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Final Analysis
Legislative Service Commission

Sub. H.B. 55

123rd General Assembly
(As Passed by the General Assembly)

Reps. Schuler, Carey, Haines, Taylor, Vesper, Boyd, Jolivette, Pringle, Goodman, Patton, DePiero, Van Vyven, Tiberi, Corbin, Salerno, Evans, Hartnett, Cates, O'Brien, Terwilleger, Verich, Sulzer, Hollister, Mottley, Grendell, Schuring, Brading, Harris, Metzger, Maier, Lucas, Ogg, Flannery, Barnes, Britton, Bender, Wilson, Allen, Winkler

Sens. Watts, Schafrath, Spada, Gardner, Blessing, Carnes, Kearns, White, Prentiss

Effective date: *

ACT SUMMARY

- Permits municipal and township police departments to dispose of certain unclaimed property by donating it to public agencies, nonprofit organizations, or certain veterans, charitable, religious, educational, or other tax-exempt organizations if a specified resolution or ordinance is adopted by the legislative authority.
- Authorizes township law enforcement agencies to inventory and dispose of stolen or other recovered property under statutory procedures similar to those used by some municipal corporations.

CONTENT AND OPERATION

Donation of property in the custody of municipal law enforcement agencies

Under *generally* continuing state law directed only to municipal corporations, when property remains unclaimed for 90 days, a chief of police, marshal, or licensed auctioneer, after giving notice in a newspaper of general circulation in the county once a week for three successive weeks, must sell the

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

property at a *public auction*.¹ The proceeds of the sale are required to be credited to the municipal general fund. (Sec. 737.32, first paragraph.)

The act permits a municipal corporation's legislative authority to adopt an ordinance authorizing the chief of police or marshal to contribute property that is not required to be disposed of pursuant to a specific statutory procedure and that is unclaimed for 90 days or more (1) to one or more public agencies, (2) to one or more nonprofit organizations with (a) no part of their net income benefiting any private shareholder or individual and (b) no substantial part of their activities consisting of carrying on propaganda or otherwise attempting to influence legislation, or (3) to one or more organizations satisfying section 501(c)(3) or (c)(19) of the Internal Revenue Code. If that type of ordinance is adopted, the chief of police or marshal could contribute the unclaimed property to one or more of those agencies or organizations rather than conducting continuing law's previously described public auction. (Sec. 737.32, second paragraph.)

Application of section 2933.41; comparable treatment for township law enforcement agencies

Continuing and former law

Generally, under continuing law in section 2933.41 of the Revised Code, for property that is lost, abandoned, stolen, or otherwise lawfully seized or forfeited, that is in the custody of a law enforcement agency, and *that is not required to be disposed of under other statutory procedures*, law enforcement agencies must adopt *written internal control policies* that provide for the maintenance of detailed records of the property in their custody and of its disposition and detailed financial records pertaining to the proceeds of any sale of the property. In addition, this law generally requires, for specified types of unclaimed or forfeited property in a law enforcement agency's custody, *court approval* to dispose of the property in described manners. Other miscellaneous unclaimed or forfeited property in a law enforcement agency's custody, with court approval, may be used by the law enforcement agency. If not so used, it may be

¹ For some kinds of property, other Revised Code sections appeared to govern under former law and continue to appear to govern the disposal procedures. For example, certain unclaimed vessels and outboard motors are disposed of under procedures in section 1547.302, and certain unclaimed motor vehicles are disposed of under procedures in section 4513.62. In addition, different procedures exist for various kinds of contraband (e.g., secs. 2913.34, 2933.43, and 2925.41 to 2925.45). Finally, section 2933.41, which is amended by the act, provides, in part, for the disposal of drugs, firearms, obscene materials, liquor, and other types of "unclaimed or forfeited property in the custody of a law enforcement agency" in specified manners or by specified sale.

sold, without appraisal, at a public auction to the highest bidder for cash, or, in the case of other unclaimed or forfeited moneys, disposed of in another manner that the court considers appropriate. Generally, under continuing law in section 2933.41, the proceeds from a sale of unclaimed or forfeited property must be placed in the general fund of the state, the county, the township, or the municipal corporation associated with the law enforcement agency involved. However, there are exceptions under which sale proceeds (in whole or in part) must be paid in certain manners--for example, a percentage of the proceeds of any sale must be paid to a citizen's reward program if the county recognizes one in that county and a specified notification procedure is followed. (Sec. 2933.41(A), (D), and (E)(1)(b) and (2).)

Under both its former and continuing versions, section 2933.41 states that it does *not apply to municipal corporation* law enforcement agencies *that follow an ordinance* pertaining to the disposal of lost, abandoned, stolen, seized, or forfeited property (apparently in recognition of municipal home rule authority to provide otherwise). But it does specify that, if a municipal corporation is notified of a citizen's reward program, a percentage of the municipal corporation's proceeds from a sale of property under an ordinance must be paid to the citizen's reward program recognized by the county (despite home rule and statutory provisions to the contrary--for example, section 737.111 which requires all moneys from the sale of unclaimed property, minus incidental expenses, to be credited to the general fund of the municipal corporation). (Sec. 2933.41(F).)

Although not expressly stated in *former section 2933.41*, the section apparently did not apply to municipal corporations operating under section 737.32, explained under "*Donation of property in the custody of municipal law enforcement agencies*," above, and related sections 737.29 to 737.31, 737.33, and 737.99 of the Revised Code. Since these sections in Title 7 apply *specifically* to *municipal* law enforcement agencies and were not repealed when section 2933.41 was enacted, it appears that, under former law, a municipal corporation could lawfully follow those procedures instead of section 2933.41's provisions.

Changes proposed by the act

The act clarifies that section 2933.41 does *not apply* to a municipal corporation operating under an ordinance (except as mentioned above) *or* under sections 737.29 to 737.33 of the Revised Code (sec. 2933.41(F)). Those sections generally provide procedures for the inventory and disposal of stolen or other property recovered by municipal law enforcement agencies. The act enacts comparable procedures that may be used by *township law enforcement agencies* (see below) and provides that section 2933.41 does not apply to townships operating under those procedures. As used in the act, "township law enforcement

agencies" means an organized police department of a township, a township police district, a joint township police district, or the office of a township constable. (Secs. 505.105 to 505.109, 505.991, and 2933.41(H) and (I).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 94
Reported, H. Local Gov't & Townships	02-16-99	p. 196
Passed House (93-3)	03-16-99	pp. 292-293
Reported, S. State & Local Gov't & Veterans Affairs	05-11-99	p. 406
Passed Senate (33-0)	05-12-99	p. 422
Concurrence (94-0)	05-18-99	pp. 671-672

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