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January 22, 2003

Senator L. Alma Mansell
President
319 State Capitol
P.O. Box 140111
Salt Lake City, Utah 84114-0111

Re: Audit Report of Fiscal Year 2002 Forfeiture Cases

Dear Senator Mansell:

This letter is an update of our earlier letter to you reporting the results of our audit of funds received by the state treasurer under the Utah Uniform Forfeiture Procedures Act (UUFPA). Our earlier letter correctly indicated that no forfeited funds were received by the state treasurer during fiscal year 2002, and therefore, no audit was performed at that time. We have subsequently learned, however, that although no money was transferred to the state treasurer, 155 forfeiture cases were decided during fiscal year 2002 (July 1, 2001 to June 30, 2002), as reported by the Administrative Office of the Courts (AOC). The following details our inquiry into those cases.

As you can see by the attached Summary Schedule, of the 155 cases reported by the AOC, 94 were filed prior to the effective date of the UUFPA, and therefore were excluded from further inquiry. In an additional 19 cases, the forfeited property was seized prior to the effective date of the UUFPA. Pursuant to the reasoning of State v. One Lot of Personal Property, West Valley Police Department, Case No. 010902769, decided March 4, 2002, in which Judge Medley determined, in the context of addressing a request for an award of attorneys' fees, that "the controlling statute is determined by the date of seizure . . . and not the date of filing," we have also excluded these from consideration. Of the remaining 42 cases, 8 were dismissed, 4 had no government involvement, 1 is still pending, and 1 was transferred to another court, and not decided until fiscal year 2003 (though this case is mentioned in the attached Summary Schedule because of the high dollar amount). **The remaining 28 cases involved cash and property that should have been transferred to the State Treasurer for fiscal year 2002 pursuant to the UUFPA.**

The total cash amount of forfeitures for those 28 cases was \$237,999.08. (See attached Schedule.) There was also property, including cars, guns, scales, cell phones, pagers, and computer equipment

forfeited for which we have no dollar amount. The Summary Schedule includes a breakdown of the proportional receipt of that cash by individual local law enforcement units.

During our investigation, we discovered that the various county district attorney offices filing these 28 cases did not comply with the UUFPA and instead continued to ask the court to award the seizing agency the forfeited funds, as allowed under the old law. In each of the 28 cases, the court also violated the UUFPA, granting the award of the forfeited funds to the seizing agency under the defunct law.

We understand from discussions with the three county district attorney offices involved,¹ that they based their actions on their belief that a conflict exists between the UUFPA and the Utah Controlled Substances Act that renders the provision in the UUFPA specifically prohibiting forfeited property from going to the seizing agency impotent.²

We believe their argument seeks a *technical* release from the admittedly deleterious effects of Initiative B when the substantive intent of both the Initiative and S.B. 168 was clear.

¹Of the eight judicial districts in the state, the cases reported here come only from the second and third districts. The other six districts had *no* applicable forfeitures for the reported time period, and thus we had no discussions with those counties. We note for the record that prior to the passing of Initiative B, there was a *significantly* greater number of forfeiture cases statewide.

²Their argument, which we understand has been sent to the legislature in a separate letter, is summarized here: S.B. 168, entitled "Uniform Commercial Code – Article 9 – Secured Transactions," which was an overhaul of Article 9 of the UCC, repealing 70A-9-101 et seq. of the Utah Code and enacting 70A-9a-101 et seq. of the Utah Code, was enacted as part of a general overhaul of Article 9 of the UCC in the 2000 legislative session. It was a lengthy bill that amended 35 Utah code sections, repealed 58 sections, enacted 138 sections and repealed and reenacted 2 sections. As part of that massive project, two subsections of the Utah Controlled Substances Act, 58-37-13 (1)(d) and (3)(b), were amended to update the UCC reference and make an unrelated technical change. S.B. 168 had a delayed effective date of July 1, 2001. As a result of the delayed effective date, Initiative B, which made major, substantive changes to 58-37-13, was passed later in time (November 2000), but was effective earlier (March 29, 2001). The counties argue that all of 58-37-13 was reenacted by S.B. 168, (a fact with which we would take issue) and thus the entire section (13), and not just the amended subsections, carries an effective date of July 2001. Further, the county argues that because Initiative B references and purports to amend the earlier (1996) version of 58-37-13, and not the amended and "reenacted" (July 2001) version, rules of statutory interpretation require them, where conflict exists, to follow the provisions of 58-37-13 with the later effective date, resulting in ignoring the Initiative's prohibition against the seizing agency being awarded the forfeited property.

In any event, even if the counties' argument is adopted, there would still be a window of 3 months' time (from March 29, 2001, the effective date of Initiative B, to July 1, 2001, the effective date of S.B. 168) during which the counties themselves would acknowledge the primacy of Initiative B. Between March 29 and June 30, 2001, property was seized in 2 cases in the amount of \$194,003, which was later forfeited to the individual seizing agencies, contrary to the UUFPA.³

It is our recommendation that the legislature pursue the appropriate course to resolve any conflict that exists, and to ensure that Initiative B is enforced, including the transfer of any funds to the State Treasurer that were retained in violation of the UUFPA.

Respectfully,



Auston G. Johnson, CPA
Utah State Auditor

cc: Mark Shurtleff, Utah Attorney General
Ed Alter, Utah State Treasurer
County Attorneys
Heather M. Campbell, Administrative Office of the Courts
Daniel B. Newby, The Sutherland Institute

³Both cases were initiated in Weber County, one in the amount of \$193,613, and the other in the amount of \$390.

**SUMMARY SCHEDULE OF FORFEITURE CASES
FISCAL YEAR 2002**

Number of cases	155
Cases filed prior to effective date of Initiative (3-29-2001)	94
<u>Cases filed after 3-29-01</u>	<u>61</u>
Cases filed after 3-29-01:	
Dismissed	8
Transferred	1
Involving private parties	4
Still pending	1
Property seized prior to 3-29-01	19 ¹
<u>Forfeitures</u>	<u>28</u>
Total Cash Amount Forfeitures (excluding property)	\$237,999.08 ²
Cash amount per local unit:	
West Valley City Police	\$15,796.47
Weber/Morgan Strike Force	\$200,509.00
Salt Lake City Police/Narcotics	\$18,305.61
Midvale Police	\$3,388.00

¹Includes property forfeited by 5 seizing agencies in the amount of \$64,007.

²Does not include an additional \$250,000 resulting from a case transferred in fiscal 2002 and disposed on July 9, 2002 (fiscal 2003).