ADVISORY OPINION 2015-12

Issued on September 3, 2015, by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Chief Deputy Sheriff** asks whether excess home incarceration funds may be used to purchase equipment for the Sheriff's Office or to purchase equipment solely for the use of Home Confinement Officers.

FACTS RELIED UPON BY THE COMMISSION

The Requester states that the Sheriff's Office controls the Home Confinement Program for the county. The home incarceration fund consists solely of payments made to the Sheriff's Office by individuals placed on home confinement.

The Requester additionally states that the Sheriff's Office has several employees who serve exclusively as Home Confinement Officers, but that at times Deputy Sheriffs could be asked to assist the Home Confinement Department with home visits, hook ups, arrests and transports.

The Requester specifically asks whether excess funds from the home incarceration fund may be used to purchase police cruisers and fixed radar units for use by the Sheriff's Office. In addition, he asks whether those excess funds may be used to purchase Tasers which would be used by both Home Confinement Officers and by Deputy Sheriffs. The Requester also asks whether the excess funds may be used for office equipment, uniforms and additional equipment solely for the use of Home Confinement Officers.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W.Va. Code§ 6B-2-5(b)(1) provides:

> 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 gain or that of another person ... The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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The funds at issue here are generated by operation of the Home Incarceration Act, which provides, in part:

> **Home incarceration fees; special fund.**
> All home incarceration fees ordered by the circuit court or a magistrate pursuant to subdivision (7), section five of this article are to be paid to the county sheriff. The county sheriff is to establish a special fund designated the home incarceration services fund, in which the sheriff is to deposit all home incarceration fees collected pursuant to this section. The county commission shall appropriate money from the fund to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

W. Va. Code§ 62-118-7.

Accordingly, monies in the home incarceration fund are public funds which are subject to the limitations set forth in the Ethics Act. "[T]he expenditure of public funds is permissible if there is a legitimate government purpose for the expenditure." A.O. 2012-27. This is consistent with W. Va. Code § 68-2-5(b)(1), which provides that "[t]he performance of usual and customary duties associated with the office or position . does not constitute the use of prestige of office for private gain."

Prior Advisory Opinions have found that County Sheriff's Offices' expenditures for fitness supplies and equipment, dry cleaning of officers' uniforms, office furniture and weapons are permissible under the Ethics Act. *See* A.O. 2014-11 and A.O. 2012-50.

'The Commission also examines whether the expenditure benefits the public servant more than it benefits the public." A.O. 2013-56. For example, in Advisory Opinion 2013-56, the Commission considered whether a Sheriff may use public funds to acquire his pilot's license. After determining that the expenditure for the license would not serve a legitimate purpose for the office, the Commission noted that the personal benefit a county sheriff would receive from receiving a lifetime pilot's license far outweighed any benefit to the public. The Ethics Commission concluded in that Advisory Opinion that based on the specific facts therein, it would violate the Ethics Act for the Sheriff to use Concealed Weapons Funds to pay for flight lessons and airplane rental for such lessons for the purpose of obtaining a lifetime pilot's license.

With respect to the question of whether home incarceration funds may be used to purchase equipment for the Sheriff's Office, utilization of those funds for police cruisers, Tasers and fixed radar units for cruisers is acceptable under the Ethics Act. Those items are directly related to general law enforcement, including patrolling highways and making arrests. Moreover, the public will benefit from Sheriff's Office employees being properly equipped to carry out their duties to maintain public safety.

Similarly, the Requester's proposed expenditure of these funds for equipment to be used by Home Confinement Officers, including office equipment, Tasers and uniforms, is acceptable under the Ethics Act.

However, the Ethics Commission does not have jurisdiction to answer of the question of whether excess funds from the home incarceration fund statutorily may be used for purposes other than those specifically set forth in W. Va. Code § 62-118-7. That provision provides, in part, that:

> The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

The Ethics Commission accordingly recommends that Requester contact the County Commission for his county and the State Auditor's Office to ensure that the use of excess home incarceration funds for Requester's proposed purchases constitute authorized expenditures.

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 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, et seq., and does not purport to interpret other laws or rules. In accordance with W.* Va. *Code § 6B-2-2, this Opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended, revoked or the law is changed.*

/s/ Michael Greer, Acting Chairperson
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