



**New Jersey State Legislature
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**Department of Law and Public Safety
Division of Criminal Justice
Seizure and Forfeiture Fund**

July 1, 1997 through June 30, 1999

**Richard L. Fair
State Auditor**

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The Honorable Jack Collins
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Enclosed is our report on the audit of the Department of Law and Public Safety, Division of Criminal Justice, Seizure and Forfeiture Fund for the period July 1, 1997 through June 30, 1999.

If you would like a personal briefing, please call me at (609) 292-3700.

Richard L. Fair
State Auditor
September 8, 1999

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**Department of Law and Public Safety
Division of Criminal Justice
Seizure and Forfeiture Fund**

Scope

We have completed an audit of Department of Law and Public Safety, Division of Criminal Justice (DCJ), Seizure and Forfeiture Fund for the period July 1, 1997 through June 30, 1999. Financial activities of the fund are accounted for in the state's General Fund.

Total expenditures of the fund were \$3.0 million during fiscal year 1998 and \$8.9 million during fiscal year 1999. The primary responsibility of the fund is to administer the proceeds and property resulting from seizures and forfeiture actions in accordance with applicable laws, directives, guidelines and standard operating procedures. Revenues of the fund totaled \$4.8 million during fiscal year 1998 and \$5.6 million during fiscal year 1999. The major components of revenue were forfeitures prosecuted by DCJ, forfeiture shares from other law enforcement agencies, and interest earned on seizures and forfeitures held in the cash management fund.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the agency's programs, were reasonable and were recorded properly in the accounting systems.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the agency. Provisions that we considered significant were documented,

and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal control.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample transactions were judgmentally selected.

Conclusions

We found that the financial transactions included in our testing were related to the agency's programs, were reasonable and were recorded properly in the accounting systems. In making this determination, we noted certain internal control weaknesses and matters of compliance with laws and regulations meriting management's attention.

Segregation of Duties

Accounting functions should be properly segregated.

The Seizure and Forfeiture Fund receives cash and other valuables that are held in trust until court resolution occurs. Two individuals are normally utilized to segregate the duties in the accounting section for the fund. During our field work, one of the individuals was transferred to another division. The remaining individual assumed all duties including depositing cash, recording of transactions, reconciling bank statements, transferring funds within the cash management fund (CMF) accounts and initiating disbursement of funds. An adequate system of internal control requires these accounting functions to be segregated to reduce the risk of loss and inappropriate activity.

Recommendation

We recommend DCJ restore proper segregation of duties to the Seizure and Forfeiture Fund.

Auditee's Response

The Department agrees that the accounting functions lacked adequate segregation of duties for the period of time following the transfer of one of the two individuals performing those functions. However, that employee has since been replaced, and as a result, proper segregation of duties is restored.

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Cash Receipts

DCJ should reconcile forfeiture share information to the amount of actual receipts.

Sometimes, seizures are made in conjunction with other law enforcement agencies. When another law enforcement agency prosecutes the seizure, Form A is filed requesting a share of the forfeiture proceeds. Upon forfeiture, the prosecuting authority calculates the level of participation and determines the forfeiture share. Payments of the forfeiture share are disbursed from the prosecuting agency's fiscal unit and sent to the Seizure and Forfeiture Fund. Notice of the final forfeiture share did not always accompany the payment from the fiscal unit. The Seizure and Forfeiture Fund does not reconcile the final forfeiture share to the payment received. Without a reconciliation, manage-

ment cannot determine if there are any amounts due or if the amounts received are correct.

We obtained the final forfeiture shares from prosecuting agencies and reconciled them to the receipts for the audit period. Management was unaware that a check for \$4,597 was incorrectly deposited by DCJ into the Safe and Secure Neighborhood Fund. This occurred because, although Form A requires checks to be made payable to DCJ, further fund designation is not required to be included on the checks.

Recommendation

Since management has corrected the erroneous deposit no further recommendation is needed. However, we recommend the DCJ obtain final forfeiture shares from the prosecuting agency and perform periodic reconciliations to ensure accurate payments are received. We further recommend that Form A be revised to require checks to include proper fund designation to reduce the risk of incorrect deposit.

Auditee's Response

The Division will begin to obtain final forfeiture shares on a regular basis and will perform reconciliations on a quarterly basis to ensure accurate payments are received. Form A will be amended to provide further fund designation.

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Payments by Memo

Internal control over the return of property to individuals should be strengthened.

The DCJ must, on occasion, return funds to the rightful owner. In such cases, a final disposition identifies which party shall receive all or a portion of the previously seized funds. During fiscal year 1998, \$66,000 of funds seized at casinos were returned to the rightful owner. Seizure and Forfeiture Program Standard Operating Procedure (SOP) Number 2, attachment 1 Number 4 states withdrawal requests are to be made in memo form attaching appropriate documentation, and indicating the account number, amount, name and address. Checks shall be sent under the signature of designated personnel of the Property Management Office.

This SOP facilitates weak internal controls by not defining appropriate documentation and not requiring the Property Management Office to obtain proof of final disposition prior to the release of funds. In our testing of disbursements, we noted that the DCJ is accepting forwarded e-mail and unsigned Deputy Attorney General's memos as appropriate documentation for disbursement of funds. Acceptance of e-mail or unsigned memos for authorization to return seized funds increases the risk of inappropriate transactions or the disbursement of incorrect payments. Additionally, these disbursements were prepared as hold checks and forwarded to the individual that prepared the request for disbursement, decreasing the effectiveness of internal control.

Recommendation

We recommend the DCJ revise the SOP to define appropriate documentation and to require the Property Management Office to receive the documentation prior to the disbursement of funds. We also recommend the payments be sent directly from the state accounting system to the payee.

Auditee's Response

The Department agrees that a revision to Standard Operating Procedure (SOP) Number 2, attachment 1, number 4 defining the types of "appropriate documentation" would help reduce the risk of inappropriate transactions or the disbursement of incorrect payments. The SOP will be revised to define appropriate documentation. The revision will also require the Property Management Office to receive the documentation prior to the disbursement of funds.

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Fringe Benefits

DCJ should reimburse the Interdepartmental Accounts for fringe benefits.

Costs associated with operations of the Seizure and Forfeiture Fund are paid by the fund's Asset Maintenance Account (AMA). These costs include salaries of seven Division of Criminal Justice employees and two Division of State Police troopers. During our review of state fiscal year 1998 and 1999 AMA expenditures, we noted that fringe benefits for these positions were not reimbursed to the Department of the Treasury Interdepartmental Accounts for Fringe Benefit Recoveries and Social Security Recoveries from Federal and Other Funds. We also noted that no waiver of reimbursement had been requested in accordance with Treasury Circular Letter 96-16. Based on a calculation made in accordance with Treasury Circular Letter 98-08 and 99-05 fringe benefits of \$160,000 should have been reimbursed to the Department of the Treasury.

Recommendation

We recommend the Seizure and Forfeiture Fund reimburse the Interdepartmental Accounts for Fringe Benefit Recoveries and Social Security Recoveries from Federal and Other Funds for the fringe benefits and include these costs in future budgetary expenditures or obtain the necessary waivers.

Auditee's Response

A departmental decision was made to reimburse the individual Direct State Services (DSS) accounts for Asset Maintenance Account (AMA) salaries alone relating to individuals from the Divisions of Criminal Justice and State Police associated with the overall operations of the Seizure and Forfeiture Fund. Factors influencing this decision were the uncertainty as to whether Treasury Circular Letters 96-16 and 98-08 (superseded by 99-05), applied in this instance and the sizeable dollar amount, particularly that of the Division of State Police.

The Department will follow the recommendation to seek the necessary waivers on an annual basis.

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Hepatitis Inoculation Fund

The Seizure and Forfeiture Fund is required by P.L. 1993 c.227 (C.26:4-100.13 et, al.) to remit five percent of all proceeds to the Hepatitis Inoculation Fund at the Department of Health and Senior Services. Proceeds include the actual forfeitures, interest earned in the individual seizure accounts at the time of forfeiture and interest earned in the Attorney General Law Enforcement Forfeiture Account (A.G.L.E.F.A.). However, the five percent calculation on the interest from the seizure accounts at the time of forfeiture was not consistently performed. Additionally, the interest earned in the A.G.L.E.F.A. was not included at all. As a result, \$31,900 was not transferred to the Hepatitis Inoculation Fund for the 17 month period ending November 1998.

DCJ should develop and implement a consistent calculation to ensure the applicable amounts are transferred to the Hepatitis Inoculation Fund.

Recommendation

We recommend the DCJ develop and implement a consistent calculation methodology to ensure the required amounts are transferred to the Hepatitis Inoculation Fund.

Auditee's Response

Prosecuting agencies use the term “proceeds” to refer to the amounts directly received as a result of a forfeiture. The statute involved, N.J.S.A. 2C:64-6, uses the term “proceeds” and contains no language inconsistent with the common understanding of this term in the prosecutorial community which by analogy to financial terminology would be “principal” as opposed to interest. It should also be noted that the statute is silent as to the timing of the deposits. The Department does agree that the issue is moot if deposits are made immediately to the Hepatitis Inoculation Fund and will endeavor to do so when practicable. However, the Department disagrees that the statutory term “proceeds” includes interest earned in individual accounts or A.G.L.E.F.A. on a delayed deposit to the Hepatitis Inoculation Fund.

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