STEVE COOLEY
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August 3, 2006

The Honorable Board of Supervisors
County of Los Angeles
500 West Temple Street
Los Angeles, California 90012

RE: BOARD OF SUPERVISORS' PROPOSAL – FEASIBILITY OF FORFEITURE OF VEHICLES USED IN GRAFFITI AND TAGGING ACTIVITIES

Dear Supervisors:

Recently, you requested input from this office regarding the feasibility of forfeiture of vehicles used in graffiti and tagging activities. Our Appellate Division has prepared a memorandum in response to that request, and it is enclosed.

This office supports forfeiture of vehicle schemes as an added deterrent to criminal activity. However, such laws must be carefully written to assure due process and avoid constitutional infirmities that expose the County to liability. Our office is willing to work with the Board, the Chief Administrative Office and County Counsel to draft such a forfeiture statute, but we would all be in a better position to do so after the O'Connell case is resolved.

Please feel free to call me if you have any questions.

Sincerely,

STEVE COOLEY
District Attorney

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Enclosure

c: Each Supervisor
Chief Administrative Officer
County Counsel

MEMORANDUM

TO: STEVE COOLEY
DISTRICT ATTORNEY

FROM: APPELLATE DIVISION
(213) 974-1616

SUBJECT: PROPOSAL FROM BOARD OF SUPERVISORS REGARDING FEASIBILITY OF FORFEITURE WHERE VEHICLE IS USED IN GRAFFITI AND TAGGING ACTIVITIES

DATE: JULY 18, 2006

CONCLUSION

The Board of Supervisors recently sought the District Attorney's input concerning "the feasibility of developing an ordinance authorizing the seizure and forfeiture of vehicles used in graffiti and tagging activities." The proposed ordinance would mirror three others enacted by the Board of Supervisors that provide for forfeiture when a vehicle is used to facilitate water theft, engage in street racing or illegal dumping. Since the enactment of those ordinances, a constitutional challenge has been made to a similar vehicle forfeiture ordinance, and the Supreme Court has granted review in that case. Since the case is still pending, the best policy would be to await that decision prior to enacting this ordinance.

DISCUSSION

At its July 5, 2006 meeting, the Board of Supervisors passed a resolution asking the District Attorney, the Sheriff, the County Counsel and the Director of Public Works to consider the feasibility of enacting an ordinance to provide for forfeiture where a vehicle is used in graffiti/ tagging activities. This ordinance would be similar to three previous ordinances that provide for forfeiture when a vehicle is used to facilitate illegal dumping, water theft or unlawful street racing. (L.A. County Code[1], §§ 13.80, 13.81 & 13.82.) These ordinances were adopted in 2004 and 2005 and mirror similar statutes enacted by other municipalities, including the City of Los Angeles, allowing a forfeiture where a vehicle is employed

[1] Unless otherwise noted all statutory references are to the Los Angeles County Code.

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during the purchase or sale of drugs or prostitution offenses. (L.A. Municipal Code, §§ 41.70 (Prostitution), 41.70.1 (Drug Sales), 41.70.2 (Speed Contests) & 41.70.3 (Illegal Dumping).)

The current county ordinances permit a law enforcement officer to seize a vehicle which he or she believes was engaged in the prohibited unlawful activity. (§ 13.80.050.) The agency must within two business days provide notice of the seizure to any legitimate claimant. (§ 13.80.050, subd. (C).) Subsequently, within 14 days of receipt of the seizure notice, the District Attorney can begin forfeiture proceedings. (§13.80.060, subd. (A).) The forfeiture notice must be served on any claimants within 30 calendar days of the vehicle's seizure. (§13.80.060, subd. (B).) At that point, the claimant must file a claim in the superior court within 10 calendar days of receiving notice of the intended forfeiture. (§ 13.80.070, subd. (A).) Once a challenge is filed, it must be set for a hearing within 30 days. (§ 13.80.070, subd. (B).)

Once forfeited, the proceeds from the vehicle's sale are used to pay (in order of preference): towing/storage costs, costs of selling the vehicle, the lien holder. (§ 13.80.080.) Thereafter, the remaining proceeds are distributed to the District Attorney's Office for the costs of prosecuting the forfeiture action (exclusive of personnel costs), then to the seizing agency for the costs of enforcing the forfeiture action (exclusive of personnel costs). If funds remain, 60% goes to the seizing agency, 25% to the District Attorney, and 15% to the County. An innocent owner's recourse is against the party from whom the vehicle was seized. However, a court may deviate from the above distribution formula where the claimant is an innocent owner.

These ordinances were enacted after the City of Oakland successfully established a vehicle forfeiture program aimed at prostitution and drug cases. The Oakland laws were upheld against a challenge that they were preempted by state statutes. (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 583.) While finding that the local statutes were not preempted, the *Horton* court did not address any constitutional challenges to the forfeiture statutes. (*Id.* at 584.)

Subsequent to *Horton*, similar forfeiture statutes were challenged on constitutional grounds in *O'Connell v. The City of Stockton* (2005) 128 Cal.App.4th 831, review granted Sept. 7, 2005, S135160. In *O'Connell*, the appellate court found the statute violated due process because, despite various filing deadlines, the statute did not provide for a prompt seizure

hearing. (*Id.* at p. 849.) The court also found, disagreeing with *Horton*, that the statutes were preempted by state law. (*Id.* at pp. 855- 866.)

The Supreme Court has granted review, and while there are no preemption issues related to a graffiti/tagging forfeiture statute, there are still serious due process issues. This is because many of the existing timelines in the county ordinances match those found to be defective in *O'Connell*. Consequently, while it might be feasible to enact the ordinance contemplated in the Board of Supervisors request, the better policy would be to await a decision in the *O'Connell* case. Presently, the lead briefs in that matter have been filed and the parties are now responding to those from various amici.

WILLIAM WOODS

C: John Paul Bernardi
Director
Prosecution Support Operations

Anthony Myers
Deputy in Charge
Asset Forfeiture Program