ADVISORY OPINION NO. 2014-12

Issued On April 3, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks if the Ethics Act permits a Sheriff to sell unused or surplus weapons directly to the son of a Deputy Sheriff and deposit the money into the Concealed Weapons Fund.

FACTS RELIED UPON BY THE COMMISSION

The County Commission has control over the Sheriff's budget. W. Va. Code§ 7-7-7. The Sheriff's Department, however, has exclusive control of the Concealed Weapons Fund under W. Va. Code§ 61-7-4. The Requester states that the County has no official policy regarding the sale of County property, but that the Sheriff would sell those weapons without advertisement, auction, third-party appraisal or prior approval from the County Commission. Finally, the Requester explains that the son in question is a licensed gun dealer.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) 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 gain or that of another person.

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The Requester asks if it is permissible for the Sheriff to sell unused or surplus weapons directly to the son of a Deputy Sheriff, who is also a licensed gun dealer, and if it is permissible to deposit the proceeds of that sale into the Concealed Weapons Fund.

Use of public office for private gain is prohibited by W. Va. Code§ 6B-2-5(b). For example, the Ethics Commission explained in Advisory Opinion 2013-23 that "since the Ethics Act expressly prohibits public servants from using their public position for private benefit, the Ethics Commission hereby finds that the Ethics Act prohibits a local Public Service District from giving unused or out-of-service property to its employees for any purpose." There, the employees were not permitted to receive unused property for free because they would be receiving a private benefit from their public positions.

Here, similarly, if the Sheriff were to sell County property, *i.e.,* guns, to the Deputy's son, without approval of the County and without giving other businesses the opportunity to

bid, the Sheriff would be using his using his public position to benefit the son of a subordinate and would therefore be in violation of the Ethics Act's prohibition against the use of public office for private gain, at W. Va. Code§ 6B-2-5(b).

Especially concerning is the fact that the Deputy's son is a licensed gun dealer, and that the weapons would be sold without notice to other dealers, an opportunity for public purchase, third-party review, or, at a bare minimum, any input from the County Commission. This situation creates an unavoidable conflict of interest resulting in an impermissible use of office, or the prestige thereof, for private gain. Therefore, the Ethics Act prohibits the Sheriff from selling unused or surplus weapons directly to the son of a Deputy Sheriff in the manner described above.

Finally, the Requester expresses concern that the Sheriff would then place the money in the Concealed Weapons Fund. The Ethics Commission does not generally regulate the method of disposition of County property. Rather, as above, the Ethics Act would be implicated if the Sheriff used his public position to ignore proper procedures to confer a private benefit to himself or another person.

Likewise, the Ethics Act would prohibit the Sheriff from otherwise using his public position to transfer the money to the Concealed Weapons Fund for his own private gain or for the gain of another. Upon information and belief, proceeds from the sale of unused or surplus weapons are to be turned in to the County's General Fund.[1] Therefore, the Ethics Commission recommends that the Requester confer with the Auditor's Office as to the propriety of such a sale and deposit.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should 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, *et seq.* and W. Va. Code § 61-10-15, 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 public servants and other persons unless and until it is amended or revoked, or the law is changed.

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

[1] Further, upon information and belief, the only deposits to a Concealed Weapons Fund should be "(s)ixty dollars of the application fee and any fees for replacement of lost or stolen licenses," as per W. Va. Code § 61-7-4(11)(c).