

Re: CC File no. 180858 Resolution authorizing the transfer of funds from the MPD Federal Forfeiture Revenue Contribution Account to the Police Department's budget.

I am requesting that CC File no. 180858 be held in committee pending a ruling from the City Attorney's Office.

The question for the City Attorney is: Are the changes made to Wisconsin State Statute 961.55 that governs asset forfeitures implemented via the **2017 Wisconsin Act 211** applicable now, and in the future, to **any** of the Asset Forfeiture funds that MPD would like to spend and if not, why not?

Here is the language of the applicable Wisconsin State Statute 961.55(1r) <https://docs.legis.wisconsin.gov/statutes/statutes/961/V/55/1r>, which was updated effective April 3, 2018 via 2017 Wisconsin Act 211:

(1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purposes of forfeiture litigation, the agency shall produce an itemized report of actual forfeiture expenses, as defined in sub. (5) (b), and submit the report to the department of administration to make it available on the department's website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds. If there is no federal or state criminal conviction, the agency may not accept any proceeds, except that the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

If in fact the asset forfeiture funds in question are within the scope of the State Statute, then the following restrictions apply to the use of those funds.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property shall do one of the following:

(a) If the property is a vehicle, retain it for official use for a period of up to one year.

Before the end of that period, the agency shall do one of the following:

1. Sell the property and use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture.
2. Continue to retain the property, if the agency deposits 30 percent of the value of the vehicle, as determined by the department of revenue, in the school fund as proceeds of the forfeiture. If the agency sells the vehicle at a later time and receives as proceeds from the sale an amount in excess of the amount previously

deposited in the school fund, the agency shall deposit the excess in the school fund.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this subsection, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law.

(d) Forward it to the bureau for disposition.

(e) If the property forfeited is money, retain a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses, as defined in par. (b), if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website and deposit the money in the school fund.

For your reference per the Wisconsin Department of Administration website <https://doa.wi.gov/Pages/AboutDOA/DOA-Forfeitures.aspx>:

Under [2017 Wisconsin Act 211](#), the Department of Administration is required to collect and post on its website forfeiture reports from law enforcement agencies in order for these agencies to retain a percentage of the value of the forfeited property to pay for forfeiture-related expenses. See ss. [961.55 \(1r\)](#), [961.55 \(5\)](#), [973.075 \(1r\)](#), and [973.075 \(4\)](#), Wis. Stats., for disposition of forfeiture proceeds.

[DOA-7200 - Forfeiture Form](#) must detail that forfeiture expenses are proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

I don't see any documentation posted by the MPD at the WI DOA's asset forfeiture website <https://doa.wi.gov/Pages/AboutDOA/2018-DOA-Forfeitures.aspx> and I question whether or not The City of Milwaukee will be in violation of State Law if it proceeds with authorizing the transfer of funds from the MPD Federal Forfeiture Revenue Contribution Account to the Police Department's budget as directed by CC File no. 180858.