**From:** Ashburn, Melissa Ann
**Sent:** Friday, July 01, 2011 9:20 AM
**Subject:** forfeiture sale under T.C.A. 40-33-107

Chief,

Rex Barton told me you have asked whether or not the City police department may conduct a sale of seized vehicles, forfeited under T.C.A. 40-33-107, and if not, whether the sheriff may by contract designate that the city police department may conduct the sale.

T.C.A. 40-33-107 requires that a state court of record, which does not include a municipal court, handle the forfeiture case and the court may enter an order permitting the sheriff to conduct a sale of the property.  This is called a “judicial forfeiture,” although the judge himself is not involved in the actual sale.  Any city or county seeking forfeiture under this law must therefore file an action in a state court and seek an order before any sale may occur.  The statute mentions only the county sheriff as the officer with authority to conduct the sale.  In my opinion, a city police department does not have authority under this law, for this type of forfeiture, to conduct a sale of such property.

The county may, however, enter into a contract with the city which provides that the city police department may conduct the sale.

The Tennessee Interlocal Cooperation Act, found at T.C.A. §12-9-101 through 109, grants broad authority to local governments to enter into agreements with other public agencies for the exercise of any power the local government possesses.  The statute authorizes cities to enter into agreements for the exercise of  “Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state....may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority”  T.C.A. § 12-9-104(a)(1).

In my opinion, the City may enter into a contract with the County providing that the Police Department may conduct the sale of forfeited vehicles.  I do not think the county sheriff himself may enter into the agreement, as the Interlocal Cooperation Act defines “public agency” having the authority under the law as being a county, city, town or municipality.  A department of a city or county may not enter into such contracts on its own, as the county or city itself holds such power under this law.

Your City may contract with the County for the right to bring the forfeiture suit and handle the entire process, or the City may only contract for the right to conduct the sale.  If only the sale is the subject of the interlocal agreement, the court having jurisdiction over the case should be informed of the contract so that the court’s order granting the power to hold the sale specifies that the City will be the entity carrying out the order for sale.

MTAS does not have a sample agreement which the City may use.   It is best to have your City Attorney prepare the contract, as he may also have to file the suit to get judicial permission to conduct the sale.

I hope this email answers your questions.  Please let me know if you need further information.

Melissa A. Ashburn

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