

Drug Fund Procedures

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Drug Fund Procedures

Reference Number: MTAS-340

The Special Revenue Account

The actual Drug Fund is a special revenue account under the control of the city recorder. It is accounted for in much the same way as street aid funds and the solid waste special revenue account. All Drug Fund revenues are deposited in the Drug Fund special revenue account, not the confidential funds account. All expenditures except cash transactions relating to undercover operations are made from the Drug Fund special revenue account.

The Budget

The police chief and the mayor, or the city manager in cities that have one, are to present a Drug Fund budget to the local governing body annually for approval. Funds cannot be expended beyond amounts approved in the budget. Additionally, funds not already in the account cannot be spent, even if approved in the Drug Fund budget.

Purchasing Guidelines

All expenditures except qualifying confidential expenditures must follow the city's purchasing guidelines. If the city has not adopted a purchasing policy, the state purchasing law for local governments must be followed. Purchasing guidelines generally specify minimum monetary limits requiring bids or quotes. The guidelines also may specify purchasing processes, such as written requisitions and purchase orders. T.C.A. § 39-17-420.

Confidential Expenditures

Reference Number: MTAS-349

T.C.A. § 39-17-420 states that all cash transactions relating to undercover operations must follow guidelines established by the state comptroller's office. The comptroller's guidelines, *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs*, have the authority of law.

The fund for confidential expenditures is actually a separate account under the control of the police chief or his or her designee. Funds for the confidential account are requested from the city recorder, then deposited in the confidential account. All Drug Fund revenues are deposited into the Drug Fund special revenue account, not into the confidential funds account.

Confidential Fund Requirements

Reference Number: MTAS-350

In January 1991, the Comptroller of the Treasury for the State of Tennessee issued *required* cash handling procedures related to undercover investigative operations for county and municipal drug enforcement programs. The comptroller worked with the Tennessee Bureau of Investigation, the Tennessee Sheriff's Association, and the Tennessee Association of Chiefs of Police to develop routine cash handling procedures for undercover drug operations that would be applicable to all local government jurisdictions. The establishment of these standards also enables the independent auditor of the local government to perform a thorough audit of the operations activity without compromising the undercover officers, their informants, or their investigations.

Local Drug Funds are to have been established in accordance with T.C.A. § 53-11-415. In order to comply with this statute, the city recorder or finance officer of the municipality is to set up a separate fund to record the financial activity related to drug operations. Entitled "Drug Fund," this special revenue fund will be used to record all proceeds and expenditures related to drug enforcement for the local government in compliance with T.C.A. § 39-17-420.

In summary, these procedures require the fund to remain under the control of the city recorder or finance officer. However, upon the demand of the chief executive of the arresting law enforcement

agency, the finance officer will distribute funds to pay for the drug enforcement program. The law enforcement agency will provide an accounting of these Drug Fund expenditures to the municipal finance officer.

General Applicability

It is important to emphasize that the following transaction guidelines are unique to *confidential* cash disbursements related to undercover drug investigations by the law enforcement agency. These guidelines do not pertain to normal, nonconfidential Drug Fund expenditures. Nonconfidential purchases and other disbursements from the Drug Fund are to be handled in the same manner as any other purchase or disbursement of the city in accordance with generally accepted accounting principals, the municipal charter, the Municipal Budget Law, the Municipal Purchasing Law of 1983, and any applicable municipal purchasing ordinance(s).

Of course, the procedures that follow are the *minimum* guidelines for Drug Fund confidential cash transactions. The chief law enforcement officer may require additional local procedures as deemed necessary.

Training

It is the responsibility of all chiefs of police and their agents involved in the handling of confidential Drug Funds to be familiar with these guidelines. Documentation affirming this fact is to be maintained in the law enforcement agency's office. Law enforcement officials are expected to be familiar with the guidelines concerning confidential Drug Fund cash transactions established by the state and to operate in compliance with these guidelines. Noncompliance may be itemized in audit findings by your internal auditor, which may initiate further action by the Department of Municipal Audit.

Requesting Funds for Confidential Operations

Reference Number: MTAS-351

There are two methods by which the chief of police shall account for confidential funds in the Drug Fund:

- A separate column in the cash journal;
- A separate bank account.

Depending on the size of the department, a separate confidential bank account may be the easier of the two. A separate checking account for confidential funds maintained by the police chief or a designee in the police department provides the agency immediate access to funds for law enforcement activities. This account also can be used to account for the money provided to agents.

To initiate available funds for confidential operations, an advance will be requested from the city recorder or finance director. These funds come from the Drug Fund special revenue account maintained in the office of the city recorder. Although the initial amount used to establish the account is left to the discretion of the police chief, it is recommended that this amount be limited to what will be needed in the next 45 days.

Receipt, Deposit & Disbursing Confidential Funds

Reference Number: MTAS-352

Receipt and Deposit of Confidential Funds

As with any municipal cash transaction, pre-numbered receipts should be issued to record the distribution and return of cash for undercover operations. If the city recorder makes a cash advance to the police chief or designee for an undercover investigation activity (such as a drug buy), a receipt shall be issued to record the amount of the advance. Once the investigation activity has been completed and the cash is returned to the city recorder, another receipt shall be issued for the returned amount.

The returned cash shall be deposited into the Drug Fund checking account in a timely manner.

Disbursing Confidential Funds

As mentioned previously regarding confidential funds, the law enforcement agency may use a second Drug Fund checking account as a confidential funds account under the control of the police chief or his or her designee. MTAS recommends use of a separate checking account as a “best practice.” Disbursements are to be made either to the police chief or other employee(s) through the use of pre-numbered checks. A separate checking account simplifies the recording procedure. All checks issued from this account are to be signed by the chief of police or designee and shall be made payable to the person receiving the funds.

All employees who participate in cash transactions in any capacity shall have a fidelity bond to protect the law enforcement agency and the municipality. The annual employee bond should be issued in an amount that would equal at least the largest single cash transaction in which the employee would normally participate over the course of the year.

Before purchasing bonds on your employees, it is a good idea to check with your liability insurance carrier. It’s possible that automatic coverage may already be in effect or may be available to insure the activities of employees who handle cash.

Purchasing Equipment and Supplies from Confidential Funds

Reference Number: MTAS-353

The Municipal Purchasing Law and local municipal purchasing ordinances apply also to normal purchases of supplies and materials from the Drug Fund special revenue account. However, if confidentiality is required for a purchase, these rules are suspended. Please note that there are specific procedures to follow even though other purchasing rules are not in effect. Documentation, including invoices and price quotes, shall be filed in support of the disbursement of funds to establish a paper trail of the use of cash. Care should be exercised in following proper procedures regarding these exceptional purchases.

It is popular opinion that the purchase of security recording devices is a confidential purchase. This view is incorrect. There is no reason the purchase of a briefcase camera or clandestine recording device would be confidential.

Drug Fund Records and Reports

Reference Number: MTAS-354

Quarterly Report to City Recorder

Although the police chief has control of the confidential funds checking account, the comptroller requires the police chief to be accountable for drug funds transferred into it. Quarterly reports concerning account activity are to be completed by the police chief or designee and submitted routinely to the city recorder. Report R-2 is provided by the comptroller for this purpose. It requires the beginning balance of confidential funds maintained by the police department, the amount of funds received, the amount of funds disbursed, and the ending balance. The city recorder and the police chief shall keep copies of the reports on file.

Annual Report of Drug Related Investigations and Cases Developed from Use of Local Drug Funds

A former statutory requirement that the law enforcement agency prepare an annual report to the district attorney general has been repealed. However, the police chief is accountable to the local legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and for the fines imposed under T.C.A. § 39-17-428. An annual *audited* report of such funds shall be submitted by the chief of the municipal law enforcement department to the local legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, if any, the audit satisfies this requirement. If no audit is conducted by the Office of the Comptroller of the Treasury, *then an audit shall be performed by a certified public accountant to satisfy this requirement.*
The annual city audit satisfies this requirement.

The governing body of the law enforcement agency responsible for the investigation and arrest that resulted in the drug conviction shall submit to the comptroller, by August 1 of each year, a report of funds collected and paid to the General Fund of the governing body pursuant to this section. This report shall show the amount of money spent on drug education and drug treatment.

Availability of Records and Reports for Audit

Activity of the confidential portion of the Drug Fund enjoys a certain amount of protection from the Open Records Law. However, this doesn't mean that the records are completely exempt from outside scrutiny during the annual audit. By law, all of the books and records involving confidential funds shall be subject to inspection and audit by the Comptroller of the Treasury or his authorized representative *except* for informant files, tapes involving undercover operations and evidence. Of course, this right to inspection and audit extends to the independent public accountant performing an audit under a contract approved by the comptroller.

Unaccounted for Confidential Funds

Cash handling procedures for confidential funds are designed to account for all Drug Fund resources used by agents during drug investigations. Unfortunately, situations arise in which confidential funds are left unaccounted. In this event, the police chief must immediately inform the district attorney general of the missing funds. This notification must be in writing, and a copy should be filed with the Division of Local Government Audit with the Comptroller of the Treasury. Furthermore, it is the responsibility of the police chief to initiate action to collect any funds that are unaccounted for.

Maintaining Informant Files

Procedure requires the law enforcement agency to establish and maintain a separate file for each informant. The Summary Informant Payment Log, Form A-6, shall be kept in the file and made available for audit. Other information regarding the informant file normally is confidential.

Use of Funds by a Secondary Agency

From time to time, one law enforcement agency may seek the assistance of another agency while performing drug investigations. This may involve the need to transfer Drug Fund resources from one agency to another. This practice is acceptable when the agency providing confidential funds receives a contract or other written document from the receiving agency acknowledging receipt of the funds and accepting responsibility for the proceeds. This written acknowledgment shall be signed by the police chief or designee of both the agency receiving the funds and the agency providing the funds. Copies of all such agreements shall be retained for audit by both agencies.

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