



PERFORMANCE AUDIT REPORT

**Seized Property in Kansas: Determining Whether
Laws Governing the Sale of Property Are Being
Followed, and How Proceeds Are Spent**

Executive Summary ***with Conclusions and Recommendations***

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
August 2000**



Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$8 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or committees should make their requests

for performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

LEGISLATIVE POST AUDIT COMMITTEE

Senator Lana Oleen, Chair
Senator Anthony Hensley
Senator Pat Ranson
Senator Chris Steineger
Senator Ben Vidricksen

Representative Kenny Wilk, Vice-Chair
Representative Richard Alldritt
Representative John Ballou
Representative Lynn Jenkins
Representative Ed McKechnie

LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@lpa.state.ks.us
Website:
<http://skyways.lib.ks.us/ksleg/PAUD/homepage.html>
Barbara J. Hinton, Legislative Post Auditor

The Legislative Division of Post Audit supports full access to the services of State government for all citizens. Upon request, Legislative Post Audit can provide its audit reports in large print, audio, or other appropriate alternative format to accommodate persons with visual impairments. Persons with hearing or speech disabilities may reach us through the Kansas Relay Center at 1-800-766-3777. Our office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.



LEGISLATURE OF KANSAS

LEGISLATIVE DIVISION OF POST AUDIT

MERCANTILE BANK TOWER
800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (785) 296-3792
FAX (785) 296-4482
E-MAIL: lpa@lpa.state.ks.us

August 30, 2000

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Seized Property In Kansas: Determining Whether Laws Governing the Sale of Property Are Being Followed, and How the Proceeds are Spent*.

The report also contains appendices showing a detailed list of the expenditures we reviewed at 6 law enforcement agencies, and a list of survey responses from local law enforcement agencies.

This report includes several recommendations for ensuring that State and federal forfeiture moneys are appropriately handled and accounted for, spent as the Legislature intended, and reported as required. In addition, the report recommends that the Legislative Post Audit Committee or other appropriate committee amend the Forfeiture Act to require State agencies to annually report their forfeiture activity under federal law, and to allow law enforcement agencies to share proceeds in windfall situations with other non-law enforcement programs.

We would be happy to discuss these recommendations or any other items in the report with you at your convenience. If you would like a copy of the full audit report, please call our office and we will send you one right away.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

**Question 1: Are Law Enforcement Agencies
Following the Applicable State Laws Related to
Handling Forfeited Property?**

Under State law, Kansas law enforcement agencies can seize money and property used in the commission of certain crimes, like drug offenses. If that money or property is subsequently forfeited, the law enforcement agency can keep, sell, or destroy it. page 4

All 6 law enforcement agencies we reviewed disposed of forfeited property appropriately. *All 6 retained some property for official use and 3 sold some property. Their actions complied with all applicable legal requirements. In addition, the 3 agencies that entered into settlement agreements with property owners complied with all statutory requirements related to those agreements.* page 8

All 6 agencies had established the required Special Law Enforcement Trust Fund, but we identified several problems with the handling of forfeiture moneys. *In 4 agencies--the Kansas Highway Patrol, the Kansas City and Garden City Police Departments, and the Osage County Sheriff's Office--State forfeiture money was commingled with money received from forfeitures completed under federal law and under the State drug tax law. The Osage County Sheriff's Office also improperly deposited federal and State forfeiture moneys directly into a local bank account, instead of into its law enforcement trust fund, as the law requires. In addition, the Thomas County Sheriff's Office distributed seized money before the money actually had been forfeited. Finally, during the audit we identified problems with an evidence storage facility and forwarded our concerns to the appropriate authorities.* page 8

Question 1 Conclusion. *Law enforcement agencies appear to be meeting the legal requirements for handling* page 12

forfeited property. However, State law is vague about how the money is to be accounted for. Clearer guidance on the need to account for these moneys separately can reduce the risk of agencies spending restricted moneys inappropriately. In addition, changes are needed at some local law enforcement agencies to minimize the risk of loss or misuse of money.

Question 1 Recommendations: We recommended that the Legislative Post Audit Committee or other appropriate committee consider amending the Kansas Forfeiture Act and the drug tax laws to specifically require separate accounting for money resulting from forfeitures under each law. We also recommended that the Osage County Sheriff's Office deposit all its forfeiture money into its special law enforcement trust fund, use the county's normal expenditure process, and review and modify the internal controls for handling informant expenses. In addition, we recommended that the Thomas County Sheriff's Office shouldn't pay attorney fees until forfeiture cases are complete. . . . page 12

In their responses, the agencies generally agreed that there needs to be separate accounting for money resulting from forfeitures under the State Act and drug tax laws. In addition, both the Osage County and Thomas County Sheriff's Offices said they have corrected the problems identified during the audit.

Question 2: How Is Money Generated From Forfeited Property Being Used?

In 1999, agencies spent State and federal forfeiture money mostly on computers, vehicles, and other law enforcement equipment. Computer equipment accounted for nearly half the expenditures we reviewed. All these expenditures appeared to be made in accordance with State and federal guidelines. However, we weren't able to do a multi-year review of the agencies' budgets in the time allotted, so we can't say conclusively that they complied with the requirement not to use forfeiture money to supplant their normal budgets. . . . page 13

Although a recent forfeiture in Colby generated \$3.7 million, forfeitures weren't a significant source of revenue for most Kansas law enforcement agencies in 1999. In response to our survey of all county sheriff's offices and police departments in cities over 5,000 population, the 103 respondents said they received a total of about \$1.6 million in 1999, or an average of about \$37,000 for agencies who reported having some forfeiture activity that year.

Some of the forfeiture-related issues raised in a recent series of newspaper articles could be a possible concern in Kansas. *Law enforcement agencies in Kansas don't have the financial incentives to bypass State forfeiture laws because those agencies already get to keep forfeited money and property. However, there may be other incentives to bypass State law and Kansas may not provide as much protection for people who have their property seized as some other states do.* . . . page 15

Most local law enforcement agencies aren't filing the required annual report summarizing their forfeiture activities under the Kansas Act. *State law requires agencies to file such reports annually with their respective governing bodies and to include the type and approximate value of forfeited property, the amount of proceeds from forfeited property, and how those proceeds were spent. Of the 103 survey respondents, only 8 agencies submitted a report. The majority of the other respondents said they didn't file a report because they had no forfeitures or weren't aware of the requirement.* . . . page 18

Question 2 Conclusion. *Most law enforcement agencies don't receive a lot of money from forfeited property, although a few do. Regardless of the amount, the money they get allows them to buy a variety of items to enhance their programs. All the purchases from forfeiture money we reviewed seemed to be in compliance with State law. However, the legal requirements for what the money can be used for are vague at the State level and could allow agencies to spend the money in ways the Legislature may not have intended.* . . . page 19

Question 2 Recommendations. *We recommended that the Legislative Post Audit Committee or other legislative committees revise the Kansas Forfeiture Act if they think the money is being spent in ways they didn't intend, amend the Act to require State agencies to annually report both their federal and State forfeiture activity, and consider amending the Act to allow agencies that get a windfall forfeiture, like the one in Colby, to share it with other non-law enforcement agencies. Finally, we recommended the Attorney General remind local law enforcement agencies of the reporting requirements and encourage them to complete the required reports.* . . . page 19

In their responses, two agencies didn't agree with the recommendation that the Legislature should consider revising how law enforcement agencies can spend their forfeiture money. Three agencies didn't agree with the recommendation that State agencies should be required to report their federal forfeiture activity to the Legislature because the information is available from federal agencies and one agency already submits the information in their annual budget report. Two agencies didn't think our recommenda-

tion for allowing sharing of a windfall forfeiture was needed. In addition, the Attorney General's Office agreed with our recommendation that their office should remind and encourage local law enforcement agencies to comply with the requirement to submit an annual forfeiture activity report to their governing body.

APPENDIX A: *Scope Statement* . . . page 20

APPENDIX B: *Table of Expenditures from Forfeiture Funds* . . . page 22

APPENDIX C: *Summary of Responses from Local Law Enforcement Agencies* . . . page 27

APPENDIX D: *Agency Responses* . . . page 34

This audit was conducted by Anthony Perez, Gretchen Heasty, LeAnn Schmitt, and John Curran. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Mr. Perez at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

