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JUDGES DERIDE SEIZURE OF BAIL MONEY BY POLICE

SALEM - State police working for the district attorney's office are confiscating cash from some people seeking to bail individuals out of Middleton Jail, an act two local judges say is unconstitutional.

Prosecutors defend the practice, saying that they have the right to investigate when they suspect the bail money comes from drug dealing. But lawyers for two men whose bail was seized earlier this month say police had no legal right to take the money - a view the judges shared in separate rulings last week.

"It was unconstitutional and unlawful for the state police to seize that money," Salem Superior Court Judge Peter Agnes said Friday during a hearing in the case of Carlos Sanchez, a Methuen man charged with cocaine and heroin trafficking.

A friend of Sanchez had tried to post \$50,000 cash bail at the jail on May 10, but the money was seized by a state trooper, who had been sent to the jail when the friend showed up with a bag of cash.

Agnes gave prosecutors until Friday to prove the money is from illegal activity. If they do not, he will release Sanchez. He also ordered police to turn the cash over to the court clerk's office immediately. Across the street in Salem District Court, Judge Robert Cornetta had come to a similar conclusion a day earlier in the case of Jorge Lopez, a Salem man charged with cocaine distribution. In this case, too, a state police trooper seized the \$25,000 cash before friends could use it to post bail. Police cannot rely on a "hunch or suspicion in seeking to seize bail funds," Cornetta said in a decision Thursday. "Nor can a mere hunch serve as probable cause to detain persons seeking to post bail."

Cornetta ordered that Lopez be released immediately. No probable cause Prosecutors disagree with both judges. They say the people posting bail could not offer proof of the source of the money. And in the Lopez case, a drug-sniffing dog detected the presence of drugs on the money after it had been seized. "It's incumbent on the district attorney to investigate if criminal conduct is afoot," Murat Erkan, an assistant district attorney, told Judge Agnes. But the judge said that does not override the Fourth Amendment to the Constitution, which requires the government to have probable cause and permission from a court to take someone's property.

He said the money could have been set aside by a clerk, and police could then have investigated and asked for a hearing regarding the source of the money, even after it had been posted as bail.

State bail administrator Michael McEaney offered similar advice in a letter to a court clerk about

the Lopez case, saying, "It is generally not appropriate for police or district attorney's staff to confiscate funds." Middleton Jail officials were asked by the district attorney's office several years ago to begin notifying them when someone brings in a large amount of cash, said spokesman Paul Fleming. The jail accepts only cash or a cashier's check from a bank.

"Obviously if there's any kind of definitive ruling from a court that this practice should not be engaged in, we would stop," Fleming said. "But we have not seen that."

The district attorney has apparently targeted the seized money for forfeiture under the state law that allows police and prosecutors to share the seized proceeds of illegal activity.

But Judge Cornetta said they would have to prove first that the money came from illegal activity.

-- MAP Posted-by: Elizabeth Wehrman

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