ADVISORY OPINION NO. 2014-11

Issued on April 3, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Sheriff** asks whether the Ethics Act permits him to spend money from the Concealed Weapons Fund to purchase fitness related supplies and equipment, and to pay for dry-cleaning officers' uniforms.

FACTS RELIED UPON BY THE COMMISSION

In West Virginia, sheriffs are statutorily charged with issuing concealed weapons permits and administering the Concealed Weapons License Administration Fund (Concealed Weapons Fund). W. Va. Code§ 61-7-4. Persons in West Virginia seeking to carry a concealed deadly weapon must obtain a permit from the sheriff.

The cost of the permit is seventy-five ($75.00). Fifteen dollars ($15.00) of the fee is deposited in the Courthouse Facilities Improvement Fund. The remainder is deposited in the Concealed Weapons Fund. This money is to be used to administer the permit program. The code further states, "Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff may consider appropriate." W. Va. Code§ 61-7-4(c).

When the Requester became Sheriff in 2009, he instituted a mandatory physical fitness policy that requires all deputies to pass an annual test which includes: push-ups, sit-ups, and a 300 meter run. All members of the Special Response Team (SRT) must exceed these standards. Their test includes: bench press, pull-ups, and a timed run while wearing full duty gear. Any deputy starting after January 2010 must pass this test yearly, or face disciplinary action which could result in termination. Deputies serving prior to this policy are exempt. Additionally, all deputies who receive a passing score get an extra 5 points on their promotional exams.

There is a training center in the basement of the Sheriff's office that is currently undergoing renovation. When completed, it will be available for officers to work out and will also be used for SRT training, hand to hand combat training, and other facets of physical law enforcement training. The County Commission is also investing funds for the training center. The Requester states, "Being that they pay 100% of our health insurance premiums, they take a pro-active stance - knowing that physical fitness will reduce the risk of injury, and keep medical claims to a minimum."

The Requester is contemplating spending money from the Concealed Weapons Fund to buy a water cooler, bottled water, and weight room supplies and/or equipment for the training center. In support thereof, he states:

> The ability to purchase equipment and/or supplies relating to physical fitness will have a positive impact on this agency. Deputies will be stronger, healthier, and more capable of performing their duties. Therefore, it is my personal and professional opinion that use of monies from the concealed weapons account is justified as it will directly benefit not only the deputies, but the public as well.

The Requester also asks whether he may spend money from the Concealed Weapons Fund to pay for dry-cleaning officers' uniforms, and states:

> Anyone that wears a uniform projects an image that not only reflects on that particular person, but also on the agency he or she works for. A deputy that is neat in appearance commands more respect, and has less incidences of obstructing/resisting compared to a deputy that is slovenly. I wish to set up an account with a local dry cleaner who has a route service, which will enable deputies to have their shirts laundered and pants pressed.

The Requester states that he selected the local dry cleaner business based on its quality service, and that he does not have a financial interest therein.

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.

ADVISORY OPINION

One basic concept of the Ethics Act is that public funds should not be spent for the private benefit of public officials or employees. The Act's Legislative findings explain that the Act is intended to prevent public servants from using their public positions for personal gain beyond the lawful emoluments of their position or to benefit narrow economic or political interests at the expense of the public at large.

There are limitations on the use of public funds. As the Commission articulated in Advisory Opinion 2012-50, the same limitations apply regardless of whether the funds are general revenue funds, *e.g.,* funds generated by State or local government through taxes; or special revenue funds, a term commonly used for funds generated through fees, such as the Sheriff's Concealed Weapons Fund.

First and foremost, expenditures from the Concealed Weapons Fund may not be used for the personal gain of any person(s). Next, it must be an authorized expenditure. Finally, as required by W. Va. Code§ 61-7-4(c), any expenditure must be related to law-enforcement purposes or the operating needs of the Sheriff's Office. In Advisory Opinion 2012-50, the Commission noted that purchases of office furniture or weapons relate to the needs of the Sheriff's Office and constitute authorized expenditures.

The Requester has established that it is a condition of employment that law enforcement officers meet a minimum fitness level annually. By not allowing the Requester to spend money from the Concealed Weapons Fund to purchase fitness related supplies and equipment, the Commission would impose a financial burden on deputies who need to maintain a regular exercise schedule to perform their jobs effectively and satisfy the requirements of the job. Just as a public agency is permitted to pay for its professionals to attend continuing education courses to maintain their certification, the proposed expenditure is equally compelling.

Additionally, there is a direct benefit to the public in having strong and healthy officers since they are more capable of performing their duties. Any benefit that may inure to the officers is more than offset by the benefit to the public. In Advisory Opinion 98-28, the Commission wrote that the Ethics Act's prohibition against use of office for private gain "does not apply to [the] agency's use of its financial resources in a program intended to reduce the overall cost of agency operation, even if the program results in immediate financial gain to its members". (State Agency authorized to underwrite a wellness program for all state employees by providing financial incentives to participating employees). Indeed, the Requester's proposed purchase of fitness supplies and equipment falls within the Ethics Act's definition of "usual and customary duties ... [and] the advancement of public policy goals or constituent services .... "

Therefore, the Commission hereby finds that the purchase of fitness supplies and equipment, within reason, are permissible under the Ethics Act.

Next, the Requester seeks to spend money from the Concealed Weapons Fund to pay for dry-cleaning officers' uniforms. The Commission takes administrative notice that a law enforcement officer who is neat in appearance commands more respect and is more likely to obtain compliance than an officer who is slovenly. As a result, this proposed expenditure also falls within the Ethics Act's definition of "the advancement of public policy goals or constituent services .... "

The Commission takes no position on whether the Requester should choose one company to provide dry-cleaning services for the Sheriff's Department, or to allow deputies to receive reimbursement for dry-cleaning expenses. Nevertheless, the Ethics Commission reminds the Requester that the decision should be based on the merits, not favoritism. Further, the Requester is prohibited from having a financial interest in the company selected to provide dry-cleaning services.

Finally, the Requester should consult with the county's attorney to determine whether the provision of free dry-cleaning to deputies constitutes a taxable fringe benefit under the Internal Revenue Code.

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-2-3, this opinion has precedential effect and may be relied upon in good faith by other similarly situated public servants unless and until it is amended or revoked, or the law is changed.

/s/ R. Kemp Morton, Chairman
Kemp Morton, Chairman