1994) of the entire budget. Capital budgets have ranged from 2.09% (1988) to .89% (1994) on average. As evidenced in the analysis of average amounts above, the final two years of data (fiscal years 1995 and 1996) appear to show a reversal in the allocations of the previous five years (1990 through 1994).

Further analysis considered the potential relationships between capital expenditures while utilizing funds from the asset forfeiture funds. These expenditures were first analyzed relative to total seizures for that year. Reported cumulative total expenditures from asset forfeiture funds ranged from 9% (1996) to 70% (1991), relative to total seizures. The average expenditure for capital items is 29.2% of total seizures over the period studied. The total dollar expenditures for capital items, utilizing asset forfeiture funds, ranged from \$406,834 (1996) to \$2,890,867 (1991). Both asset forfeiture seizures and expenditures appear to be declining beginning in fiscal year 1995.

Specific expenditures by the Fort Lauderdale Police Department account for the majority of asset forfeiture fund expenditures in 1991. Fort Lauderdale spent a reported \$1,656,262 out of a total cumulative expenditure of \$2,890,867. Fort Lauderdale applied those funds toward the purchase of a computer-aided dispatch system and automated records management system. Removing those expenditures, the averages for 1991 are not out of line with the historic averages.

The nine municipalities researched for this study all report some internal and external controls to insure proper utilization of funds (personal communication with fiscal managers). The vast majority of municipalities (88.89%) report that routine audits are completed by either internal or external auditors. Each of the municipalities apply strict internal review policies where legal advisors must authorize the expenditures to insure compliance with applicable statutes. While none of the agencies reported funds being utilized to supplant the general fund budgets, three (33.33%) have felt some degree of pressure to utilize funds for potentially troublesome issues. However, in each instance, internal policies and controls have reportedly prevented improper expenditures.

Interestingly, two agencies, Tallahassee and Gainesville, reported having considerable control over asset forfeiture funds. In both these jurisdictions the budgets are assisted by municipal control or operation of a utility plant. The revenues from the utility plants provide extra funds for general budgeting issues. On average, agencies budgeted 0.92% annually for capital items during fiscal years 1988 through 1996. There was an additional 0.43% (as a percentage of the total general fund police department budget) utilized from asset forfeiture funds. Combined, agencies averaged 1.35% of the total budgeted for capital expenditures.

Discussion

The intent of the Florida Contraband Forfeiture Act was (and is): “to complement criminal prosecutions by adding severe economic sanctions to potential incarceration, and to provide law enforcement agencies with funds to acquire specialized equipment in their efforts to attack crime” (J. Hochman, personal communication, June 12, 1997). Federal asset forfeiture programs were designed with similar intent to Florida Statutes (GAO, 1992). In the seventeen years since enactment, the statutes have been amended repeatedly to add due process rights to those persons having property seized. These

amendments include the following rights to the property owner (real and personal property): to be notified personally and formally of the seizure, to request an adversarial preliminary hearing, to have such hearing within a specified time, and requiring a more convincing standard of proof from a simple preponderance (51%) to the new standard of clear and convincing evidence. The original intent of the statutes have not been altered through any of the subsequent amendments.

The futures studies from California predicted bleakly that agencies would be forced to utilize forfeiture funds as a routine source of money to maintain services. The studies were critical of this concept and attempted to forewarn law enforcement executives. Freeman (1990) specifically states that "The potential threat, however, is the risk of corruption. At what point does the agency become a profiteer of drug assets and, therefore, a perpetrator of drug-related criminal activity?" This ethics-based study further predicted that by the year 2000, there was a forty percent chance that more than fifty percent of California agencies would be dependent on the narcotics asset forfeiture funds (p. 27).

Similarly, Rowell (1992) discussed political influences that may encourage improper utilization of asset forfeiture funds. More specifically, Rowell predicted that reliance on seizures as a funding source may determine personnel allocations and investigative priorities (pp. 51-54). Such a reliance, tied to operational priorities and decisions may lead to corruption issues.

How accurate were these predictions? As a federal report states, there is an inconsistency in guidance regarding how the shared federal funds from seized assets should be utilized at the local level (GAO, 1992). Florida's contraband forfeiture laws are very similar to the federal statutes. While the GAO did audit specific California and Arizona agencies to determine the appropriateness of fund usage, there were no reported federal audits of the forfeiture asset funds of any of the agencies selected for this study.

Research indicates that Florida agencies apparently have not fallen into the traps as predicted by Rowell and Freeman. As reported by the municipalities studied for this project, internal controls have prevented raids on asset forfeiture funds. These internal controls include routine audits and legal advisor reviews prior to expenditure. Each fiscal manager was keenly aware of the statutory requirements and potential pitfalls.

The budgetary impacts and benefits have been enormous to agencies. Each fiscal manager related large purchases that would have been difficult, at best, to obtain without asset forfeiture funds. The largest capital impacts appear to be in the area of technology. Agencies report automation purchases, similar to Fort Lauderdale's computer-aided dispatch and records management system. Others, like Orlando, St. Petersburg, and Tampa are planning, or have installed mobile computer equipment in vehicles. The Gainesville Police Department purchased a helicopter through asset forfeiture funds. Only Tallahassee, which has a municipal utility, reported that the asset forfeiture fund has not had a tremendously positive impact. The Tallahassee Police Department has mostly purchased automation enhancing items. But, the fiscal manager believes that these purchases would probably have been possible through the general fund process as well (J. Betsey, personal communication, August 20, 1997).

There are no clear trends that indicate an attempt to supplant general fund budgets with asset forfeiture funds by the agencies studied. A review of the raw budgetary data provided by fiscal managers reveals that the capital budgets tend to vary more than the personnel and operating budgets. During the economically more difficult fiscal years of the early 90s, the capital budgets were at their lowest. Personnel and operating budgets, which included the fixed expense items, remained constant. The trends do indicate that budgeting for capital items is the most discretionary element within the three budget categories.

Agencies reported significant swings in the line item of capital budgeting from one fiscal year to the next. Hialeah, for example, budgeted:

<u>AMOUNT</u>	<u>FISCAL YEAR</u>
\$ 466,456	1991
\$ 15,205	1992
\$ 1,232	1993
\$ -0-	1994
\$ 16,549	1995
\$ 805,000	1996

However, with the exception of fiscal year 1995, when Hialeah spent \$827,615, there appears to be no substantial increases from asset forfeiture funds. Other factors must be considered while reviewing the budgetary practices of each agency. A simple analysis of the raw data does not indicate which agencies accepted new functions, deleted functions, or merged with others.

During a portion of the period under review, Daytona Beach was a Public Safety Department. The dispatch center in the Fort Lauderdale Police Department has changed from a police center to a combined police and fire center to, most recently, partially under the control of Broward County. As a result, the general fund budget swings according to the added, deleted, and merged functions. Regardless of the changing functions, the three budget categories have been relatively stable when compared as a percentage of the entire budget. On average, the capital budget for all agencies equaled 0.92% of the total budget for the period researched. Only Fort Lauderdale (0.40%), Orlando (0.40%), and St. Petersburg (0.50%) were significantly below the average over this period.

Considering the focus of this study, to determine the impacts and utilization of asset forfeiture funds, the larger agencies within Florida apparently have not followed the paths predicted by our California counterparts in the early 90s. Only three (33%) of the nine agencies reported pressure to utilize their funds for other than law enforcement purposes. However, all nine (100%) report that this has not occurred. The internal policies and controls, including legal unit reviews, are credited with preventing misuse of these funds. Routine audits, both internal and external to the organization, have yet to uncover misuse as predicted by the Rowell and Freeman studies.

The nine agencies reported \$38,742,325 seized and awarded back to the agencies over the period from fiscal year 1988 through 1996 (FDLE, form FCF-1). The agencies spent \$11,323,228 (29%) from the total seizures on capital items. The numbers are indeed large and demonstrate the impacts for the law enforcement community.

Additionally, these dollars offset potential tax revenues that may have been necessary without an asset forfeiture law. There are three areas of concern however.

The research for this paper did not examine the allocation of resources necessary to acquire the asset forfeitures (Rowell, 1992). No attempt was made to either prove or disprove the prediction that agencies would . . . become a profiteer of drug assets and, therefore, a perpetrator of drug-related criminal activity?" (Freeman, 1990). This concern is sufficiently important on its own to merit extensive research, especially in light of police misconduct in various task forces and units involved in narcotics enforcement and money laundering activities.

If the analysis regarding the trend for seizures, as begun in fiscal year 1995, continues, there may be need to become more vigilant. Seizures peaked in fiscal year 1988, dropped and remained relatively steady until 1994, where there was an increase, then began to drop again. A continuation of this decline may cause future economic distress, especially if the anti-tax sentiments don't abate. Compounding this decline is the preference of agencies to utilize the fund for automation projects. Technological advancements are rapidly rendering purchases from the past few years obsolete. Future enhancements will necessitate routine large infusions of money to maintain compatibility with older equipment while migrating to cutting edge technology.

Where will these future funds come from? Again, we may need to review the Freeman and Rowell studies in the future. In the least, police managers must continue to remain vigilant to insure that the corruption and fund diversions they had predicted do not become reality. Police agencies and taxpayers have both benefited from the concept of these funds: using the forfeited proceeds of criminals in lieu of tax revenues to enhance police services to the community. The future of contraband forfeiture funds, and the ability to provide enhanced service, depends on the legal and ethical utilization by police agencies.

Alan Roberts was recently assigned as an assistant Chief of Police in the Fort Lauderdale Police Department. He has 10 yrs. command experience in his 20 year law enforcement career. Alan had previously commanded divisions in Operations, Administration, and Special Investigations. This well-balanced experiential base had helped Alan maintain a "global" view in management issues.

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