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May 2, 2017

Emily J. Sovell
Sully County State's Attorney
P.O. Box 505
Onida, SD 57645

OFFICIAL OPINION No. 17-03

Re: A sheriff's authority to accept gifts and to unilaterally amend the county's insurance policy to insure that gift

Dear Ms. Sovell,

You've requested an official opinion from the Attorney General's Office based on the following questions:

QUESTIONS:

1. Whether the sheriff has the authority to accept ownership of a drug dog that was given as a gift?
2. Whether the sheriff has the authority to unilaterally amend Sully County's insurance policy to cover the drug dog that was given as a gift?

ANSWERS:

1. No express statutory authority exists that would allow a sheriff to accept ownership of a drug dog that was given as a gift. However, sheriffs have implied authority to accept gifts, such as a drug dog, that are directly related to his or her statutory responsibilities and will assist the sheriff to conduct law enforcement activities within the county.

2. The sheriff does not have the authority to unilaterally amend Sully County's insurance policy to cover the drug dog that was given as a gift.

FACTS:

On February 7, 2017, the Sully County sheriff sought approval from the Sully County Commission for a drug dog. The County Commission unanimously voted to reject that request. Following that meeting, a person offered to convey his or her drug dog to the sheriff's office as a gift. The sheriff entered into an agreement to transfer ownership of the drug dog to the sheriff's office. Thereafter, the sheriff directly contacted the County's insurance provider and amended the policy to include coverage for the drug dog. That amendment to Sully County's insurance policy was done without the County Commission's approval.

IN RE QUESTION 1:

The South Dakota Supreme Court has continually reiterated the purpose of statutory construction is to discover a statute's true intention primarily through an analysis of its language. *In re Estate of Ricard*, 2014 S.D. 54, ¶ 8, 851 N.W.2d 753, 755-56 (citations omitted). As a result, "[w]ords and phrases in a statute must be given their plain meaning and effect." *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 806-07 (citations omitted). A statute that has clear, certain, and unambiguous language does not need interpretation; rather, a court need only declare the Legislature's clearly expressed intentions. *Id.* (citations omitted). The clearly expressed intentions "must be determined from the statute as a whole, as well as enactments relating to the same subject." *Id.* ¶ 6 (citations omitted); see also *In re Petition for Declaratory Ruling re SDCL 62-1-1(6)*, 2016 S.D. 21, ¶ 9, 877 N.W.2d 340, 344 (citation omitted).

Under South Dakota law, sheriffs are elected officials of the county in which they serve. See SDCL 7-12-1, and -2. As a county official, sheriffs are free to run their departments as they see fit, without interference by their county commission. See, e.g., AGO 94-02 (concluding a county commission cannot instruct a sheriff to undertake any specific action); AGO 06-07 (determining that SDCL 7-12-10 & SDCL 7-12-11 empowers sheriffs, not county commissions, to "appoint, discipline, and terminate" employees). Indeed, "[t]he only conceivable method of control the county commissioners

would have over a sheriff would be through the power of the purse.” AGO 89-30. For example, as part of that power of the purse, “[a]ny county may, at the discretion of the board of county commissioners, furnish any motorcycle, automobile, truck or other vehicle, uniforms and other equipment to the sheriff or his deputies, or both, for law enforcement purposes only.” SDCL 7-12-12; *see also* AGO 94-02.

Generally a sheriff’s authority is limited to those “powers [that] are expressly conferred upon [them] by statute and such as may be reasonably implied from those [powers] expressly granted.” *Pennington Cty. v. State ex rel. United Judicial Sys.*, 2002 S.D. 31, ¶ 10, 641 N.W.2d 127, 130-31 (quoting *State v. Quinn*, 2001 S.D. 25, ¶ 10, 623 N.W.2d 36, 38 (citations omitted)); *State ex rel. Jacobsen v. Hansen*, 68 N.W.2d 480, 481 (S.D. 1955) (recognizing counties are merely “creature[s] of statute” that have “no inherent authority.”) As a result, express or implied statutory authority must exist before a sheriff may legally accept a gift for the benefit of their office. *Pennington Cty.*, 2002 S.D. 31, ¶ 10.

The statutes that delineate a sheriff’s authority, SDCL ch. 7-12, contain no express statutory provision that authorizes a sheriff to accept gifts for the benefit of his or her office. Further, no express statutory authority has been found in any other provision of the state code that allows a sheriff to accept gifts. Absent express authority to accept gifts, a sheriff must have implied authority in order to accept a gift for the benefit of his or her office.

Implied authority is that authority “reasonably necessary to effectuate the express powers granted to, or duties imposed upon,” a sheriff. *Application of Kohlman*, 263 N.W.2d 674, 678 (S.D. 1978). The sheriff is by statute directed to “keep and preserve the peace within the county” and may call upon any “power of the county as the sheriff deems necessary” to aid in carrying out this duty. SDCL 7-12-1. It is also recognized that as a certified law enforcement officer a sheriff has a duty to prevent and detect crime and to enforce the criminal and highway traffic laws of the state. SDCL 23-3-27 & 23-3-43. The question that must then be resolved in this matter is whether the gift of ownership of a drug dog is reasonably necessary to conduct law enforcement activities in the county. After a review of all applicable statutes, and considering both the power and duties of a sheriff, I conclude a sheriff has the implied authority to accept a gift that is directly related to his or her

responsibilities as sheriff and will assist the sheriff to conduct law enforcement activities within the county.¹

IN RE QUESTION 2:

As recited above, the purpose of statutory construction is to discover a statute's intent through an analysis of its text. *Taliaferro*, 2014 S.D. 82, ¶ 6 (citations omitted). As such, “[w]ords and phrases in a statute must be given their plain meaning and effect.” *Id.* (citations omitted). A statute does not need interpretation when its language is clear, certain, and unambiguous. *Id.* Instead, all that remains is to declare the Legislature's clearly expressed intentions. *Id.*

Under SDCL 7-12-26.1, a county commission may purchase liability insurance for the sheriff's office. Specifically, the statute provides:

Each board of county commissioners may purchase and pay premiums on insurance covering and insuring the sheriff and each deputy and employee of the sheriff. The insurance shall insure against personal liability as a result of errors or omissions in the performance of official duties. The premiums shall be paid from the county general fund.

SDCL 7-12-26.1.

The language of the statute is clear, certain, and unambiguous; the Legislature has expressly delegated the authority to purchase liability insurance for sheriffs and their employees to county commissions. SDCL 7-12-26.1; AGO 85-46 (concluding that “[t]he first sentence of the statute is clearly an explicit grant of power to the boards of county commissioners with the [S]tate . . . to purchase and pay for liability insurance . . .”). To conclude otherwise belies the plain and ordinary meaning of the statutory text.

¹ It is recognized that an appearance of impropriety may arise around the direct acceptance of gifts by a sheriff. To prevent such an appearance, it is recommended that a sheriff request that the county commission formally accept an offered gift on behalf of the county, and then direct that gift to the sheriff's office for use in conducting law enforcement activities in the county.

CONCLUSION

Based on a thorough review of the relevant statutes, it is my opinion that sheriffs are not expressly authorized by statute to accept gifts for the benefit of his or her office. However, sheriffs are impliedly authorized to accept those gifts that are directly related to his or her responsibilities and that will assist in conducting law enforcement activities within the county. Sheriffs are not authorized to unilaterally amend a county's insurance policy. That power rests solely with the county commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty J. Jackley", with a long horizontal flourish extending to the right.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SB/lde