

Office of Legislative
Auditor General



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November 21, 2014

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FINAL REPORT TRANSMITTAL LETTER

Honorable Wayne County Commissioners:

Enclosed is our final copy of the Office of Legislative Auditor General's Report on the Wayne County Sheriff Reimbursement of Campaign Funds. The contents of this report did not change from the draft report previously issued. Our report is dated February 21, 2014; DAP No. 2013-57-816. The report was accepted by the Audit Committee at its meeting held on October 29, 2014 and formally received by the Wayne County Commission on November 20, 2014.

We are pleased to inform you that officials and staff in the Wayne County Sheriff's Office provided their full and complete cooperation during the review. If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose. Copies of all Office of Legislative Auditor General's final reports can be found on our website: <http://www.waynecounty.com/commission/lagreports.htm>.


Willie Mayo, CPA, CIA, CGAP, CGMA, CICA
Auditor General

REPORT DISTRIBUTION

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Benny Napoleon, Sheriff
Suzanne Hall, Director of Administration

Goodman Acker P.C.
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Wayne County Ethics Board

Wayne County Executive



Office of Legislative
Auditor General



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February 21, 2014

DAP No: 2013-57-816

Wayne County Board of Ethics
c/o Acting Clerk of Commission
500 Griswold, Suite 861
Detroit, MI 48226

Chairman Giovan:

Advisory Opinion

Based on comments made in a television interview by the Wayne County Sheriff regarding the use of a county vehicle and fuel for the purposes of campaigning for public office, the Office of Legislative Auditor General (OAG) contacted the Wayne County Sheriff regarding potential implications regarding the use of county assets for campaigning purposes. Upon notification, Sheriff's Office officials agreed to assist the OAG by providing information.

The OAG performed a calculation of an appropriate amount of reimbursement due to Wayne County for the Sheriff's use of a county vehicle and charges for fuel and non-fuel purchases on county credit cards during the period the Sheriff campaigned for the City of Detroit mayoral position.

Scope

The period requiring reimbursement for campaigning is from March 27, 2013 through November 5, 2013.

Engagement Standards

This engagement was conducted as a special project which resulted in a request for an advisory opinion from the Wayne County Ethic's Board. This engagement was not an audit according to Government Auditing Standards and therefore the work is not being performed under any particular auditing or review standards.

Methodology

We primarily relied on inquires and testimonies provided by WCSO officials. We were not able to review and examine detail documentation to support the percentage of time the Sheriff stated was spent campaigning for the mayoral position of the City of Detroit.



If we were able to examine the Sheriff's itinerary and/or other documentation to support the percentages provided to us by WCSO Officials, the reimbursable costs outcome could possibly be different than the amount being calculated in this report.

Background

On November 13, 2013, Wayne County Sheriff Benny Napoleon, in an interview with Channel 7 News regarding the issues discussed in the OAG's Vehicle Fleet Operations review, indicated that he had used a county owned vehicle and purchased fuel and non-fuel charges with county credit cards, during his campaigning for elective office as Mayor of the City of Detroit.

Following the airing of this interview, the Wayne County Auditor General contacted officials at the Wayne County Sheriff's Office (WCSO) informing them that the use of a county owned vehicle and fuel and non-fuel charges with a county credit card was a violation of a State Statute and County Ordinances.

Violation of Public Act and Wayne County Ordinances:

Based on our review, the use of public assets for private purposes is a violation of:

- Michigan Campaign Finance Act 388 of 1976;
- Chapter 33 of the Wayne County Code of Ordinances, County Vehicle Use; and,
- Wayne County Ethics Policy.

The Michigan Campaign Finance Act 388 of 1976, Section 169.257 prohibits a public body or a person acting for a public body to use or authorize the use of a public asset for campaign purposes. A person who knowingly violates this section is guilty of a misdemeanor punishable by a fine or imprisonment.

The County Vehicle Use Ordinance, Section 33-7 (b)(5) states that a county vehicle shall not be used in support of election campaigning for a public office... nor for travel to and from any appearance at which an elected official is campaigning for re-election. The ordinance does not list any penalties for violation.

The Wayne County Ethics Ordinance, Section 40-4(g)(1) prohibits a public servant from "engaging in political campaign activities during hours for which the public servant receives compensation from the county; while using county equipment or resources..."

Section 40-7(C)(1) Complaints-Due Process "Any individual who believes a violation of the Ethics Ordinance has occurred may file a complaint with the ethics board." The ordinance states that criminal penalties and civil remedies set forth by state statute apply to conduct regulated by those statutes.

Section 40-7(g) Advisory Opinions states:

- (1) Any public servant may make a written request for an advisory opinion if the public servant is in doubt as to whether their conduct is in compliance with the requirements of this chapter. A request may be made anonymously.
- (2) The public servant shall provide any additional information requested by the ethics Board.

- (3) Within 30 days of receiving the request, the Ethics Board shall determine its advisory opinion at a meeting.

The Wayne County Ethics Ordinance, Section 40-10, states a violation of this ordinance is a civil infraction punishable by a fine of \$500 and costs along with possible disciplinary actions including censure, reprimand, removal, dismissal, or discharge.

We requested from Commission Counsel what penalties, if any, were applicable and if the usage costs could be recovered. According to a communication from Commission Counsel, the penalties for violating these laws vary from fines to imprisonment. Also, Counsel believes that cost may be recovered.

We also attempted to contact the Prosecuting Attorney to obtain an opinion regarding the possible violation of the Michigan Campaign Act and certain Wayne County ordinances, but received no response.

Objective – Determine the costs for vehicle and fuel and non-fuel usage by the Wayne County Sheriff

Cost Elements

1. Percentage of Time Spent Campaigning –

Campaign Itinerary – Fact

In order to calculate an amount applicable for reimbursement, we attempted to ascertain the percentage of county time that was related to campaigning by the Sheriff and other WCSO Officials.

Specifically, we attempted to obtain an itinerary of the Sheriff's activities during the period of our review. However, Sheriff Officials declined the Auditor General's request to provide a calendar of the Sheriff's itinerary to the audit team.

Based on discussion with Sheriff Officials, we were informed that the Sheriff utilized his vehicle 5 - 35 percent of the time spent campaigning along with an additional 5 percent for commuting purposes during the period of our review. However, due to the lack of an itinerary and/or other documentation, we were not able to validate the time the Sheriff spent campaigning.

Based on the reports by the news media the Sheriff formed an exploratory committee on December 10, 2012, and officially announced his candidacy for the Mayor of the City of Detroit on March 26, 2013.

Statement from WCSO Representative

In an email sent to OAG staff on December 4, 2013, a Sheriff's representative stated: "When I reviewed the Sheriff's calendar on November 15th I believe, I estimated that of the total number of activities he had for the day, what percentage of travel to and from the location would be considered "campaign focused."

“In the beginning it was pretty slow but his appointments gradually increased between the primary and November 5. Bear in mind he routinely returned to the office throughout the day and early evening to continue Sheriff’s duties and meet with staff.”

The percentages in this table are based on representations made by WCSO Officials.

**Wayne County Sheriff Vehicle Usage
January – October 2013**

2013 Month	Campaign Use	Commuting Purposes	Total
January	0%	5%	5%
February	0%	5%	5%
*March (27 – 31)	5%	5%	10%
April	5%	5%	10%
May	7%	5%	12%
June	10%	5%	15%
July	20%	5%	25%
August	25%	5%	30%
September	35%	5%	40%
October	35%	5%	40%
**November (1 – 5)	45%	5%	50%

* March 27 – 31 (Official Announcement)

** November 1 – 5 (Election Day)

Although, 5% is used for commute time, this amount is excluded from our calculation for reimbursement because the Sheriff’s duties and responsibilities required him to have use of a county vehicle 24/7.

2. Cost of vehicle –

a. Fact

We performed an analysis of the use of the Sheriff’s county vehicle during the scope period of our review from January 2013 through November 5, 2013.

According to a written agreement between General Motors (GM) and the Wayne County Sheriff’s office, the vehicle was loaned to the Sheriff’s office by GM in February of 2011 at no cost to the county other than insurance and maintenance. This vehicle is a 2011 GMC Yukon SLT, and upon receipt, had no reported miles on the vehicle.

According to records provided by Sheriff Officials, and based on discussion with M&B officials, we noted that the vehicle was subsequently donated to the county through a superseding Bill of Sale and Agreement in October 2012. However, this Bill of Sale and Agreement for the vehicle was not signed until December 2012; did not receive a county asset inventory “brass” tag until July 2013; and, according to an M&B official, was not recorded on the county’s books until December 2013, with a service date of December 2012.

Based on our review of documentation provided by M&B, they determined the blue book value of the vehicle at \$25,841. We believe this amount is fair and reasonable and used it as the value in our calculation for vehicle usage in this report.

Insurance

As of the date of our report, Sheriff Officials reported that the vehicle had 77,165 miles. In addition, the county insures the vehicle. We were not able to determine the individual cost of insurance for the vehicle as the county insures through a blanket coverage that covers all county vehicles up to approximately \$2 million.

For comparative purposes, we obtained several quotes for auto insurance from outside vendors. Based on our inquiry from three different vendors, the average cost for insurance for a 2011 GMC Yukon was \$275 per month. Calculating this total against the provided percentages for the period - March 27 through November 5, 2013, we calculated a total amount of reimbursement of \$400.

Cost of Lease

We calculated the monthly cost to lease the vehicle based on the blue book value to be \$561 per month, or \$6,732 annually. Based on the estimated percentage of monthly vehicle usage provided by the Sheriff for campaigning purposes of 5 to 35 percent for each month, we calculated the total amount of reimbursement as it applies to the use of the county owned vehicle to be \$813. (See Table Below.)

**Cost of Vehicle
Using Average Cost to Lease**

<u>2013 Month</u>	<u>Campaign Use</u>	<u>Amount</u>	<u>Total</u>
January	0%	\$0	\$0
February	0%	\$0	\$0
*March 27 - 31	5%	\$90	\$4
April	5%	\$561	\$28
May	7%	\$561	\$39
June	10%	\$561	\$56
July	20%	\$561	\$112
August	25%	\$561	\$140
September	35%	\$561	\$196
October	35%	\$561	\$196
**November 1 – 5	45%	\$93	\$42
TOTAL			\$813

* March 27 – 31 (Official Announcement)

** November 1 – 5 (Election Day)

3. Authorized Use of Vehicle

According to Sheriff Officials, the county owned vehicle was used by the Sheriff for the period – March 27 through November 5, 2013.

During a Channel 7 News television interview on November 13, 2013, the Sheriff stated that “the President of the United States campaigns for office and he gets to use a plane.” He stated therefore, he should be able to use his county owned vehicle for his campaign purposes. The plane the Sheriff refers to is Air Force One.

However, based on our review, we were able to identify that the President does in fact reimburse the taxpayers for the portion of use for campaigning using Air Force One. The President or his election campaign pays back an amount that is “equivalent of the airfare that they would have paid had they used a commercial airline. On such trips they pay for their own food, lodging, and other incidental expenses” according to a May 17, 2012, report issued by the Congressional Research Service.

Based on our research, the use of a county owned vehicle for campaign purposes is not a proper use of the vehicle and costs should be recovered.

Fuel Usage

We obtained and reviewed records from both British Petroleum (BP) and the Wayne County Department of Public Services for the scope period of our review to determine the cost of reimbursement for the use of county fuel cards by the Sheriff for the period March 27 through November 5, 2013 and noted the following:

Gallons – Fact – Based on our review, the sheriff used the county issued British Petroleum (BP) credit card for purchases of both fuel and non-fuel items. For the period March 27 – November 5, 2013, there was a total cost of \$7,303 incurred. We applied the stated percentages used above for campaign purposes to calculate the total amount of charges on the credit card related to campaigning. Total fuel and non-fuel reimbursement is calculated to be \$1,065.

4. Drivers Salary and Fringes

a. Fact

Sheriff Officials stated that the Sheriff primarily utilized three individuals who served as his driver. This consisted of two principal drivers, with the third on an as-needed basis, during the scope period of our review. We obtained the salary and fringes of the two principal drivers along with the amount of fuel used by these drivers during this period and added this amount to our calculation.

Based on our review, we calculated the salary and fringes of both principal drivers for Sheriff Napoleon during this period. Because of the lack of records supporting when a particular driver was actually driving the Sheriff, we were not able to specifically identify the exact amount of reimbursement. Therefore, we took into account that all three drivers could not be driving the Sheriff at the same time.

Using the percentages provided by Sheriff Officials, we calculated an average salary of \$73,000 based on the average of the two primary drivers' salary and applying a fringe rate of 80 percent, for an average total of \$131,400. We then divided this total by 12 to come to a monthly average of \$10,950. Applying this total to the provided percentages, the total amount for reimbursement came to \$15,908. See chart below.

b. Noted overtime

During our review of the hours worked by the two primary drivers we noted instances where overtime was occurred. We attempted to obtain an explanation for the overtime but were not able to obtain a response from Sheriff management. Therefore, we have not included any overtime in our calculation.

**Cost for Two Drivers
Using Average Salary plus Fringe Factor**

2013 Month	Campaign Use	Amount	Total
January	0%	\$0	\$0
February	0%	\$0	\$0
*March	5%	\$1,766	\$88
April	5%	\$10,950	\$547
May	7%	\$10,950	\$766
June	10%	\$10,950	\$1,095
July	20%	\$10,950	\$2,190
August	25%	\$10,950	\$2,737
September	35%	\$10,950	\$3,832
October	35%	\$10,950	\$3,832
**November 1 – 5	45%	\$1,825	\$821
TOTAL			\$15,908

* March 27 – 31 (Official Announcement)

** November 1 – 5 (Election Day)

Other Matters

Sheriff's Salary and Fringes

a. Rationale

Based on discussion with Commission Counsel, she stated that as an elected official, the Sheriff does not have a set work schedule. Therefore he could argue that he works 24/7, and no costs should be deducted for the time he spent campaigning.

We concur with the statement made by Commission Counsel and have concluded not to request a reimbursement for compensation paid to the Sheriff during the times he was campaigning for the Mayor of the City of Detroit for the following reasons:

- i. The Sheriff is an elected official and is not required to submit a timesheet in order to be paid per the M&B time reporting policy;
- ii. The Sheriff is on duty 24/7 and as an elected official there are no mandatory set hours required for him to work;
- iii. The Sheriff has asserted that the principal portion of his time spent campaigning were in the evenings after normal work hours and on weekends;
- iv. The Wayne County Code of Ethics prohibits elected officials from campaigning during the time the public servant receives compensation; but, it does not address elected law enforcement officials who work 24/7 days per week; and,
- v. The Michigan Campaign Finance Act prohibits a public body or a person acting for a public body to use or authorize the use of a public asset for campaign purposes. However, we were informed by the Sheriff's attorney that he was unaware of the Act being applied to the salary of a 24/7 elected law enforcement official.

Summary of Overall Calculations

Calculation of Costs And Reimbursement Amount For Sheriff Campaign Expenditures	
Asset Used	Reimbursement Amount
Vehicle (2011 GMC Yukon)	\$813
Fuel (Sheriff and Drivers)	1,065
Insurance	400
Drivers Portion of Salary and Fringes	15,908
Total	\$18,186

Conclusion

As stated in the Wayne County Ethics Ordinance, the citizens' confidence in the integrity of Wayne County government is a crucial factor in maintaining the public's trust and each public servant is a personal steward of that integrity. Everyone must maintain unquestionable standards of integrity, truthfulness, honesty, fairness, and personal responsibility in the performance of public functions.

Based on our review, we identified specific violations of county ordinances and the State of Michigan Campaign Finance Act. These violations resulted from the use of public resources for campaign purposes. Based on the information provided to our office, we calculated approximately \$18,186 in costs that should be reimbursed to the county.

In our opinion, we believe the Sheriff violated Wayne County Ordinances and the State of Michigan Campaign Finance Act as it relates to the use of county assets for campaigning purposes; therefore, in accordance with the provisions as outlined in the Wayne County Ethics Ordinance, the Sheriff's Office is requesting an Advisory Opinion from the Wayne County Ethics Board. If a ruling is issued by the Wayne County Ethics Board, the Sheriff's Office has agreed to abide by that ruling.

If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose.



Willie Mayo, CPA, CIA, CGAP, CGMA, CICA
Wayne County Auditor General

APPENDIX A

John P. Jacobs Legal Memorandum in Support of Wayne County Ethics Board Opinion

MEMORANDUM

TO: Wayne County Ethics Board

FROM: John P. Jacobs, Special Counsel For The Board

RE: Legal Memorandum In Support of
Wayne County Ethics Board Opinion
In Re Ethics Opinion Relating To Sheriff Benny Napoleon
File No. 20145

DATE: September 19, 2014

JURISDICTION

This opinion process was initiated by requests made pursuant to the Wayne County Ethics Ordinance to give the Wayne County Ethics Board an opportunity to interpret both § 40-4(g)(1) and (2), and, in addition, the Wayne County Vehicle Use Ordinance § 33-7(b)(5), based upon Wayne County Sheriff Benny Napoleon's use of a county vehicle and driver during his Mayoral Campaign.

An Advisory Opinion Request was sought jointly by both the Wayne County Auditor General and Wayne County Sheriff Benny Napoleon regarding Sheriff Napoleon's allegedly inappropriate use of the Wayne County Sheriff's vehicle and driver during his recent political campaign. For ready reference these Requests are attached as Tabs "1" and "2".

Under the Wayne County Ethics Ordinance, Enrolled Ordinance No. 2012-209, Advisory Opinions are always possible to resolve ethical/statutory/ordinance conundrums such as these. Under Ethics Ordinance § 7.7(a), an advisory opinion may be requested by any employee or official of Wayne County. Subsection (a) says as follows:

Any public servant may make a written request for an advisory opinion if the public servant is in doubt as to whether their conduct is in compliance with the requirements of this Ordinance. A request may be made anonymously.

The Auditor General requested this Advisory Opinion on February 21, 2014 and this was followed up by another such request by Counsel for Wayne County Sheriff Benny Napoleon on May 7, 2014. See Tabs "1" and "2".

WHAT IS NOT AT ISSUE

Before Special Counsel for the Board speaks to the controversy now at issue, Counsel for the Board would like to note one important area of agreement with which all parties are in complete accord. Both the Sheriff and the Auditor General agree on one

important point. Given his 24/7/365 status as being constantly on call for the post, Sheriff Napoleon's wages earned as Sheriff during his recent Campaign for Mayor are safely exempt from reimbursement and levy¹. Counsel for the Board fully agrees with that agreed-upon position as more fully set forth in Tab "1", p. 7 and Tab "2".

These arguments certainly appear to have been properly honed and have limited the issues to be decided, leaving only reimbursement of the county vehicle expenses and the wages/compensation of the Wayne County Deputy² who was doing the protective driving in support of the campaign as still disputed and still requiring resolution.

We note this agreement for future guidance. Otherwise, other round-the-clock public officials could not act as political candidates as they might not draw an earned salary during any contemporaneous political campaign that was in effect during the work hours spent by an Official in a public position. As such, the Sheriff's pay itself was never in dispute. Counsel for the Board must and does agree with this concession.

However, for clarity, the political use and expenses as to the vehicle/security driver cannot be said to be disposed of by the foregoing Stipulation. Counsel for the Board expresses no opinion as to other County Officers or City employees or officials who are burdened by 24/7/365 duties and who are not now before the Board as all such future cases must be judged on their own merits, of course.

A second record stipulation that assists us ought to be referenced as well. Pages 4-5 of the submission filed by Counsel on behalf of Sheriff Benny Napoleon, Tab "2", has admitted that the campaign use of the vehicle, fuel, ratable insurance, protective staff/driver salary and fringes represented an expended total value of \$18,186. These sums do not appear to be disputed arithmetically or in terms of their calculation or accuracy. However, the remaining issue as to the appropriateness of use of county vehicle and driver for political purposes during a campaign still remains vividly at issue.

¹Under MCLA 15.401, while not cited by any party, it is only fair to note that Sheriff Napoleon was an elected official and his wages could still be paid as that bar only applies to unelected public employees.

²Under MCLA 15.404, while not cited by any party, it is also fair to note the Deputy was a defined "public employee" and was not lawfully permitted to participate in these campaign activities during the Mayoral race on behalf of Sheriff Napoleon as he was an unelected employee, compensated during those hours by Wayne County.

ORDINANCES AND STATUTES

We begin with the relevant Ordinances and Statutes.

The Wayne County Ethics Ordinance § 40-4(g)(1), attached hereto as Tab "3", mandates the following:

VII. *Inappropriate use of County time and property for political activity*

(1) A public servant is prohibited from engaging in political campaign activities during hours for which the public servant receives compensation from the County; while using County equipment or resources; or while on property where business of the County is being conducted.

In addition to MCLA 15.404, the Ethics Ordinance also ordains in § 40-4(g)(2):

(2) A public servant personally or through an agent, is prohibited from soliciting other public servants to work on political campaign activities during hours for which the public servant receives compensation from the County; while using County equipment or resources; or while on property where business of the County is conducted.

The Ethics Ordinance in § 4.6(b), Tab "4", also directs that use of a County Vehicle by a County Official or County Employee shall adhere to the Wayne County "Vehicle Use" Ordinance. That cited "Vehicle Use" Wayne County Ordinance, §33-7(b)(5), attached as Tab "5", provides, in part, as follows:

5-Elected official assigned vehicle

County elected offices in the executive and legislative branches are eligible to be assigned a vehicle for use on county business and public events. [Such use must be] [c]ompliant [sic] with the prohibition of the Michigan Campaign Finance Statute.

Finally, the Michigan Campaign Finance Act, MCLA 169.257(1), referenced by §33-7(b)(5), must also be addressed. The Act notes that a public body or a person acting for a public body shall not use or authorize the use of a "**vehicle**" or "other public resources" to make a "contribution" as defined by MCLA 169.204(1) ["contribution" defined, in part, as "... anything of ascertainable monetary value made for the purposes of influencing the nomination or election of a candidate...."]. While there are exempt

"volunteer personal services" or exempt minor travel expenses in MCLA 169.204(4)(a), the limitations on this exception to the Michigan Campaign Finance Act do not appear to be applicable in this case and have not been argued by Sheriff Napoleon to be relevant.

THE FACTS ARE LARGELY AGREED UPON

The essential facts surrounding the use of the Command Vehicle by Sheriff Benny Napoleon for political events and campaigning for Mayor in 2013 are not disputed as they stem from recorded news interviews. Sheriff Napoleon argues that the Wayne County Sheriff, in his supervision of one of the largest local law enforcement agencies in the country is, in effect, required to be constantly on the job for criminal law enforcement, twenty-four hours per day, seven days per week (i.e., 24/7). Likewise, the Sheriff contends that he is ubiquitously and virtually always "on the job", 24/7, as he is always on call and he is an integral part of a coordinated terrorist watch given our international borders. As such, he must always be on immediate alert as to all other matters of public safety/security importance. Therefore, the Sheriff is on the job at his post or available in his Command Vehicle: He is always and constantly on duty, omnipresently; it is not possible to parse by allocation how his hours are spent or to segregate public duties and his political activities.

Put another way, Counsel for Sheriff Napoleon notes with much skill that, "[T]he Sheriff is required to be on duty, 24/7, to respond to a wide variety of emergencies at any time, day or night, including drug raids, injured officers, barricaded gunmen, shoot outs, jail inmate or other officer incidents and power outages..."

It is also cogently argued that the Sheriff regularly receives threats to his personal safety which accounts for why he travels with a "driver", who indubitably doubles as a security officer. It is contended that his driver serves a critically important function, not only in his operation of the vehicle, but also as to his/her furnishing Sheriff Napoleon with security. That said, there is no contention made that this Wayne County Deputy is a 24/7 official with the same Constitutional obligations. It appears that the subordinate Deputy is entitled to hourly County Compensation and has rotation shifts on hourly compensation like most other subordinate law enforcement officers reporting to Sheriff Napoleon.

Sheriff Napoleon further makes the point by able Counsel that his specially equipped law enforcement vehicle is essential to be at his fingertips whenever he is not at his desk. It is in essence, his command desk and mobile office away from the office.

It is also contended by Sheriff Napoleon that the Macomb and Oakland County Sheriffs have policies similar to the Wayne County Ethics Ordinance and Vehicle Use

Ordinance, but they apparently have been ignored to allow the Macomb and Oakland Sheriffs to utilize County provided vehicles to attend political campaign events.³

Sheriff Napoleon contends that the provisions of Ethics Ordinance § 40-4(g)(1) and Wayne County Vehicle Use Ordinance § 33-7(b)(5), cannot be construed to prohibit the Sheriff from using his specially equipped County law enforcement Command vehicle and protective staff driver while he is occupied on a personal campaign to win an elected position as these provisions will conflict with the overriding constitutional and statutory law enforcement responsibilities of the Sheriff which, in effect, it is argued, never cease.

Counsel for Sheriff Napoleon states that, if compelled to reimburse the County for the allocable political usage of the vehicle and driver, the Sheriff will be required to pay and is therefore effectively deprived of his specially equipped law enforcement vehicle and his assigned protective staff driver by the prevalent Ordinances while he is campaigning. Thus, the argument goes, the Sheriff will not be able to carry out his constitutional law enforcement responsibilities if called upon, especially in emergencies.

In response, the Auditor General relies upon the legal authorities cited above, in essence, noting that no written statutory exceptions authorize such vehicle/driver use.

DISCUSSION

Sheriff Napoleon's arguments, found in Tab "2", pp 7-8, ought not to be accepted because, to be successful, these Ordinances and Statutes, otherwise clear as to vehicle/driver prohibition on their respective faces, must be completely ignored, giving the Sheriff a form of global legal immunity from reimbursement based on unwritten exemptions at odds with virtually all political campaign laws, not only as to the extent of the county's vehicle use for political purposes, but most other laws otherwise restricting him. Since there is no such language, if a desired result for the Sheriff, the County and State Legislatures should be petitioned for changes to the law as the Sheriff's position

³ We note the recent letter of counsel, Tab "6", largely confirms a lack of evidence as to these other Counties on this point. Even if these practices of other County Sheriffs were verifiably true, in Special Counsel's Opinion, this would still not translate to a successful legal defense in that all Sheriffs in all three counties are **all** arguably acting inappropriately here based on the cited legal authorities. If Macomb County or Oakland County fail to follow the law, these Sheriffs from other Counties are acting at their own peril.

does not appear to be consonant with the current, existing state of the law at this time.⁴

For his part, the Office of Legislative Auditor General, Mr. Willie Mayo, has a decidedly different view, and one with a more persuasive perspective, Counsel for the Board thinks, on these matters. The Auditor General correctly invokes MCLA 169.257(1). As described by the Auditor General, the use of a publicly owned **vehicle** is explicitly within the confines of the cited statute as a "contribution" to prohibit a public body or a person acting for that public body to use such a vehicle for political campaign purposes. The *ratio decidendi* upshot of MCLA 169.257(1) is to remove the public perception of the advantages of incumbency or of county employment by exploiting a taxpayer-funded governmental vehicle or other resource as a "tail wind" resource contribution: The "prohibited" use of the vehicle as "contribution" should be avoided, lest it be seen by voters and taxpayers as bestowing a financial advantage upon the office-holding incumbent candidate seeking reelection or the public employee using government property to advance his career by his or her political campaign.

The Auditor General further cites Wayne County Vehicle Use Ordinance § 33-

⁴ It must be noted that, even if use of the vehicle for campaigning appears facially rational given the "24/7" wraparound schedule of Sheriff Napoleon at first glance, but that thought-provoking point, at its terminus, this actually begs the question: If the Sheriff needs his taxpayer-financed vehicle and driver, campaigning in them may indeed be convenient when there is no emergency (which is likely most of the time) but, in any event, that argument eviscerates both the operation of these laws explicitly as written and negates the option of **reimbursement** of personal or campaign funds after the fact to make the County whole for improper use of a vehicle and driver in violation of the Campaign Act and/or Ethics and Vehicle Use Ordinances. Obviously, *ab initio* compliance with these authorities to avoid the vehicle or driver use from the outset is a much better approach, especially when that matter, if deemed, as here, legally murky, has been formally clarified by an opinion, as it has now.

Put another way, MCLA 169.257 prohibits *in toto* the politically advantageous, taxpayer-financed public "contribution" as a benefit. An impressive command vehicle with a uniformed driver with which to campaign, is juridically identical to using stately state/local offices in which to hold political meetings or mailing important-looking governmental stationery to the public in a political campaign. If these are legally impossible, as MCLA 169.257(1) holds by its Plain Meaning, city, state and/or local government should never be seen as making an outright political contribution of its valuables or funds or property or employees in a partisan or in a "favorite son" manner.

7(b)(5); the Auditor General gives that Ordinance a more persuasive cogent emphasis.⁵

The Auditor General's conclusions found on pages 8-9 of his submission in Tab "1" asserted specific violations of County Ordinances (cited below) and the Michigan Campaign Finance Act, notably, viz., MCLA 169.257(1).

For his part, the Auditor General asserted that the Sheriff violated various Wayne County Ordinances and the Campaign Finance Act as related to the use of County assets for campaigning purposes. The Auditor General asserts that the Wayne County Sheriff's Office must agree to abide by the rule of the Wayne County Ethics Board (Auditor General's submission, p 8). Again, of course, this procedure is authorized by the Wayne County Ethics Ordinance, §40-4-(g)(1).

In addition, the Ethics Ordinance also states in § 40-4(g)(2) as follows:

A public servant personally or through an agent, is prohibited from soliciting other public servants to work on political campaign activities during hours for which the public servant receives compensation from the County; while using County equipment or resources; or while on property where business of the County is conducted.

The drivers acting as security officers who attended these political events were being paid by the County and it is our Opinion that these County Deputies squarely fit within the section the *Inappropriate Use of County Time and Property for Political Activity*. Section 40-4(g)(1) on its face makes this Prohibition. This Provision forbids the Deputy or driver from engaging in political campaign activities during hours for which

⁵Vehicle use Ordinance § 33-7(b)(5) states with precision that **"a county vehicle shall not be used in support of election campaigning for a public office or ballot question or for travel to and from any appearance at which an elected official is campaigning for re-election."**

It is obvious that the Legislative Intent derived from Vehicle use Ordinance § 33-7(b)(5), enforced by Ethics Ordinance § 4.6(b), as well as Ethics Ordinance §§ 40-4(g)(1) and (2) and MCLA 169.257(1), as derived from the Plain Meaning of these enactments, is to prohibit all usages of a County vehicle and driver/security while campaigning for office, or with respect to a ballot question, or any other appearance at which elected officials or county employees are campaigning for re-election or for any other political purposes.

the public servant also receives compensation from the County. It also prohibits individuals from using County equipment, i.e., the County vehicle dedicated to Sheriff Napoleon's use.

Under Ethics § 40-4(g)(2), Counsel for the Board further believes that Sheriff Napoleon, a public servant, was unable personally, or through other officers, to have deputies or other public servants provide transportation or security for him while the deputies were receiving compensation from the County while the Sheriff was contemporaneously engaged in political activity or for campaign purposes. It is undisputed that the Deputies were driving "county equipment" [the County vehicle dedicated to the use of Sheriff Napoleon]. This prohibited use and the application for County Officials seems quite clear as contrary to the Ethics Ordinance. No exceptions or language are cited by Counsel for the Sheriff, except for the "24/7" rationale which has never been approved by the prevailing Statutes and the dispositive Ordinances.

Also relevant to our examination is the Wayne County Vehicle Ordinance § 33-7(b)(5), enforced by Ethics Ordinance § 4.6(b), which § 33-7(b)(5) says with respect to the assigned vehicles available to elected officers as follows:

County elected officers in the executive and legislative branches are eligible to be assigned a vehicle for use on County business and public events. Compliant [sic] with the prohibitions of the Michigan Campaign Finance Statute. **A county vehicle shall not be used in support of an election campaigning for a public office or ballot question or for travel to and from any appearance at which an elected official is campaigning for re-election.** (Emphasis Supplied.)

The literal sense of this Ordinance is to preclude elected officials from utilizing their assigned County vehicles in campaigning for any public office.

In pari materia with the Wayne County Vehicle Ordinance § 33-7(b)(5) is also the Michigan Campaign Finance Act, MCLA 169.201 et seq. While this will be discussed more fully below, MCLA 169.257(1) prohibits political contributions [as defined] by the use of County vehicles. "**Vehicles**" are specifically named as a prohibited contribution.

Was the use of the vehicle, and the security/driver services of the county deputy a "contribution"? In the opinion of this Board, it was, indeed, a "contribution" under MCLA 169.204(1). To repeat, the phrase "contribution" is defined as follows:

'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance,

loan, or donation of money or anything of value to a person, made for the purpose of influencing a nomination or election of a candidate....

MCLA 169.257(1) appears to have been violated here. A public body or a person acting for a public body shall not use or authorize the use of funds, **personnel**, office space, computer hardware or software, **property**, stationery, postage, **vehicles**, equipment or supplies or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under § 4(3)(a). Vehicles and personnel are explicitly forbidden.

It is true that MCLA 169.204(3)(a) contains a minor exception for volunteer personal services provided without compensation or payments or costs incurred if they are less than \$500 in the calendar year by an individual for personal travel expenses if the costs are voluntarily incurred, without any understanding or agreement that the costs shall be directly or indirectly repaid. Putting aside that the \$500 limit of MCLA 169.204(3)(a), even if it existed here for the sake of argument, the deputy services and the use of the vehicle, fuel, etc., could not be deemed "volunteer personal services" as they were directly furnished by the County and would be an inappropriate campaign contribution under MCLA 169.257(1) as both **personnel** and vehicles owned by the County would constitute an improper contribution to Sheriff Napoleon's mayoral campaign efforts. No such exceptions apply.

This analysis does not respond to Sheriff Napoleon's argument that he is being unconstitutionally constrained in his Law Enforcement duties placed upon him by his Constitutionally protected office. We resolve this contention below.

CONSTITUTIONAL DUTIES

It goes without saying, of course, and we certainly should note, the citizens of Wayne County are indeed grateful for all of the indefatigable and noble efforts of Sheriff Napoleon in the myriad undertakings he has exhaustively employed himself to afford security from crime and terrorism which has been a hallmark of his tenure as Sheriff.

Counsel for the Sheriff strongly argues that these clear authorities conflict with the Michigan Constitution, Article VII, § 4 (Const 1963) and therefore must be disregarded. Tab "2", pp 7-8. Counsel acts to suspend the operation of these laws (which have utterly no written exceptions in their operation) under an alleged Constitutional conflict on the argument that they substantially impede the office. (Id.)

Invoking Michigan Constitutional provisions Article VII, § 4 (Const 1963), as well as MCLA 45.407, in addition to case law, circumscribed by the analysis of duties under MCLA 45.407, Counsel for Sheriff Napoleon also chooses the phrase "reasonable

service" found in MCLA 45.407 to serve as a wraparound justification for all political uses of the Command Vehicle as there is, in effect, no holiday for execution of Orders, Judgments, judicial process, preservation of the peace, arrest and detention of persons charged with the commission of various crimes, and, more or less directly connected with the administration of justice for the County.

While it cannot be denied but that the County Sheriff has broad powers, his Counsel's citing National Union of Police Officers Local 502-M AFL-CIO v Board of Commissioners for the County of Wayne, 93 Mich App 76; 286 NW2d 242 (1979) and Opinion of the Attorney General No. 7025 (1999) and Opinion of the Attorney General No. 5304 (1978) does not completely set forth the current law.

In fairness, it must also be observed that the legal authorities cited by Counsel for the Sheriff do not deal with the precise issue with the precise legal authorities cited by the Auditor General and by Counsel for the Board in any direct or peripheral way.⁶

Counsel for Sheriff Napoleon is, indeed, correct that Article VII, § 4 of the Michigan Constitution of 1963 provides for the Constitutional Office of Sheriff to exist in each County. We cannot agree with him, however, that this Constitutional Provision renders Sheriff Napoleon legally and ethically immune from being required to follow the cited legal authorities (or any other laws) which apply equally to all governmental officials and public employees since these laws do not truly change the character of the Office. See Leelanau County Sheriff v Kiessel, 297 Mich App 285, 292-293; 824 NW2d 576 (2012), lv den, 493 Mich 877 (2013) (statutory legal requirements on the Sheriff that do not destroy the office or change its character and are therefore appropriate for enforcement on the Officeholder.)

First of all, it must be noted that there are self-contained and inherent limitations in this Constitutional Charter as there must be heed to bow to laws passed by

⁶ It is only fair to note but that at no time were the legal authorities deemed controlling here on the political use of vehicle question were ever cited or considered in the National Union of Police Officers Opinion. Put another way, MCLA 169.257(1) or Wayne County Ethics Ordinance § 40-4(g)(1) and (2) or Wayne County Vehicle Use Ordinance § 33-7(b)(5), were never at issue nor were they otherwise considered or distinguished by the NUPO decision. The same point can be made for Attorney General in Opinions 7025 and 5304. Counsel for the Board holds that a different result must obtain on Ethical Review. The Constitutional Office of Sheriff is not **itself** destroyed or changed in any way, even if **campaigning** for it is more structured or limited or difficult.

legislative bodies: Article VII, § 4 says in part: "There shall be elected for four year terms in each organized County, a Sheriff, a County Clerk, a County Treasurer, a Register of Deeds and a Prosecuting Attorney, **WHOSE DUTIES AND POWERS SHALL BE PROVIDED BY LAW.**" The Legislatures of Wayne County and the State of Michigan may enact legislation that may affect or describe the Sheriff's duties as long as they do not destroy the office or materially change it. Such a provision does not immunize the Sheriff in **campaigning** for office as the **Office** itself is not affected at all.

Article VII, § 4 does not bestow upon a Sheriff or a County Clerk or a Treasurer, or a Register of Deeds or a Prosecuting Attorney unrestricted power as they must hew their conduct to what the law passed by other Legislative Officials *in pari materia*. Such complementary legislative guidelines legally may provide reasonable limits in the operation of their Constitutional Offices.

While the Constitution clearly bestows upon the Sheriff his or her law enforcement duties, these ethical obligations are reasonable borders on such common law and statutory Law Enforcement since they do not destroy the Sheriff's inherent power to perform the duties of the office from the lens of Law Enforcement; the test of the Constitutional Office is whether the Sheriff's Constitutional Law Enforcement power is **destroyed** by the infringement. Brownstown Twp v Wayne County, 68 Mich App 244; 242 NW2d 538 (1976). The Office cannot be deemed to be unreasonably limited if the **campaigning** for it is prohibited or delimited under the Michigan Campaign Finance Act as it is for every single other public official or employee who must campaign to win.

The early absolutism once acknowledged for Sheriffs was short lived in current legal history. Even one of its exemplars, National Union of Police Officers Local 502-M AFL-CIO v Board of Commissioners for the County of Wayne, 93 Mich App 76, 89; 286 NW2d 242 (1979), cited by Counsel for the Sheriff, also held that, under the Constitution, "the Sheriff's power to hire, fire and discipline **is not absolute** [but is bordered by applicable statutes]."

This ancient trend towards absolutism in the area of employment of deputies appears to be no longer existent in any event based upon Article VII, § 4 objections or later appellate analysis. In Leelanau County Sheriff v Kiessel, 297 Mich App 285; 824 NW2d 576 (2012), lv den, 493 Mich 877 (2013), the Michigan Court of Appeals ruled that the Sheriff's previous absolute discretion to hire and fire deputy officers was now limited by Michigan Statutes, viz., the Veterans Preference Act. In 2012, the Michigan Court abandoned this old constitutional absolutism in this recent holding, at 292-293:

We first reject plaintiff's argument that because the sheriff is a constitutional officer, the Legislature may not limit the sheriff's common

law or statutory ability to discharge employees at will. In Bensinger, 122 Mich App 444 [122 Mich App 437, 333 NW2d 73 (1983)], this Court noted that **'the Legislature may not vary the duties and powers of the sheriff in a way which changes the character of the office.'**

But this Court has also held that 'the sheriff's power to hire, fire and discipline is not absolute.' National Union of Police Offices Local 502-M, AFL-CIO v Wayne County Board of Commissioners, 93 Mich App 76, 89; 286 NW2d 242 (1979). **Indeed our Constitution expressly confers on the Legislature the authority to prescribe the duties and powers of the sheriff.** Const. 1963, art. VII, § 4... **Moreover, the Legislature has authority to alter or abolish the common law.** Const. 1963, art. III, § 7; Hinojosa v Dept of Natural Resources, 263 Mich App 537, 546; 688 NW2d 550 (2004). **Consequently, Michigan's Constitution does not preclude the Legislature from limiting the sheriff's authority to discharge deputies at will, whether that authority emanates from the common law or from statute.** (Emphasis and Underlining Added.)

It would therefore appear that the historical "absolutism" once afforded the sheriff in the early 20th Century in matters of hiring and firing is no longer the prevailing, or even valid modern view. The validity of the perceived absolutism of Article VII, § 4 has, in point of law, been greatly eroded. The character of a Sheriff's **office** is neither destroyed nor materially changed if he or she is mandated to avoid public vehicle used for political **campaigning**, we hold with confidence.

Put in this light, the argument that these statutes and ordinances destroy the ability of Sheriff Napoleon to discharge his constitutional duties seems somewhat hyperbolic. And again both Article VII, § 4 and Leelanau County Sheriff v Kiessel, 297 Mich App 285; 824 NW2d 576 (2012), lv den, 493 Mich 877 (2013) do not admit of such absolute immunity from common sense legislative strictures.

Since the duties can be performed in having the Deputy keep the Command Vehicle available in the County Garage to go at a moment's notice to meet Sheriff Napoleon at any point on the campaign trail where he wishes to use the Command Vehicle for emergency Sheriff's Business, the burden on Sheriff Napoleon in using his personal or borrowed vehicle for political work is *de minimus*, insubstantial, and cannot be said to be "unreasonable" on the one hand or "destructive" on the other. Even if used-- and the solid legal goal is not to use the vehicle at all during campaigning-- there can be utterly no legal objection to paying required reimbursement as a campaign cost.

To repeat somewhat, the Sheriff strives for a Constitutional absolutism that Article

VII, § 4 itself does not grant the Office as it is subject to the limiting phrase, "...[W]hose duties and powers shall be provided by law...." which gives the Legislature inherent controls. Given expressed Legislative power, Leelanau County Sheriff is the right rule.

There are numerous examples of other legislatively-imposed constraints placed on the Sheriffs of Michigan that are deemed reasonable restrictions on their power. While the County Board of Supervisors cannot proscribe or curtail the inherent duties of the Office of Sheriff, peripheral matters, such as his or her salary, a sum which can be set by the Board of Commissioners as part of its legislative control by the Board of Commissioners of the terms and conditions of employment, including the perquisites of office. Opinion of the Attorney General 1947-1948, No. 730, p 632). Redefined by a 2012 case, Sheriffs are no longer absolutely free in the employment of Deputies but are subject to legislatively enacted employment restrictions (Leelanau County Sheriff, supra). ; Sheriffs are also required to shoulder the burdens of the Freedom of Information Act according to the Opinion of the Attorney General No. 5419, 1978).

It is the duty of the Court, the County, the parties and everyone concerned with the process to avoid making constructions which create an unconstitutional and absurd result with respect to the propriety or following of statutes. Perez v State Farm Mut Automobile Ins Co, 418 Mich 634, 661; 334 NW2d 773 (1983) (fn 6); Oakland County Taxpayers v Bd of Supervisors of Oakland, 355 Mich 305; 94 NW2d 875 (1959).

Moreover, since public statutes and ordinances are entitled to a deep presumption of constitutionality, Coalition Protecting Auto No Fault v Michigan Catastrophic Claims Assoc, 305 Mich App 301; ___ NW2d ___ (May 20, 2014), the *de minimis* effect that this ancillary preclusion of a county vehicle may have on Sheriff Napoleon should not be held to trigger a Constitutional Crisis as to the Sheriff's public role and duties by requiring him or her to follow the above-cited Policy enactments, statutes, and codes in the use of public property for political use.

While there is, frankly, a surprising dearth of reported authority nationwide concerning the prohibition on a public official's use of a government vehicle and driver to attend campaign rallies and other partisan events, the few cases that do exist outlaw public official use of governmental vehicles and drivers to campaign. See People v Sperl, 54 Cal App 3d 640, 657-658, 126 Cal Rptr 907, 919-920 (Cal App 1976), *cited with approval by* People v Johnson, 209 Cal App 3d 800, 809, 147 Cal Rptr 3d 391 (2012), Both cases hold that the uses of a public vehicle and governmental employee as driver by an elected official for purposes of attending campaign or other political events are patently illegal.

CONCLUSION

Special Counsel for the Ethics Board respectfully concludes this analysis with several public policy thoughts.

First, the answer to be set forth is from laws very clear on the face of them. Indubitably, all the actions taken by Sheriff Napoleon were obviously done in good faith. Nevertheless, notwithstanding that demonstrable good faith explored at length with great skill by his able counsel, Sheriff Napoleon's *bona fides* is not a defense because what was expended here on his political behalf was legally improper under the constellation of readily ascertainable statutes and ordinances cited above, none which have mollifying or protective exceptions or exemptions written in the laws which govern here.

Second, this is not as "grey" an area as was indicated by Sheriff Napoleon's Counsel. There are no "safe harbor" enclaves or exceptions to these laws as written. None. The Board is unable to engraft words or language to these Statutes and Ordinances as written to achieve a soft landing. Kirkaldy v. Rim, 478 Mich 581, 587, 734 NW2d 201 (2007); In re Wayne Co. Prosecutor, 232 Mich App 482, 486, 591 NW2d 359 (1998). The mandates therein are clear enough on the face of them. There is no cited legal authority or *in pari materia* statutes or ordinances that otherwise vitiate this monolithic line of authority to avoid the consequences of political use of the vehicle and the driver for campaigning. To carve out appealing exceptions without legal authority is to countenance a flood of other improper vehicle uses as the flood of excuses are only limited by the creativity of counsel. To use street parlance, the Law is the Law.

Third, while this Opinion should serve as a valuable to guide future conduct for other County Officers and Employees, when the public official has used a vehicle and driver in violation of the statutes and Wayne County Ordinances cited above. There is a pragmatic problem when that happens. Put another way, by the time this violation of laws comes to the attention of the Auditor General, that improper use of County employees and County vehicles are, by then, all but moot. Reimbursement to erase the unjust enrichment may be the only pragmatic remedy to alleviate the errors made here so as to restore the public treasury to comply with the law. Unjust enrichment remains a legally viable option and theory to recover legally disputed funds for restitution to make the government whole, of course, or for it to be required to pay. 46th Circuit Trial Court v. Crawford County, 266 Mich App 150, 162 702 NW2d 588 (2005), *rev'd other gds*, 46th Circuit Trial Court v. Crawford County, 476 Mich 131, 719 NW2d 553 (2006).

Fourth, a request was made by Counsel for the Sheriff to render this Opinion as effective as on a prospective basis, only. While creative and clever, this petition overlooks that these laws have been on the books in various forms for years (1995-2012) before the 2013 Campaign and that this plea is a subliminal appeal for Board

Nullification of previously existing and controlling law. As the Court in Selk v Detroit Plastic Products, 419 Mich 32, 35, 348 NW2d 652 (1984) carefully explained, **'The primary purpose of an effective date may be to provide a date certain for the statute's application.... [E]ffective dates provide notice to those who must conform their conduct to the law as specified in the enactment.'** (Emphasis Supplied.)

Finally, we are aware that this controversial question has been termed a "Close Case". One is reminded of the decision in GAC Commercial Corp v Mahoney Topography, Inc, 66 Mich App 186; 238 NW2d 575 (1975) which remains as true today as it did when it was first announced for lawyers' ethical dilemmas. If edited for "public officials", this is the rule which ought to guide us; while it is apt for lawyers, it is equally good for public officials:

But the bottom line should always be this: Where there is a question of ethics, the answer is 'no'. There is no room for 'close' questions of professional propriety, particularly at a time when public trust in and respect for the legal profession [and for elected public officials] is not at its highest level. (Emphasis Supplied.)

Special Counsel for the Board believes the law is clear and that the legal position of the Wayne County Auditor General must be both sustained and the reimbursement remedy requested by the Auditor General effectuated to resolve this public ethical controversy. No penal fine is recommended at this or at any time as this issue is of a central Public Character, appears to be decisionmaking of first impression and there is no question but that the Sheriff has always acted in good faith throughout. While this is no defense to reimbursement as a civil remedy, the penal fine should not be countenanced in the view of Special Counsel for the Board.

Respectfully Submitted,

JACOBS AND DIEMER, P.C.

By: 

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Board of Ethics

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EXHIBIT "1"

Office of Legislative
Auditor General

WILLIE MAYO, CPA, CIA, CICA
AUDITOR GENERAL



500 GRISWOLD STREET
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February 21, 2014

DAP No: 2013-57-816

Wayne County Board of Ethics
c/o Acting Clerk of Commission
500 Griswold, Suite 861
Detroit, MI 48226

Chairman Giovan:

Advisory Opinion

Based on comments made in a television interview by the Wayne County Sheriff regarding the use of a county vehicle and fuel for the purposes of campaigning for public office, the Office of Legislative Auditor General (OAG) contacted the Wayne County Sheriff regarding potential implications regarding the use of county assets for campaigning purposes. Upon notification, Sheriff's Office officials agreed to assist the OAG by providing information.

The OAG performed a calculation of an appropriate amount of reimbursement due to Wayne County for the Sheriff's use of a county vehicle and charges for fuel and non-fuel purchases on county credit cards during the period the Sheriff campaigned for the City of Detroit mayoral position.

Scope

The period requiring reimbursement for campaigning is from March 27, 2013 through November 5, 2013.

Engagement Standards

This engagement was conducted as a special project which resulted in a request for an advisory opinion from the Wayne County Ethic's Board. This engagement was not an audit according to Government Auditing Standards and therefore the work is not being performed under any particular auditing or review standards.

Methodology

We primarily relied on inquires and testimonies provided by WCSO officials. We were not able to review and examine detail documentation to support the percentage of time the Sheriff stated was spent campaigning for the mayoral position of the City of Detroit.



If we were able to examine the Sheriff's itinerary and/or other documentation to support the percentages provided to us by WCSO Officials, the reimbursable costs outcome could possibly be different than the amount being calculated in this report.

Background

On November 13, 2013, Wayne County Sheriff Benny Napoleon, in an interview with Channel 7 News regarding the issues discussed in the OAG's Vehicle Fleet Operations review, indicated that he had used a county owned vehicle and purchased fuel and non-fuel charges with county credit cards, during his campaigning for elective office as Mayor of the City of Detroit.

Following the airing of this interview, the Wayne County Auditor General contacted officials at the Wayne County Sheriff's Office (WCSO) informing them that the use of a county owned vehicle and fuel and non-fuel charges with a county credit card was a violation of a State Statute and County Ordinances.

Violation of Public Act and Wayne County Ordinances:

Based on our review, the use of public assets for private purposes is a violation of:

- Michigan Campaign Finance Act 388 of 1976;
- Chapter 33 of the Wayne County Code of Ordinances, County Vehicle Use; and,
- Wayne County Ethics Policy.

The Michigan Campaign Finance Act 388 of 1976, Section 169.257 prohibits a public body or a person acting for a public body to use or authorize the use of a public asset for campaign purposes. A person who knowingly violates this section is guilty of a misdemeanor punishable by a fine or imprisonment.

The County Vehicle Use Ordinance, Section 33-7 (b)(5) states that a county vehicle shall not be used in support of election campaigning for a public office... nor for travel to and from any appearance at which an elected official is campaigning for re-election. The ordinance does not list any penalties for violation.

The Wayne County Ethics Ordinance, Section 40-4(g)(1) prohibits a public servant from "engaging in political campaign activities during hours for which the public servant receives compensation from the county; while using county equipment or resources..."

Section 40-7(C)(1) Complaints-Due Process "Any individual who believes a violation of the Ethics Ordinance has occurred may file a complaint with the ethics board." The ordinance states that criminal penalties and civil remedies set forth by state statute apply to conduct regulated by those statutes.

Section 40-7(g) Advisory Opinions states:

- (1) Any public servant may make a written request for an advisory opinion if the public servant is in doubt as to whether their conduct is in compliance with the requirements of this chapter. A request may be made anonymously.
- (2) The public servant shall provide any additional information requested by the ethics Board.

- (3) Within 30 days of receiving the request, the Ethics Board shall determine its advisory opinion at a meeting.

The Wayne County Ethics Ordinance, Section 40-10, states a violation of this ordinance is a civil infraction punishable by a fine of \$500 and costs along with possible disciplinary actions including censure, reprimand, removal, dismissal, or discharge.

We requested from Commission Counsel what penalties, if any, were applicable and if the usage costs could be recovered. According to a communication from Commission Counsel, the penalties for violating these laws vary from fines to imprisonment. Also, Counsel believes that cost may be recovered.

We also attempted to contact the Prosecuting Attorney to obtain an opinion regarding the possible violation of the Michigan Campaign Act and certain Wayne County ordinances, but received no response.

Objective – Determine the costs for vehicle and fuel and non-fuel usage by the Wayne County Sheriff

Cost Elements

1. Percentage of Time Spent Campaigning –

Campaign Itinerary – Fact

In order to calculate an amount applicable for reimbursement, we attempted to ascertain the percentage of county time that was related to campaigning by the Sheriff and other WCSO Officials.

Specifically, we attempted to obtain an itinerary of the Sheriff's activities during the period of our review. However, Sheriff Officials declined the Auditor General's request to provide a calendar of the Sheriff's itinerary to the audit team.

Based on discussion with Sheriff Officials, we were informed that the Sheriff utilized his vehicle 5 - 35 percent of the time spent campaigning along with an additional 5 percent for commuting purposes during the period of our review. However, due to the lack of an itinerary and/or other documentation, we were not able to validate the time the Sheriff spent campaigning.

Based on the reports by the news media the Sheriff formed an exploratory committee on December 10, 2012, and officially announced his candidacy for the Mayor of the City of Detroit on March 26, 2013.

Statement from WCSO Representative

In an email sent to OAG staff on December 4, 2013, a Sheriff's representative stated: "When I reviewed the Sheriff's calendar on November 15th I believe, I estimated that of the total number of activities he had for the day, what percentage of travel to and from the location would be considered "campaign focused."

"In the beginning it was pretty slow but his appointments gradually increased between the primary and November 5. Bear in mind he routinely returned to the office throughout the day and early evening to continue Sheriff's duties and meet with staff."

The percentages in this table are based on representations made by WCSO Officials.

**Wayne County Sheriff Vehicle Usage
January – October 2013**

2013 Month	Campaign Use	Commuting Purposes	Total
January	0%	5%	5%
February	0%	5%	5%
*March (27 – 31)	5%	5%	10%
April	5%	5%	10%
May	7%	5%	12%
June	10%	5%	15%
July	20%	5%	25%
August	25%	5%	30%
September	35%	5%	40%
October	35%	5%	40%
**November (1 – 5)	45%	5%	50%

* March 27 – 31 (Official Announcement)

** November 1 – 5 (Election Day)

Although, 5% is used for commute time, this amount is excluded from our calculation for reimbursement because the Sheriff's duties and responsibilities required him to have use of a county vehicle 24/7.

2. Cost of vehicle –

a. Fact

We performed an analysis of the use of the Sheriff's county vehicle during the scope period of our review from January 2013 through November 5, 2013.

According to a written agreement between General Motors (GM) and the Wayne County Sheriff's office, the vehicle was loaned to the Sheriff's office by GM in February of 2011 at no cost to the county other than insurance and maintenance. This vehicle is a 2011 GMC Yukon SLT, and upon receipt, had no reported miles on the vehicle.

According to records provided by Sheriff Officials, and based on discussion with M&B officials, we noted that the vehicle was subsequently donated to the county through a superseding Bill of Sale and Agreement in October 2012. However, this Bill of Sale and Agreement for the vehicle was not signed until December 2012; did not receive a county asset inventory "brass" tag until July 2013; and, according to an M&B official, was not recorded on the county's books until December 2013, with a service date of December 2012.

Based on our review of documentation provided by M&B, they determined the blue book value of the vehicle at \$25,841. We believe this amount is fair and reasonable and used it as the value in our calculation for vehicle usage in this report.

Insurance

As of the date of our report, Sheriff Officials reported that the vehicle had 77,165 miles. In addition, the county insures the vehicle. We were not able to determine the individual cost of insurance for the vehicle as the county insures through a blanket coverage that covers all county vehicles up to approximately \$2 million.

For comparative purposes, we obtained several quotes for auto insurance from outside vendors. Based on our inquiry from three different vendors, the average cost for insurance for a 2011 GMC Yukon was \$275 per month. Calculating this total against the provided percentages for the period - March 27 through November 5, 2013, we calculated a total amount of reimbursement of \$400.

Cost of Lease

We calculated the monthly cost to lease the vehicle based on the blue book value to be \$561 per month, or \$6,732 annually. Based on the estimated percentage of monthly vehicle usage provided by the Sheriff for campaigning purposes of 5 to 35 percent for each month, we calculated the total amount of reimbursement as it applies to the use of the county owned vehicle to be \$813. (See Table Below.)

**Cost of Vehicle
Using Average Cost to Lease**

2013 Month	Campaign Use	Amount	Total
January	0%	\$0	\$0
February	0%	\$0	\$0
*March 27 - 31	5%	\$90	\$4
April	5%	\$561	\$28
May	7%	\$561	\$39
June	10%	\$561	\$56
July	20%	\$561	\$112
August	25%	\$561	\$140
September	35%	\$561	\$196
October	35%	\$561	\$196
**November 1 - 5	45%	\$93	\$42
TOTAL			\$813

* March 27 - 31 (Official Announcement)

** November 1 - 5 (Election Day)

3. Authorized Use of Vehicle

According to Sheriff Officials, the county owned vehicle was used by the Sheriff for the period – March 27 through November 5, 2013.

During a Channel 7 News television interview on November 13, 2013, the Sheriff stated that “the President of the United States campaigns for office and he gets to use a plane.” He stated therefore, he should be able to use his county owned vehicle for his campaign purposes. The plane the Sheriff refers to is Air Force One.

However, based on our review, we were able to identify that the President does in fact reimburse the taxpayers for the portion of use for campaigning using Air Force One. The President or his election campaign pays back an amount that is “equivalent of the airfare that they would have paid had they used a commercial airline. On such trips they pay for their own food, lodging, and other incidental expenses” according to a May 17, 2012, report issued by the Congressional Research Service.

Based on our research, the use of a county owned vehicle for campaign purposes is not a proper use of the vehicle and costs should be recovered.

Fuel Usage

We obtained and reviewed records from both British Petroleum (BP) and the Wayne County Department of Public Services for the scope period of our review to determine the cost of reimbursement for the use of county fuel cards by the Sheriff for the period March 27 through November 5, 2013 and noted the following:

Gallons – Fact – Based on our review, the sheriff used the county issued British Petroleum (BP) credit card for purchases of both fuel and non-fuel items. For the period March 27 – November 5, 2013, there was a total cost of \$7,303 incurred. We applied the stated percentages used above for campaign purposes to calculate the total amount of charges on the credit card related to campaigning. Total fuel and non-fuel reimbursement is calculated to be \$1,065.

4. Drivers Salary and Fringes

a. Fact

Sheriff Officials stated that the Sheriff primarily utilized three individuals who served as his driver. This consisted of two principal drivers, with the third on an as-needed basis, during the scope period of our review. We obtained the salary and fringes of the two principal drivers along with the amount of fuel used by these drivers during this period and added this amount to our calculation.

Based on our review, we calculated the salary and fringes of both principal drivers for Sheriff Napoleon during this period. Because of the lack of records supporting when a particular driver was actually driving the Sheriff, we were not able to specifically identify the exact amount of reimbursement. Therefore, we took into account that all three drivers could not be driving the Sheriff at the same time.

Using the percentages provided by Sheriff Officials, we calculated an average salary of \$73,000 based on the average of the two primary drivers' salary and applying a fringe rate of 80 percent, for an average total of \$131,400. We then divided this total by 12 to come to a monthly average of \$10,950. Applying this total to the provided percentages, the total amount for reimbursement came to \$15,908. See chart below.

b. Noted overtime

During our review of the hours worked by the two primary drivers we noted instances where overtime was occurred. We attempted to obtain an explanation for the overtime but were not able to obtain a response from Sheriff management. Therefore, we have not included any overtime in our calculation.

**Cost for Two Drivers
Using Average Salary plus Fringe Factor**

2013 Month	Campaign Use	Amount	Total
January	0%	\$0	\$0
February	0%	\$0	\$0
*March	5%	\$1,766	\$88
April	5%	\$10,950	\$547
May	7%	\$10,950	\$766
June	10%	\$10,950	\$1,095
July	20%	\$10,950	\$2,190
August	25%	\$10,950	\$2,737
September	35%	\$10,950	\$3,832
October	35%	\$10,950	\$3,832
**November 1 – 5	45%	\$1,825	\$821
TOTAL			\$15,908

* March 27 – 31 (Official Announcement)

** November 1 – 5 (Election Day)

Other Matters

Sheriff's Salary and Fringes

a. Rationale

Based on discussion with Commission Counsel, she stated that as an elected official, the Sheriff does not have a set work schedule. Therefore he could argue that he works 24/7, and no costs should be deducted for the time he spent campaigning.

We concur with the statement made by Commission Counsel and have concluded not to request a reimbursement for compensation paid to the Sheriff during the times he was campaigning for the Mayor of the City of Detroit for the following reasons:

- i. The Sheriff is an elected official and is not required to submit a timesheet in order to be paid per the M&B time reporting policy;
- ii. The Sheriff is on duty 24/7 and as an elected official there are no mandatory set hours required for him to work;
- iii. The Sheriff has asserted that the principal portion of his time spent campaigning were in the evenings after normal work hours and on weekends;
- iv. The Wayne County Code of Ethics prohibits elected officials from campaigning during the time the public servant receives compensation; but, it does not address elected law enforcement officials who work 24/7 days per week; and,
- v. The Michigan Campaign Finance Act prohibits a public body or a person acting for a public body to use or authorize the use of a public asset for campaign purposes. However, we were informed by the Sheriff's attorney that he was unaware of the Act being applied to the salary of a 24/7 elected law enforcement official.

Summary of Overall Calculations

Calculation of Costs And Reimbursement Amount For Sheriff Campaign Expenditures	
Asset Used	Reimbursement Amount
Vehicle (2011 GMC Yukon)	\$813
Fuel (Sheriff and Drivers)	1,065
Insurance	400
Drivers Portion of Salary and Fringes	15,908
Total	\$18,186

Conclusion

As stated in the Wayne County Ethics Ordinance, the citizens' confidence in the integrity of Wayne County government is a crucial factor in maintaining the public's trust and each public servant is a personal steward of that integrity. Everyone must maintain unquestionable standards of integrity, truthfulness, honesty, fairness, and personal responsibility in the performance of public functions.

Based on our review, we identified specific violations of county ordinances and the State of Michigan Campaign Finance Act. These violations resulted from the use of public resources for campaign purposes. Based on the information provided to our office, we calculated approximately \$18,186 in costs that should be reimbursed to the county.

In our opinion, we believe the Sheriff violated Wayne County Ordinances and the State of Michigan Campaign Finance Act as it relates to the use of county assets for campaigning purposes; therefore, in accordance with the provisions as outlined in the Wayne County Ethics Ordinance, the Sheriff's Office is requesting an Advisory Opinion from the Wayne County Ethic's Board. If a ruling is issued by the Wayne County Ethic's Board, the Sheriff's Office has agreed to abide by that ruling.

Wayne County Board of Ethics
DAP No. 2013-57-816
February 21, 2014

If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose.


Willie Mayo, CPA, CIA, CGAP, CGMA, CICA
Wayne County Auditor General

EXHIBIT "2"

* GERALD H. ACKER
** BARRY J. GOODMAN
TIM SULOLLI
KEVIN Z. KOMAR
LARRY R. MAITLAND II
BRADLEY M. PERI
MARK BREWER
JORDAN B. ACKER
JOHNNY A. HAMOOD
CHARLES W. WOJNO
EBONEY R. HUGHES

*ALSO ADMITTED IN DC
**ALSO ADMITTED IN FLORIDA
www.goodmanacker.com

Honorable William J. Giovan
Chair, Wayne County Ethics Board
Guardian Building
500 Griswold, Suite 861
Detroit, MI 48226

May 7, 2014

Re: Advisory Opinion Request

Dear Judge Giovan,

Pursuant to Section 40-7(g) of the Wayne County Ethics Ordinance, this is a request for an advisory opinion on behalf of Wayne County Sheriff Benny Napoleon concerning the application of portions of Ethics Ordinance Section 40-4(g)(1) and Vehicle Use Ordinance Section 33-7(b)(5) during his campaign for Mayor of Detroit.

I. Introduction

In Ordinance No. 2012-209, Wayne County established ethics standards and procedures. Section 40-7 of the Ethics Ordinance created a 7-member Ethics Board authorized, among other things, to issue advisory opinions to public servants on the interpretation and application of the Ethics Ordinance. See Section 40-7(g).

Wayne County Sheriff Benny Napoleon [hereinafter "the Sheriff"] submits this request for an advisory opinion concerning the interpretation and application to his campaign for Mayor of Detroit of the underscored provisions of Ethics Ordinance Section 40-4(g)(1):

- (g) *Inappropriate use of county time and property for political activity.*
(1) A public servant is prohibited from engaging in political campaign activities during hours for which the public servant receives compensation from the county; while using county equipment or resources; or while on property where business of the county is being conducted.

and Vehicle Use Ordinance Section 33-7(b)(5):

(5) *Type 5 – Elected official assigned vehicle.* County elected offices in the executive and legislative branches are eligible to be assigned a vehicle for use on county business and public events. Compliant with the prohibitions of the Michigan Campaign Finance Statute. A county vehicle shall not be used in support of election campaigning for a public office or ballot question or for travel to and from any appearance at which an elected official is campaigning for re-election.

II. Question Presented

MAY THE WAYNE COUNTY SHERIFF, AS A CONSTITUTIONAL LAW ENFORCEMENT OFFICER WHO IS ON DUTY 24 HOURS/DAY, 7 DAYS/WEEK AND WHO IS REQUIRED TO RESPOND TO LAW ENFORCEMENT EMERGENCIES THROUGHOUT THE COUNTY, CONTINUE TO USE A SPECIALIZED ASSIGNED COUNTY LAW ENFORCEMENT VEHICLE AND PROTECTIVE STAFF/DRIVER WHILE CAMPAIGNING FOR PUBLIC OFFICE?

The Sheriff submits that the answer is “Yes,” based on the law and facts.

III. Statement of Facts

A. Wayne County Law Enforcement

The Wayne County Sheriff supervises one of the largest local law enforcement agencies in the country. With nearly 2 million people, Wayne County is the largest county in Michigan and one of the 20 largest counties in the United States with commensurate law enforcement demands.

With more than 900 officers, the Sheriff's Department is the largest sheriff's department in Michigan and the 2nd largest local enforcement agency in Michigan. The Department provides services ranging from road, mounted and marine patrols, court order and security, running Michigan's largest county jail system with more than 2,000 prisoners in 3 facilities, and narcotic enforcement to fugitive apprehension, a Special Response Team, Internet investigations, and working with international, national, state and local law enforcement agencies.

The Sheriff is required to be on duty 24/7 to respond to a wide variety of emergencies at any time, day or night, including drug raids, injured officers, barricaded gunmen, shoot-outs, jail inmate and officer incidents, and power outages.

B. International Border Security

Almost unique among U.S. counties are the Wayne County Sheriff's additional law enforcement responsibilities due to the international border.

Wayne County is the 2nd largest county in the United States on an international border. It is home to 4 international border crossings which are high profile terrorist targets, especially since 9/11. The United States and Canada have the largest trade relationship in the world, totally hundreds of billions of dollars annually. Over 50% of the international land-based trade between the U.S. and Canada transits Wayne County using those border crossings.

In addition to terrorism threats, the international border also provides opportunities for illegal immigration and drug smuggling. "The northern border of the U.S. is ripe for...not only alien and drug trafficking, but also for facilitating the entrance of terrorists."¹

The Wayne County Sheriff's Department is an integral part of law enforcement at the U.S.-Canadian border.

C. Sheriff Benny Napoleon

The Sheriff is a career law enforcement professional with nearly 40 years experience. Prior to becoming Sheriff in 2009, he served 26 years with the Detroit Police Department, including 4 years as Assistant Chief and 3 years as Chief from 1998 until 2001.

Because of his law enforcement leadership in Detroit and Wayne County, the Sheriff regularly receives threats to his personal safety.

His extensive work with the Detroit Police Department Gang Squad resulted in prosecution of the major gangs including: BK's, Earl Flynns, YBI, Chambers Brothers, Currie Boys, Latin Counts, Cobras, Cash Flow, NFL, Lynhurst Lynch Mob, P.A.'s,

¹ Testimony before U.S. House of Representatives Subcommittee on National Security, reported in Ottawa Citizen, November 22, 2013.

F.A.'s Schoolcraft Boys, Zone 9, Gucci, Joy Boys, RTM West Side, Red Wings ABF (All Black Family) West Side, Young Gutta Boys & Girls, BMF, HGK's, 7 Mile Dogs and Fenkell Boys. As Sheriff, there are over 2,000 inmates in the jails at any time as well as more than 500 on GPS tether. The gang members, inmates, families, friends and others are a serious threat to the Sheriff as a result of their arrest and incarceration. In any given year, he receives numerous threats, including death threats, stalking threats and other threats of great bodily harm. The most dangerous threats to the Sheriff are not from a known threat but from unknown people who do not warn the Sheriff that they are coming.

As a result, his driver also serves a critically important function as armed security for the Sheriff.

D. The Sheriff's Specially Equipped Law Enforcement Vehicle

In recognition of the Sheriff's extensive law enforcement responsibilities, the Wayne County Vehicle Use Ordinance authorizes him to use a county vehicle. See Section 33-7(b)(5).

This vehicle is uniquely equipped to meet the demands of the Sheriff's law enforcement duties. It is equipped with a police radio, siren, emergency lights, weapons, protective vests and flares.

E. The Macomb and Oakland County Sheriffs Use County Vehicles to Attend Political Campaign Events

Macomb and Oakland Counties have policies similar to Ethics Ordinance Section 40-4(g)(1) and Vehicle Use Ordinance Section 33-7 (b)(5) which authorize the use of county vehicles by their Sheriffs and which prohibit the use of county property for political purposes. Those policies have been applied to allow those Sheriffs to use their County-provided vehicles to attend political campaign events.

F. Vehicle Usage During the Sheriff's Detroit Mayoral Election Campaign

In order to provide the Ethics Board with the factual context of this advisory opinion request, Wayne County Auditor General Willie Mayo and his staff worked cooperatively with undersigned counsel for the Sheriff to calculate the value of the use of the Sheriff's vehicle and protective staff/driver during his 2013 campaign for Mayor

of Detroit². The Sheriff and his legal counsel want to express their gratitude for that cooperation and assistance.

The Auditor General calculates that value as follows:

<u>Asset Used</u>	<u>Value</u>
Vehicle (2011 GMC Yukon)	\$813
Fuel	\$1,065
Insurance	\$400
Protective Staff/Driver Salary and Fringes	<u>\$15,908</u>
Total Value	\$18,186

IV. Legal Argument

THE WAYNE COUNTY ORDINANCES MUST BE INTERPRETED TO ALLOW THE SHERIFF TO USE A SPECIALLY EQUIPPED COUNTY LAW ENFORCEMENT VEHICLE AND PROTECTIVE STAFF/DRIVER TO PERFORM HIS CONSTITUTIONAL AND STATUTORY LAW ENFORCEMENT DUTIES WHILE CAMPAIGNING FOR PUBLIC OFFICE

A. The County Sheriff Is A Constitutional Officer With Broad Law Enforcement Powers.

The Michigan Constitution establishes the office of county sheriff:

"There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law."

² Based on comments made in a television interview by the Wayne County Sheriff regarding the use of a county vehicle and fuel for the purposes of campaigning for public office, the Office of Legislative Auditor General (OAG) contacted the Wayne County Sheriff regarding potential implications regarding the use of county assets for campaigning purposes. Upon notification, Sheriff's Office officials agreed to assist the OAG by providing information. The OAG performed a calculation of an appropriate amount of reimbursement the OAG believed was due to Wayne County for the Sheriff's use of a county vehicle and charges for fuel and non-fuel purchases on county credit cards during the period the Sheriff campaigned for the City of Detroit mayoral position.

Michigan Constitution Article 7, Section 4. State law further establishes the Sheriff's duties:

"Duties of sheriffs, under-sheriffs, and deputy sheriffs

It is hereby provided that this act shall be so construed as to require the sheriff, under-sheriff and deputy sheriffs to perform all reasonable services within the jurisdiction of their offices for which the county may be liable and to serve and execute all civil writs and processes that may be reasonably served and executed by said officers under salary."

M.C.L. Section 45.407.

In Brownstown Twp v Wayne County, 68 Mich App 244 (1976), lv denied, 399 Mich. 831 (1977), the Court of Appeals detailed the extensive legal duties of a county sheriff under the State Constitution, statute and common law:

"The office of sheriff is a constitutional office with duties and powers provided by law. Const 1963 art 7 § 4, Labor Mediation Board v Tuscola County Sheriff, 25 Mich App 159, 162; 181 NW2d 44 (1970). When officers are named in the Constitution they have a known legal character. The Legislature may vary the duties of a constitutional office, but it may not change the duties so as to destroy the power to perform the duties of the office. Allor v Board of Auditors of County of Wayne, 43 Mich 76, 102-103; 4 NW 492 (1880). See Murfree, Law of Sheriffs, §41, p 22.

We proceed to analyze the duties of the sheriff. MCLA 45.407; MSA 5.917, provides:

"It is hereby provided that this act shall be so construed as to require the sheriff, under-sheriff and deputy sheriffs to perform all reasonable services within the jurisdiction of their offices for which the county may be liable and to serve and execute all civil writs and processes that may be reasonably served and executed by said officers under salary." (Emphasis supplied.)

We construe the provision "reasonable service" to mean the sheriff must perform the duties of the office of sheriff as recognized at common law as well as those statutory duties which do not destroy the sheriff's power to perform the duties of the office at common law.

Michigan's most authoritative case on the duties of the sheriff at common law is White v East Saginaw, 43 Mich 567, 570; 6 NW 86 (1880). That case quoted approvingly from People v Edwards, 9 Cal 286 (1858).

“ [T]he duties of sheriff, as such, relate to the execution of the orders, judgments, and process of the courts; the preservation of the peace; the arrest and detention of persons charged with the commission of a public offense; the service of papers in actions, and the like; they are more or less directly connected with the administration of justice; they have no relation to the collection of revenue.”

In Scougale v Sweet, 124 Mich 311; 82 NW 1061 (1900), the Court recognized that the sheriff could not shut his eyes to crime and had a duty to respond to prevent a breach of the peace of which he had notice. The Court stated that it was the duty of the sheriff to enforce those laws enacted by the people for the protection of their lives, persons, property, health, and morals.”

Id. at 247-49 (emphasis added). See also NUPO 502-M v Wayne County, 93 Mich App 76, 82-83 (1989) (County sheriff has broad police powers).

The Attorney General has similarly opined as to the broad scope of a county sheriff's powers and responsibilities. See, e.g., OAG No. 7025 (1999); OAG No. 5304 (1978).

B. The Wayne County Ordinances Must Be Interpreted To Avoid A Conflict With The County Sheriff's Extensive and Exclusive Constitutional And Statutory Law Enforcement Duties.

It is well-established that counties are subordinate to the state and that each part of the county government has only those powers conferred upon it by the State Constitution or state law. See, e.g., Brownstown Twp., supra, 68 Mich App at 247. The law enforcement power in a county has been exclusively delegated to the county sheriff by State Constitution and state law, see id., and therefore it cannot be exercised or proscribed by a county commission through ordinance or otherwise. See, e.g., OAG No. 5304 (1978)(county board of commissioners cannot create a county police department with same functions as sheriff); OAG 1947-48 No. 730 at 633 (county board cannot proscribe the duties of a county sheriff).

These principles apply here. If the provisions of Ethics Ordinance Section 40-4(g)(1) and Vehicle Use Ordinance Section 33-7(b)(5) are interpreted to prohibit the Sheriff from using a specially equipped county law enforcement vehicle and protective staff/driver while campaigning, those provisions will conflict with the overriding constitutional and statutory law enforcement responsibilities of the Sheriff detailed earlier.

The Sheriff has extensive law enforcement responsibilities 24/7 no matter where he is or what he is doing. If he is deprived of the use of his specially equipped law enforcement vehicle and protective staff/driver by the ordinances while he is campaigning, he will not be able to carry out his law enforcement responsibilities if called upon, especially in an emergency. The victims of that failure will be the residents of Wayne County, to whom he swore an oath to protect and for whom he has exclusive law enforcement responsibility.

In order to avoid a conflict between the ordinances and the State Constitution and law on the law enforcement duties of the Sheriff, the ordinances must be construed to allow the Sheriff to continue to use a unique, specialized county law enforcement vehicle and protective staff/driver while campaigning. The public safety of Wayne County residents demands no less.

C. Macomb and Oakland County Sheriffs Are Allowed to Use Their County Vehicles to Attend Political Campaign Events.

In recognition of these principles, the Macomb and Oakland County Sheriffs are allowed to use their County vehicles to attend political campaign events.

Like Sheriff Napoleon, the sheriffs in these 2 large suburban counties are on duty 24/7 and have extensive law enforcement responsibilities. Wayne County should recognize, as Macomb and Oakland Counties do, the need for the Sheriff to use his vehicle at all times.

V. Conclusion and Relief Sought

For all of these reasons, Sheriff Napoleon requests an advisory opinion interpreting Ethics Ordinance Section 40-4(g)(1) and Vehicle Use Ordinance Section 33-7(b)(5) to allow him to use a specialized county law enforcement vehicle and protective staff/driver while campaigning for public office.

Respectfully submitted,

Goodman Acker, P.C.

A handwritten signature in black ink, appearing to read "Mark Brewer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Brewer

CC: Sheriff Benny Napoleon
Auditor General Willie Mayo

EXHIBIT "3"

Sec. 40-4. Standards of conduct.**(a) Conflict of interest.**

- (1) A public servant shall not participate in the making of any county decision with respect to any matter in which they or a relative or domestic partner has a substantial financial interest which is distinguishable from that of the general public.
- (2) If a public servant has a conflict of interest in a particular county procurement, they shall not take part directly or indirectly in that procurement and shall immediately notify their superior, if applicable.
- (3) There is a conflict of interest whenever a public servant knows or should reasonably be expected to know that they or a relative or domestic partner:
 - a. Has a substantial financial interest in any procurement; or
 - b. Is presently employed by any county business in a managerial or other key position, or has become employed by any county business in any kind of position within the previous 12 months; or
 - c. Has negotiated or is negotiating for employment with any county business, or with another party who is likely to become a party to a contract, such as, a prospective sub-contractor or consultant; or
 - d. Has a substantial financial interest in a business in which one or more of the principal beneficiaries of this county business also has a substantial financial interest. A substantial financial interest in a disclosed blind trust is not a conflict of interest.
- (4) There is a conflict of interest if a public servant uses confidential information for their personal gain or for the personal gain of a relative or domestic partner, or others.
- (5) This chapter shall not in any manner vary or change the requirements of Contracts of Public Servants with Public Entities Act, Public Act 317 of 1968, MCL 15.321 et seq., which governs the solicitation by and participation in government contracts by public servants of the county and preempts all local regulation of such conduct.

(b) Gifts and gratuities.

- (1) Except as permitted by this chapter, a person shall not offer, give, or agree to give any public servant nor shall a public servant solicit, demand, accept, or agree to accept from another person, a gratuity for themselves or for a relative or domestic partner.
- (2) Exceptions. Section 40-4(b)(1) is not applicable to the following:
 - a. Opportunities, benefits, and services that are available on the same conditions as for the general public.
 - b. A gift received from a public servant's relative or domestic partner, provided that the relative or domestic partner is not acting as a third party's intermediary or an agent to attempt to circumvent this section.
 - c. Anything for which the public servant pays fair market value for.
 - d. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan, Public Act 388 of 1976, MCL 169.201 et seq.
 - e. Anything provided by an individual on the basis of a personal friendship unless the public servant has reason to believe that, under the circumstances, the gift was provided because of the employment position of the public servant and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the public servant shall consider the circumstances under which the gift was offered, such as: (1) the history of the relationship between the individual giving the gift and the public servant,

including any previous exchange of gifts between those individuals; (2) whether to the actual knowledge of the public servant, the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (3) whether to the actual knowledge of the public servant, the individual who gave the gift also at the same time gave the same or similar gifts to other public servants.

- f. Food or refreshments not more than \$75.00 per person per transaction, or \$150.00 total per year from any one business or concessionaire; provided that the food or refreshments are (1) consumed on the premises from which they were purchased or prepared, or (2) catered. For the purpose of this section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.
 - g. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a public servant), if the benefits have not been offered or enhanced because of the employment position of the public servant, and are customarily provided to others in similar circumstances.
 - h. Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials.
 - i. Complimentary tickets or admission to events in support of non-profit or charitable organizations.
 - j. Admission or registration fee, travel expenses, entertainment, lodging, meals or refreshments that are furnished to the public servant; (i) by the sponsor(s) of an event, appearance or ceremony which is related to official business of the county in connection with such an event, appearance, or ceremony and to which one or more of the public are invited; or (ii) in connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity as long as the county does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity; and are customarily provided to others in similar circumstances.
 - k. Acceptance of unsolicited advertising of promotional material and other items of nominal value.
- (3) Each of the exceptions listed in this section is mutually exclusive and independent of every other.
- (4) A public servant does not violate this section if they promptly take reasonable action to return the gift.
- (5) A person shall not offer, give, or agree to give any public servant nor shall a public servant solicit, demand, accept, or agree to accept from another person an offer of employment for themselves or for a relative that is intended to induce or to influence any county decision.
- (c) *Incompatible employment.*
- (1) Pursuant to Public Act 566 of 1978, MCL 15.181 et seq., a public servant shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the public servant's official duties or when that employment may tend to impair their independence of judgment or action in the performance of official duties.
 - (2) For one year after employment with Wayne County, an elected official shall not be hired or appointed to a compensated county position nor shall a contract be awarded

to the elected official or a business in which the elected official has a substantial financial interest.

- (3) A member of an appointed board or commission may not be appointed or hired to a compensated county position created by that board or commission until at least one year after the completion of their term of office.
 - (4) A public servant shall not solicit or receive, for themselves or for a relative or domestic partner, compensation or a gratuity from a board, committee, agency, or entity if the public servant serves on or otherwise participates in the board, committee, agency, or entity on behalf of Wayne County, in any capacity, including, but not limited to, a member, director, employee or consultant.
 - (5) Unless he or she is a county elected officer or unless granted a waiver pursuant to subsection (6), a public servant who is on the contract managers list shall not be nor agree to become the paid employee of or independent contractor to a county business.
 - (6) Upon request of a public servant, the ethics board shall make a recommendation to approve or deny a waiver to the county commission. If a waiver is recommended by the county ethics board, it may be granted by a majority vote of the county commission, unless a greater majority is required or a waiver is prohibited by state law. If a waiver is not so recommended, a two-thirds vote of the county commission is required to grant a waiver.
 - (7) A waiver from the contemporaneous employment prohibition (section 40-4(b)(5)) may be grant upon written determination that:
 - a. The contemporaneous employment or financial interest of the public servant has been publicly disclosed;
 - b. The public servant will be able to perform their employment duties without actual or apparent bias or favoritism; and
 - c. The waiver will be in the best interests of the county.
- (d) *Nepotism.*
- (1) A public servant's relative or domestic partner may be considered for employment if the applicant possesses all the qualifications for employment.
 - (2) A relative or domestic partner may not be hired, however, if the employment would: (i) create a direct or indirect supervisor/subordinate relationship with the public servant; or (ii) create an actual conflict of interest or the appearance of a conflict of interest.
 - (3) A public servant shall not influence the decision to fill a position in Wayne County government with a person that is a relative or domestic partner of the county public servant.
 - (4) It is the policy of Wayne County not to discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital status. Employees who marry or become domestic partners may continue employment as long as there is not: (i) a direct or indirect supervisor/subordinate relationship between the employees; or (ii) an actual conflict of interest or the appearance of a conflict of interest.
- Should one the above situations occur, the county would attempt to find a suitable position within the Charter County of Wayne to which one of the affected employees may transfer. Exceptions may be made by the appropriate elected official in cases where there is an intermediate level of supervision between the division head or supervisor and the related employee. If accommodations of this nature are not feasible, the employees will first be permitted to determine which of them will resign. If

no agreement between the employees can be reached, the appropriate elected official will decide which of the employees will be terminated.

- (5) The provisions of section 40-4(d)(2) shall not restrict or in any way limit the continued employment of or the employment positions available to a public servant if they are employed on the date the ordinance from which this chapter is derived is adopted by the county commission.
- (e) *Confidential information.*
 - (1) A public servant shall not benefit financially from confidential information or knowingly use confidential information for actual or anticipated personal gain, or for the actual or personal gain of any other person.
 - (2) A public servant shall not knowingly disclose any information obtained or discussed in closed sessions of the commission in advance of the time prescribed for its authorized release to the public.
 - (3) A public servant shall not divulge confidential information acquired in the course of service to the county in advance of the time prescribed for its authorized release to the public.
- (f) *Use of public assets for private purposes.*
 - (1) A public servant shall use county personnel, resources, property, and funds under the public servant's official care and control judiciously and solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
 - (2) All county vehicles shall be used in accordance with the county vehicle use ordinance.
- (g) *Inappropriate use of county time and property for political activity.*
 - (1) A public servant is prohibited from engaging in political campaign activities during hours for which the public servant receives compensation from the county; while using county equipment or resources; or while on property where business of the county is conducted.
 - (2) A public servant, personally or through an agent, is prohibited from soliciting other public servants to work on political campaign activities during hours for which the public servant receives compensation from the county; while using county equipment or resources; or while on property where business of the county is conducted.
 - (3) A public servant, personally or through an agent, is prohibited from stating or implying to any other public servant that participation in any political activity, including fund-raising events, is necessary for employment or for any benefit of employment within the county.
 - (4) A public servant, personally or through an agent, is prohibited from directing or coercing any other public servant from participating in any political activity.

(Ord. No. 2012-209, § 4, 4-5-12)

Sec. 40-5. Personal disclosure for public servants.

- (a) Each public servant shall file an annual public disclosure form. The statement shall be filed with the Wayne County Clerk by March 15 of each calendar year. Each public servant shall also provide a copy to their immediate supervisor, excluding elected officials, and to the purchasing director. The Wayne County Clerk, immediate supervisors, and the purchasing director shall retain a copy of the annual public financial disclosure statement on file until March 15th of the following year. The county clerk shall post the submitted disclosure forms on the county's website. The disclosure form shall be submitted electronically. The public

EXHIBIT "4"

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INTRODUCED BY COMMISSIONER(S): COMMISSIONERS GEBHARDT, WEBB, BELL, KILLEEN, VARGA, WORONCHAK, BASHAM, CLARK-COLEMAN, LELAND, MCNAMARA, PALAMARA, PARKER, SCOTT, AND WARE

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CHARTER COUNTY OF WAYNE:

This Ordinance shall be cited as the Ethics Ordinance.

As active participants in the delivery of important governmental services, public servants are routinely called upon to make decisions. Since decisions may be varied and difficult, the choices that are made must yield good results while maintaining public interest values along the way. As public servants make these difficult decisions, there is an obligation to the citizens of Wayne County to maintain the highest ethical standards. Everyone must maintain unquestionable standards of integrity, truthfulness, honesty, fairness, and personal responsibility in the performance of public functions. The proper performance of public duties and functions requires that public servants be independent, impartial, and responsible to the citizens of Wayne County.

This Ordinance is established to provide meaningful guidance to employees, elected and appointed officials, and the members of appointed boards and commissions. Nothing in this Ordinance is intended to suggest that anyone should alter their personal beliefs. It is, however, meant to assist all public servants in making the ethical decisions that arise every day. Personal commitment to sound, ethical decision making is essential to Wayne County's continued long term success. The citizens' confidence in the integrity of Wayne County government is a crucial

1 **4.6 Use of Public Assets for Private Purposes**

2
3 (a) A public servant shall use County personnel, resources, property,
4 and funds under the public servant's official care and control
5 judiciously and solely in accordance with prescribed constitutional,
6 statutory and regulatory procedures and not for personal gain or
7 benefit.

8
9 (b) All County vehicles shall be used in accordance with the County
10 Vehicle Use Ordinance.

11
12 **4.7 Inappropriate Use of County Time and Property for Political**
13 **Activity**

14
15 (a) A public servant is prohibited from engaging in political campaign
16 activities during hours for which the public servant receives
17 compensation from the County; while using county equipment or
18 resources; or while on property where business of the County is
19 conducted.

20
21 (b) A public servant, personally or through an agent, is prohibited from
22 soliciting other public servants to work on political campaign
23 activities during hours for which the public servant receives
24 compensation from the County; while using county equipment or
25 resources; or while on property where business of the County is
26 conducted.

27
28 (c) A public servant, personally or through an agent, is prohibited from
29 stating or implying to any other public servant that participation in
30 any political activity, including fund-raising events, is necessary for
31 employment or for any benefit of employment within the county.

32
33 (d) A public servant, personally or through an agent, is prohibited
34 from directing or coercing any other public servant from participating
35 in any political activity.

36
37 **SECTION 5: Personal Disclosure for Public Servants**

38
39 (a) Each public servant shall file an annual public disclosure form.
40 The statement shall be filed with the Wayne County Clerk by March 15 of
41 each calendar year. Each public servant shall also provide a copy to
42 their immediate supervisor, excluding elected officials, and to the
43 purchasing director. The Wayne County Clerk, immediate supervisors, and
44 the purchasing director shall retain a copy of the annual public
45 financial disclosure statement on file until March 15th of the following

Wayne County Municipal Violations Ordinance Bureau to pay the fine and costs prescribed by this Ordinance. If an admission of responsibility is not made and the civil fine and costs are not paid, then the Chairperson shall file a municipal civil infraction citation with the appropriate district court and shall serve a copy on the respondent. Municipal civil infraction notices and citations shall be in accordance with Chapter 2 of the Wayne County Code of Ordinances.

(g) The Ethics Board shall forward all findings of facts to the appropriate elected official.

Section 7.6: Standard of Review

The standard of review shall be the preponderance of credible and relevant evidence. The complainant shall have the burden of introducing the requisite evidence to prove the alleged unethical conduct. The person requesting an advisory opinion shall have the burden of presenting facts or issues to the Ethics Board for its consideration. The person whose conduct is being questioned has all of the following rights: (i) be present; (ii) be represented by counsel; (iii) testify; (iv) produce and examine witnesses; (v) cross-examine adverse witnesses; and (vi) introduce other evidence as may be material and relevant to the issues.

Section 7.7: Advisory Opinions

(a) Any public servant may make a written request for an advisory opinion if the public servant is in doubt as to whether their conduct is in compliance with the requirements of this Ordinance. A request may be made anonymously.

(b) The public servant shall provide any additional information requested by the Ethics Board.

(c) Within thirty (30) days of receiving the request, the Ethics Board shall determine its advisory opinion at a meeting.

SECTION 8: WHISTLEBLOWER PROTECTION

(a) No complainant, or public servant acting on behalf of the complainant, shall be discharged, threatened or otherwise discriminated against regarding compensation, terms, conditions, location or privileges of employment because: (i) the complainant or public servant acting on behalf of the complainant reports or is about to report, in writing, a violation or suspected violation of this Ordinance; or (ii)

EXHIBIT "5"

Sec. 33-7. Assignment of county vehicles.

See § 4.6 (b)

(a) *Generally.* The REO shall assign county vehicles to individuals by position who meet the initial eligibility requirements of section 33-5. If an individual meets the eligibility requirements of section 33-5, the REO may assign that individual a county vehicle for the conduct of county business only when it shall be in the best interests of the county in terms of economy and the improvement of necessary operations. In making this determination, the REO must consider the following factors:

- (1) *Mileage driven.* Whether the amount of mileage driven justifies that vehicles should be assigned or whether employees should be reimbursed for using their personal vehicles;
- (2) *Specialized vehicles.* Whether the vehicles needed to perform county functions requires specialized equipment that would make it impractical to use their personal vehicles;
- (3) *Specialized duties.* Whether the individual performs a specialized duty to the county that would make it impractical for a person to use his or her personal vehicle;
- (4) *Special conditions.* Whether the terrain or other working environment conditions and hazards make it impractical or unreasonable to require that an employee use his or her personal vehicle; and
- (5) *Economy.* Whether the individual's operation of a county vehicle is the most economically beneficial means by which the county can have the individual discharge his or her responsibilities.

(b) Each county vehicle is classified as one of the following categories of use:

- (1) *Type 1—Pool vehicle.* If a department requires frequent, but intermittent use of a vehicle for varied employees for whom it is impractical to require use of their personal vehicles, a pool vehicle may be assigned. A pool vehicle may not be taken home unless temporarily assigned as a replacement vehicle to a person who has been assigned a type 2, 3 or 5 vehicle. A use log shall be maintained on each type 1 vehicle, using a required department of management and budget form.
- (2) *Type 2—Administrative vehicle.* County appointed department directors and deputy directors, with the approval of their REO, are eligible to be assigned an administrative vehicle for use on county business and public events.
- (3) *Type 3—Job required vehicle.* If a job requires the regular use of a vehicle for more than 1,000 miles per month for county business on an on-going basis, a job required vehicle may be assigned.
- (4) *Type 4—Temporarily assigned vehicle.* If a job requires foreseeable use of a vehicle for more than 250 miles per week for county business on a temporary basis, a vehicle may be temporarily assigned as needed. A temporarily assigned vehicle may or may not be taken home, as determined by the department director.
- (5) *Type 5—Elected official assigned vehicle.* County elected offices in the executive and legislative branches are eligible to be assigned a vehicle for use on county business and public events. Compliant with the prohibitions of the Michigan Campaign Finance Statute. A county vehicle shall not be used in support of election campaigning for a public office or ballot question or for travel to and from any appearance at which an elected official is campaigning for re-election.

(c) *Interdepartmental reassignments of county cars.* The REO shall prepare and

submit to the commission, for informational purposes only, a quarterly report of any and all reassignments of county vehicles between departments.

- (d) *Exceptions.* The chief executive officer is not empowered to deny the operation of county vehicles to other elected officials, for a violation of section 33-5.

(Ord. No. 93-587, § 7, eff. 11-5-93; Ord. No. 2001-813, § 1, eff. 11-1-01)

Sec. 33-8. Identification of county vehicles.

- (a) *Internal auditing identification.* Each county vehicle shall be assigned an identification number for the purposes of internal identification and annual accounting.
- (b) *Public identification.* All county vehicles, including automobiles, pick-up trucks, vans, sport utility, suburban and four-wheel drive (4 × 4) vehicles shall be identified with:
- (1) Except for Type 5 vehicles, a logo on each side (driver's door and front passenger door);
 - (2) A tag bearing an internal identification number; and
 - (3) A county license plate.
- (c) *Exemptions from public identification requirements.* County vehicles operated by law enforcement agencies when necessary in the furtherance of law enforcement duties shall be exempted from the public identification requirements. However, the REO of each of these agencies must maintain an inventory control record and must provide reports on these county vehicles in accordance with section 33-10.

(Ord. No. 93-587, § 8, eff. 11-5-93; Ord. No. 2001-813, § 1, eff. 11-1-01)

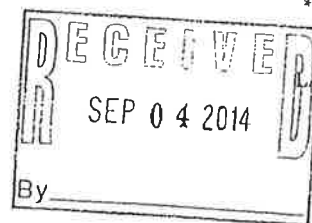
Sec. 33-9. Operation of a county vehicle.

- (a) *Authorized operation of a county vehicle.* County vehicles shall only be used for official county business. Personal use of a county vehicle is prohibited, except that an employee who has permission to drive a vehicle home may make infrequent stops for personal business on the most reasonably direct routes between home and work, but may not convey any other person in the vehicle, other than another county employee to and from work.
- (b) *Unauthorized operation of a county vehicle.* The operation of a county vehicle for personal business is expressly and entirely prohibited. Unauthorized use of a county vehicle shall constitute grounds for the revocation of an individual's operation of a county vehicle and other appropriate disciplinary action.
- (c) *Authorized home operation of a county vehicle.* The REO may specifically authorize individuals who meet the eligibility requirements of section 33-5 to operate county vehicles upon the most reasonably direct routes between their assigned work locations and their place of residence based upon one or all of the following criteria:
- (1) The individual must report directly to the job site rather than their permanently assigned office site or work location;
 - (2) The individual must be enabled to report immediately to a job situation;
 - (3) The individual may reasonably be expected to necessarily and routinely report directly to a job situation;

EXHIBIT "6"

September 2, 2014

John P. Jacobs, Esq.
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CHARLES W. WOJNO
EBONEY R. HUGHES

*ALSO ADMITTED IN DC
**ALSO ADMITTED IN FLORIDA

www.goodmanacker.com

Re: Wayne County Ethics Board Opinion
File 20145

Dear Mr. Jacobs,

This is in reply to your letter dated August 25, 2014 concerning Section III.E. of Sheriff Napoleon's May 7, 2014 Advisory Opinion Request.

1. Macomb and Oakland Counties

In both counties, I was unable to find any written waivers or other writings authorizing the use of the Sheriff's County vehicles for political purposes notwithstanding official policies to the contrary. However, I interviewed several current and retired public employees, including some in both Sheriff Departments. All of them observed Sheriffs in both counties over many years attending political events and campaigning for reelection with their county vehicle. No one I interviewed was aware of any complaint regarding such use. Observations based on my own political involvement for 35 years in Macomb County matched the results of those interviews. Those interviews were the basis for my careful statement that "[t]hose policies [barring use of county vehicles for political purposes] have been applied to allow those Sheriffs to use their County-provided vehicles to attend political campaign events." (emphasis on "applied" added).

2. Outstate Sheriffs

I chose to investigate Macomb and Oakland Counties because they are the most comparable counties to Wayne – 2 large urban/suburban counties whose sheriffs are on duty 24/7 and have extensive law enforcement responsibilities.

However, I believe that a review of outstate counties would find similar practices. During the 18 years I served as Chair or Executive Chair of the Michigan Democratic Party, I

frequently observed outstate county sheriffs of both political parties using their official vehicles to attend political events and to campaign for their own reelection.

3. Summary

In sum, the evidence uncovered in Macomb, Oakland, and outstate shows the practice followed by Sheriff Napoleon and his predecessors in Wayne County is followed by county sheriffs throughout Michigan notwithstanding state law, or local ordinances or policies. I have practiced campaign finance law in Michigan for 30 years and have never heard of a single instance of a county sheriff being prosecuted for a violation of laws, ordinance or policies prohibiting the use of county vehicles for political purposes, or being asked to reimburse a county as requested here.

An opinion to the contrary by the Wayne County Ethics Board would conflict with the constitutional and statutory authorities cited in our Request, be incompatible with the decades-old practices and settled expectations of county sheriffs throughout the state, and would be manifestly unfair to Sheriff Napoleon who has followed those practices in good faith.

Very truly yours,

GOODMAN ACKER, P.C.



Mark Brewer

CC: Willie Mayo
Sue Hall

APPENDIX B

Communication from Auditor General to Wayne County Sheriff

Willie Mayo

From: Willie Mayo
Sent: Wednesday, October 22, 2014 12:05 PM
To: Benny N. Napoleon
Cc: Susan M. Bisio; Suzanne Hall; Cora, Marcella ; John Kellett; 'giovan@cgblegal.com'; Raymond Basham ; Felicia Johnson
Subject: Re: Sheriff Vehicle Reimbursement
Attachments: Attorney General FAQ.pdf; Ethics Board Ruling.pdf

Sheriff Benny Napoleon :

Based on yesterday's Ethics Board meeting, it is the Office of the Legislative Auditor General's intent to transmit and present our report on the Sheriff's use of county assets while campaigning at the October 29th Audit Committee meeting.

We are aware that Counsel for the Sheriff's Office stated they are seeking an opinion from the Attorney General prior to agreeing to submit reimbursement. This is contrary to the agreement reached by the Sheriff and the OAG Office. It was agreed that the Sheriff would abide by the decision reached by the Ethics Board. Quite frankly, based on our research, we do not believe the State of Michigan Attorney General Office will opine on Wayne County Ordinances. See attachment from the State of Michigan Attorney General FAQ.


In an email from Assistant Corporation Counsel dated June 30, 2014, to the Chairman of the Ethics Board, it stated "that the County is a political subdivision of the State of Michigan, but it is not a state agency against whom an Office of the Attorney General opinion would have the force of law." It further stated the Office of Attorney General would be the "force of law" on state agencies not a political subdivision of the state. Assistant Corporation Counsel goes on to cite case law to support the conclusions reached.

In light of the conclusions reached by Assistant Corporation Counsel in the June 30th email, and the lack of provisions in the Wayne County Ordinances and State Campaign Act that allows the Sheriff to use the county vehicle for campaign purposes, as Auditor General, I believe the Sheriff should abide by the promise to be guided by the decision reached by the Ethics Board and reimburse the county in the amount of \$18,186, as soon as possible.

For your convenience, I have attached the decision reached by the Ethics Board at yesterday's meeting.

Also, we are requesting from the Sheriff's Office all relevant information that will support the Sheriff's opinion that the activity is allowed, such as any federal laws that were discussed in the meeting yesterday. This information will be helpful as we move forward with the report.

Willie Mayo, CPA, CIA, CGAP, CGMA
Legislative Auditor General
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State of Michigan
Attorney General Bill Schuette

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FAQ

Can I obtain an Attorney General's Opinion on a legal matter?

Answer:
Michigan law, MCL 14.32, provides that "[i]t shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer. . . ." Therefore, private citizens do not have standing to seek an Attorney General Opinion. Michigan's Supreme Court has recognized that one of the "primary missions" of the Attorney General is to give legal advice to the Legislature, and to departments and agencies of state government. *East Grand Rapids School Dist v Kent County Tax Allocation Bd*, 415 Mich 381, 394; 330 NW2d 7 (1982). Although not legally required to do so, the Attorney General may respond to opinion requests from individual members of the Legislature. In deciding whether to grant such requests, the Attorney General takes into account the need to allocate limited resources and other long recognized policy considerations outlined below. County prosecutors may also submit opinion requests provided that they are accompanied by a memorandum of law analyzing the legal question.

Consistent with his primary mission, the Attorney General prioritizes opinion requests that affect the operation of state government. Because the Legislature has authorized local units of government to employ their own legal counsel to provide guidance on matters of local concern, the Attorney General typically does not issue opinions concerning the interpretation of local charters, local ordinances, locally negotiated collective bargaining agreements, and other uniquely local issues. Other typical reasons for declining a request are: 1) the requester is not a person authorized to request an opinion under the applicable law; 2) the request seeks an interpretation of proposed legislation that may never become law; 3) the question asked is currently pending before a court or administrative tribunal or likely to be the subject of litigation in the near future; 4) the request involves the operation of the judicial branch of government or a local unit of government; or 5) the request seeks legal advice on behalf of, or involves disputes between, private persons or entities.

If the opinion request is granted, it is assigned to an assistant attorney general having recognized expertise in the relevant area of the law. This attorney is expected to prepare a thoroughly researched and well-written draft. The Assistant Attorney General for Law then reviews the draft to assure it is legally sound and performs any editing that may be needed before sending the draft to the Chief Legal Counsel. The draft also may be circulated to other attorneys within the Department of Attorney General for additional substantive review. Drafts of most formal opinions and some letter opinions are first submitted for consideration and approval by the Attorney General's Opinion Review Board (ORB), before submission to the Attorney General for his review. Given the time and attention accorded these matters, the opinions process may take several months to complete depending upon the complexity of the question presented.

[Opinions Policy](#)

- About the AG's Office
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- Crime Victim Rights
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October 22, 2014

Mark Brewer, Esq.
Goodman Acker PC
mbrewer@goodmanacker.com

Mr. Willie Mayo
Legislative Auditor General
wmayo@waynecounty.com

Re: Sheriff Napoleon Request for Advisory Opinion

Messrs. Brewer and Mayo:

Although both of you were present at the Board of Ethics meeting of October 20, 2014, this will give formal notice of the results of Sheriff Benny Napoleon's request for an advisory opinion regarding the use of his county-supplied motor vehicle in attending political events.

At that meeting the Board adopted the following resolution by a vote of three ayes and one nay:

Resolved: that, in the opinion of the Wayne County Ethics Board, the Sheriff of Wayne County is forbidden by law and ordinance from using his County-supplied vehicle and-or a county-paid employee to attend political campaign events, whether his own or those of any other candidate for office.

The Ethics Board is also of the opinion that the Sheriff is obliged to reimburse Wayne County for the value of his use of those resources during his past campaign for the office of Mayor of the City of Detroit.

Sincerely,

William J. Giovan
Chair

WJG/wjg
cc – Ethics Board
Susan M. Bisio, Board Counsel