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November 26, 2002

The Honorable Ed Alter
Utah State Treasurer
215 State Capitol Bldg
Salt Lake City, UT 84114-1202

Dear Mr. Alter,

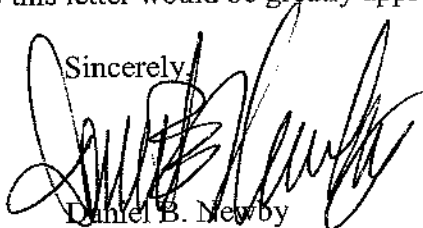
On November 20, 2002, the Law Enforcement Interim Committee reviewed current property forfeiture statutes and procedures. I obtained a copy of one of the handouts given to the committee members by Ms. Janet Jenson, a registered lobbyist. The handouts assert that Utah State Code 24-1-16(4) may be violated in that:

- “No annual audit of forfeiture proceeds has been performed [by the State Treasurer’s Office], and it is not clear that one is being performed.”
- “No accounting has been rendered to the legislature by the State Treasurer.”
- “No forfeiture funds have been deposited in the Uniform School Trust Fund as required.”

In addition, the handout asserted that your office has received appropriations of \$100,000 in FY 2001 and \$200,000 in FY 2002 to implement the new law, but that there has been no accountability for these funds.

I would appreciate your response to these assertions and have attached the handout for your review. Your timely attention to this letter would be greatly appreciated.

Sincerely,



Daniel B. Newby
Director of Operations & Development
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Enclosures: Handout (2 pp.); Utah State Code 24-1-16(4)



Before amending the forfeiture law, the Legislature should require a study and a detailed report of whether and how the new forfeiture law has been implemented:

Utah Code § 24-1-16(4) requires the State Treasurer to maintain an accounting of all forfeitures, sales, and proceeds, and the State Auditor to perform an annual audit of such proceeds and communicate the results of the audit to the State Treasurer and the Legislature and to make them public. Despite the law's oversight requirements:

According to state court records¹, 154 forfeiture cases were decided in FY 2002 after the new law took effect, yet --

No annual audit of forfeiture proceeds has been performed, and it is not clear that one is being performed;

No accounting has been rendered to the legislature by the State Treasurer;

No forfeiture funds have been deposited in the Uniform School Fund as required.

Where has the money gone? Surely some of these 154 forfeitures generated funds, but legislators and the public have no access to an audit or accounting of the forfeitures or where the proceeds have gone, or how much money should have been deposited in the Uniform School Fund.

The State Treasurer's Office received appropriations of \$100,000 in FY2001 and \$200,000 in FY 2002 to implement the new law (although the law itself provided that such additional funds, if necessary, were to come from forfeiture proceeds). If no forfeitures have occurred as claimed, it is not clear what the Treasurer has done with this money.

Claims that "Utah law enforcement has given up \$2.5 million in federal money" since the new law took effect are untrue. Before the new law took effect, payments to Utah's state and local police from the federal government's "equitable sharing" rules were only \$ 199,037 (FY 2001); \$226,524 (FY 2000); and \$133,586 (FY 1999).²

Claims that state would receive "80% of any property seized or forfeited federally" are also untrue. To receive 80% of federal forfeitures, local law enforcement has to do ALL of the work to investigate the case and seize the property before handing it over to the feds for forfeiture under federal law. Local law enforcement would be entitled to NONE of the money if the DEA made a seizure without their help.



¹ See http://courtdlink.utcourts.gov/state/FY02/dist/fy2002_9.htm.

² Click on "Utah" at www.usdcj.gov/jud/afp/02fundreport/2001CAFRARports/Report2b.htm
www.usdcj.gov/jud/afp/02fundreport/2000CAFRARports/Report2b.htm
www.usdcj.gov/jud/afp/02fundreport/1999CAFRARports/Report2b.htm.

• **It is not true that a 1999 legislative audit (performed prior to the new forfeiture law) "found no evidence" of forfeiture abuses as reported by the *Deseret News*. In fact, the 1999 legislative audit³ -- admittedly only reviewing a small sample of 65 cases -- found, for example:**

- Agencies were spending seized money before the courts awarded it to them (*Audit, p. 30*);
- Seized cash had been "lost" (*Audit, p. 35*);
- Police officers had purchased seized property at "questionable" prices (*Audit, p. 40*);
- Forfeiture proceeds were being used for general operating expenses -- not drug enforcement -- which violated the law (*Audit, p. 52*);
- Forfeiture expenditures could not be tracked because no separate accounts were kept (*Audit, p. 51*);
- *There was no legislative oversight of forfeiture expenditures (Audit, p. 49)*;
- One agency took property without going through the forfeiture process at all (*Audit, p. 30*).
- Agencies were charging impound fees on vehicles even *after* the courts denied forfeiture (*Audit, p. 1*).

In light of the foregoing and the public's phenomenal support for the new law, we respectfully suggest that, before amending it, the Committee require an investigation of how the new law was implemented, how exactly it is operating, and its impact. After all, the forfeiture law was approved by nearly 70% of Utah voters and passed by a 2-1 margin -- a significant grass roots support from voters who understood 2 key things: (1) private property should not be taken from individuals unless they are convicted of a crime; and (2) police should not "profiteer" by taking property, selling it and keeping the money -- at least not without Legislative oversight.

The new law's provisions are written to track FEDERAL and OTHER STATES's laws dealing with the conflicts inherent in having law enforcement retain proceeds from forfeitures they are involved in. Neither the federal government, nor any of the other states with nearly identical laws are experiencing the types of problems alleged to be occurring under our new law.

For more information, please contact Andrew Stavros or Janet Jenson at (801) 363-4011.

³ See *A Performance Audit of Asset Forfeiture Procedures, Office of Legislative Auditor General, Nov. 1999.*

24-1-16. Disposition of proceeds from criminal or civil forfeiture.

(1) When any property is civilly or criminally forfeited under this chapter by a finding of the court that no person is entitled to recover the property, the property shall be sold by the state treasurer, or destroyed if unfit for sale, and all revenue or proceeds therefrom shall be deposited in the Uniform School Fund after deducting the costs and expenses of:

- (a) maintaining and storing the forfeited property;
- (b) administering the forfeiture proceeding;
- (c) appointed counsel under Section 24-1-9; and
- (d) payment of money to compensate victims of conduct giving rise to or related to the forfeiture, or of conduct which is part of the same scheme that led to the forfeiture under this chapter.

(2) No property either seized or forfeited, whether civilly or criminally, nor any revenues or proceeds therefrom shall be paid to, appropriated for, or used for the benefit, directly or indirectly, of law enforcement officers, law enforcement agencies or agencies performing law enforcement functions.

(3) No property either seized or forfeited, whether civilly or criminally, nor any revenue or proceeds therefrom shall be, directly or indirectly, paid to, appropriated for, or used for the benefit of persons acting as:

- (a) informants in any law enforcement function;
- (b) witnesses in any administrative or judicial forum; or
- (c) prosecutors in any state or federal actions.

(4) The state treasurer shall maintain an accounting of all properties which are either civilly or criminally forfeited and subsequently sold and all proceeds therefrom, and the state auditor shall perform an annual audit of such proceeds and communicate the results of the audit to the state treasurer and to the legislature. All accounting and audit records generated under this subparagraph shall be available and open to the public.

Amended by Chapter 185, 2002 General Session

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