

Advisory Opinion 2020-14

Issued on November 5, 2020, by

The West Virginia Ethics Commission

Opinion Sought

A **Sheriff** asks whether the Sheriff's Office may use public funds to install a fence at a K-9 handler's private residence for security and liability purposes.

Facts Relied Upon by the Commission

The Sheriff's Office has a Deputy who is a K-9 handler. The K-9 handler is responsible for the care and control of the Sheriff's Office K-9 which is trained in narcotic detection and as a bite dog.¹ The K-9 handler houses the K-9 at his personal residence.

The Sheriff's Office states that housing a K-9 with its assigned handler is a common practice because it is beneficial to the health and safety of the K-9 and allows the K-9 and his handler to be quickly dispatched when needed. Other benefits include bonding between the handler and K-9 and more training opportunities.

The Sheriff's Office covers the expenses of the K-9, including dog food, a chain-link kennel and other items needed for the care of the K-9. The K-9 handler is moving from a rural part of the county to an incorporated municipality in the county where he has purchased a house. The handler will be keeping the K-9 outside in a portable, chain-link kennel at his new house, just as he does at his old house.²

As the K-9 handler will be living in a municipality, he is concerned that a passerby may attempt to pet the K-9 or stick his or her fingers in the kennel which could result in injury to the passerby or the K-9. To guard against this risk, the K-9 handler has requested that the Sheriff's Office purchase a fence to install around the portable, chain-link kennel at his new residence. The estimated cost of the fence is \$2,700.

The Sheriff's Office further asks, assuming it is authorized to purchase the fence, if it must require the handler to refund the cost of the fence if the handler leaves his employment or if the K-9 is taken out of service due to death, injury, or old age.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(b) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private

¹ A "bite dog" is used to restrain suspects.

² The K-9 stays in his handler's home in inclement weather.

gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection.

Advisory Opinion

The Ethics Act permits the expenditure of public funds when there is a legitimate government purpose for the expenditure.³ The Ethics Commission has held that an “expenditure . . . may constitute the unlawful use of [public] office for private gain if the overriding benefit is to the public official or employee as opposed to the agency or public.” Advisory Opinion 2018-03.

In applying these principles, the Ethics Commission held in Advisory Opinion 2012-20 that a public agency may use public money to purchase prizes or other incentives for a wellness program for its employees. In Advisory Opinion 2018-07, the Ethics Commission held that a county commission may allow the sheriff to live rent-free in a house located in the county park because the sheriff’s presence would enhance security at the park and he would repair and maintain the house. The Commission reasoned that “the private gain [to the sheriff], if any, is justified because there are overriding public benefits.”

The Sheriff’s Office has a K-9 which, for the benefit of the health of the K-9 and the convenience of the Sheriff’s Office, is housed at the personal residence of his handler. The Sheriff’s Office has already purchased a chain-link kennel for the K-9 which the handler uses to confine the K-9 when it is outside. As the K-9 handler will live in an incorporated municipality, the Sheriff’s Office wants to use public funds to install a fence around the chain-link kennel for safety and liability purposes.

It is the opinion of the Ethics Commission that there is a legitimate government purpose for the expenditure of public funds to install a fence on a K-9 handler’s private property for purposes of safely housing the Sheriff’s Office K-9. The potential, individual private gain to the K-9 handler “is justified because there are overriding public benefits” to the public and the Sheriff’s Office. Advisory Opinion 2018-07.

The Ethics Commission finds, therefore, that it does not violate the Ethics Act for a Sheriff’s Office to use a reasonable amount of public funds to install a fence on a K-9 handler’s private property for the purposes of protecting the public and the K-9 and limiting the potential liability exposure of the County. The County must

³ Advisory Opinions 2020-04, 2018-07, and 2012-20.

take steps to ensure that the K-9 handler is not unjustly enriched if he or his K-9 leaves the service of the Sheriff's Office.⁴

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules, including whether there is express or implied authority for the expenditure.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

⁴ For example, the County Commission may have a policy or agreement providing that the Sheriff's Office will either repossess the fence or require reimbursement from the K-9 handler at the depreciated, fair market value of the fence if the K-9 handler leaves his employment with the Sheriff's Office.