



JUDICIAL INVESTIGATION COMMISSION

WV Judicial Tower - Suite 700 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169

December 18, 2023

Re: JIC Advisory Opinion 2023-29

Dear Judge :

Your request for a formal advisory opinion was recently reviewed by the Judicial Investigation Commission. You want to get a therapy dog for the Courthouse for use with child victims and vulnerable adults. Your staff and you have been researching the idea and you indicate that it will take approximately six months to one year. The cost to obtain and train the dog is approximately \$15,000. The County Commission has approved and authorized use of a facility dog. You were also recently on a radio program where you were asked about the therapy dog.

You indicate that some groups then came forward mentioning that they would like to donate to the cause. According to you the Chief Court Marshal was approached by the Eastern WV Community Foundation, a local philanthropic 501(C)3 group, and asked how they may provide financial assistance for this project. A number of other businesses have also asked about contributing to the endeavor.

You are requesting permission to have the Chief Court Marshal work with the non-profits/businesses if they decide to assist and be an intermediary between the non-profit and the breeder/trainers for the comfort dog. In the alternative, you believe the County Commission may be willing to act as the gatekeeper of any funds contributed.

Since the decision of *State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 507 S.E.2d 376 (1998), County Commissions have the authority to hire and pay civilian court marshals to work in the courthouse. *Id.* While the court marshal may engage in some of

the activities of court security similar to a deputy sheriff assigned as a court bailiff, he/she cannot impair or supplant the powers and duties of a deputy sheriff acting as a bailiff. *Id.* Generally, the chief judge selects the chief court marshal. Furthermore, in *Farley*, the State Supreme Court stated:

[T]he judge of the circuit court or the chief judge thereof . . . has the inherent administrative power to designate and authorize persons to perform security services necessary to the safe and efficient operation of the county judiciary, provided that such administrative action does not impair or supplant the power and responsibility of the county sheriff to furnish deputy sheriffs to serve as court bailiffs.

Id. at 284, 507 S.E.2d at 385. You are currently the chief judge of the circuit; and while you did not appoint the current chief marshal, you do have control over him. You also have two deputy court marshals and a bailiff who provides security services for you.

To address your question, the Commission has reviewed Rule 3.7(A)(2) of the Code of Judicial Conduct which states:

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

- (2) soliciting contributions for such organization or entity but only from members of the judge's family or from the judges over whom the judge does not exercise supervisory or appellate authority;

You supervise the chief court marshal, and you would be asking him to act in your stead. As a judge, you cannot act as a fundraiser outside the scope of 3.7(A)(2) nor can you act as a conduit between the donors and the breeders. Neither can the chief court marshal. Therefore, the JIC finds that you should not have any involvement with the fundraising and that the County Commission should seek and act as the conduit between the donors and the breeders.¹

¹ You argue that JIC Advisory Opinion 2022-14 gives you the authority to take such action. However, that advisory opinion is distinguishable since it involved a funding request for the State Supreme Court Learning Center from a charitable trust closely related to the spouse of a sitting justice.

The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Moats". The signature is fluid and cursive, with the first name "Alan" and last name "Moats" clearly distinguishable.

Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat