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To: Town of Bennett Mayor and Board of Trustees

From: Scotty P. Krob, Bennett Town Attorney

Date: February 13, 2024

Re: Obligations of Adams County sheriff to provide police services to the Town of Bennett

I. Issues presented:

- A. What level of police services, if any, is a county sheriff obligated to provide to an incorporated municipality located within the county, in the absence of a specific contract between the sheriff and the municipality?
- B. Is a municipality obligated to provide police services other than what is provided by the county sheriff, either by contract or by having its own municipal police department?
- C. Can a county sheriff require a municipality to pay a fee in order to receive law enforcement services, in the absence of a contract or a statute that specifically authorizes such fee?

II. Summary of analysis

Although no Colorado appellate court has expressly addressed the issue, the language of the Colorado statute, the Colorado cases that address the obligations of county sheriffs generally, and the case law and authorities from other states that have considered whether a sheriff is obligated to serve municipalities within their county, support the conclusions that:

- (1) A county sheriff is obligated to provide the same level of police service to an incorporated municipality within their county as they provide to the unincorporated parts of the county, without the necessity of a separate contract to do so.

- (2) The sheriff's duty owed to all parts of the county is to keep the peace to the best of their abilities and to protect the public by stopping criminal acts and arresting the offenders for crimes defined under Colorado statute or established by the common law.
- (3) A municipality is not obligated to provide police services in addition to what is provided by the county sheriff, though it may do so either through contract with the sheriff or by establishing its own police department, if it desires services beyond those the sheriff is obligated to provide.
- (4) It is unlawful for a county sheriff to charge a municipality within the county a fee for providing the services the sheriff is statutorily obligated to provide. It is unlawful for a sheriff to charge a fee for additional services beyond those they are statutorily obligated to provide, unless they have a valid contract with the municipality agreeing to pay those fees.

III. Analysis

A. Obligations of a county sheriff to provide police services to incorporated municipalities within their county.

1. Colorado constitution and statutes

Article XIV, Section 8 of the Colorado constitution creates the office of county sheriff, along with other county offices. Section 30-10-501, C.R.S., mandates the election of a sheriff in each county. The statute establishing the duties and authority of county sheriffs is Section 30-10-516, C.R.S., which provides:

Sheriffs to preserve peace – command aid

It is the duty of the sheriffs, undersheriffs, and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections.

On its face, the statute imposing duties on county sheriffs to keep the peace in their county makes no distinction between the unincorporated and incorporated parts of the county.

2. Colorado case law

No Colorado appellate case has directly addressed what services a county sheriff must provide to incorporated versus unincorporated parts of their county. A few Colorado appellate decisions have addressed the duties of county sheriffs generally, under Section 30-10-516, C.R.S., and at the common law.

In 1930, the Colorado Supreme Court addressed the general duties of county sheriffs and their deputies in *Corder v. People ex rel. Smiley*, 287 P. 85 (Colo. 1930). In that case county deputy

Hatfield witnessed a group of boys within the Town of Pierce playing Halloween pranks. Deputy Hatfield ran after the boys and yelled at them to stop. When they failed to do so, deputy Hatfield fired two shots. One shot hit one of the boys in the hand. The wounded boy's family sued the county. One of the issues at trial was whether Hatfield was acting in his capacity as a county deputy sheriff. In deciding that Hatfield was acting as a county deputy sheriff, the court addressed generally the duties and obligations of sheriffs and their deputies under Colorado law. The court held it is the duty of sheriffs to "stop criminal acts and arrest the offenders, for crimes known to the common law and those specified by statute, and to do more to preserve the peace, such as seeking to dissuade the wrongdoers from continuing their misconduct." *Corder*, 187 P. at 88.

The duties of county sheriffs was confirmed more recently in *Castaldo v. Stone*, 192 F. Supp. 2d 1124 (Dist. Colo. 2001), a civil case arising out of the Columbine High School shootings asserting claims against the Jefferson County sheriff and deputies, among others. In rendering his decision, the federal district judge noted that the duties and powers of county sheriffs and their deputies are those set forth in Section 30-10-516, C.R.S. Specifically the court ruled, "[t]heir mission is to keep the peace to the best of their abilities and to protect the public so that the citizenry can live and work in a relatively safe world." *Castaldo* 192 F. Supp. 2d at 1147.

Colorado's attorney general has also opined on the duties owed by county sheriffs in Colorado generally. In 1999, the Colorado attorney general issued an opinion addressing the authority of county sheriffs to act if computer failures at the year 2000 date change caused disasters or breaches of the peace. Office of the Attorney General, State of Colorado, Formal Opinion No. 997-)9/8/99) (1999 WL 33100121 (Colo. A.G.). The attorney general addressed a county sheriff's authority in the absence of a declaration of emergency and determined:

Statutes define and authorize specific powers and duties of the sheriff. The peace keeping duties are codified in Colorado at Section 30-10-516, C.R.S., ...Sheriffs may utilize their authority under Section 30-10-516, C.R.S. to "keep and preserve the peace in their respective counties," which they do by issuing summons and making arrests.

3. Conclusions under Colorado statute and cases

Colorado cases and statute establish that a deputy sheriff has the duty to keep the peace to the best of their abilities and to protect the public so that the citizenry can live and work in a relatively safe world. *Castaldo*. Sheriffs are obligated to fulfill those duties by stopping criminal acts and arresting the offenders, for crimes defined under Colorado statute and established by the common law. *Corder* and Colorado AG opinion. The statute encapsulating those duties, Section 30-10-516, C.R.S., places the burden on sheriffs to do so "in their respective counties" without any indication that their obligations are confined solely to unincorporated parts of their county. No Colorado authority was found placing any such limitation on a sheriff's duties, though, as mentioned above, no Colorado appellate decision has expressly addressed the issue.

The fact that the statute establishing the duties of a county sheriff requires them to "keep the peace and protect the public" in their respective counties, without any limitation excluding

citizens and taxpayers in the incorporated areas of their counties from receiving such protection, could be deemed dispositive of the issue. This is particularly true since taxpayers in incorporated areas pay the same county taxes that fund a county sheriff's office, that taxpayers in the unincorporated areas pay. If all county taxpayers are paying the same taxes for sheriff services, then all county taxpayers should receive those services, regardless of whether they are in the unincorporated or incorporated parts of the county. However, since no Colorado appellate decision has addressed the issue yet, it is prudent to consider how it has been resolved in other states.

4. Authorities from other states

Appellate courts and authorities in states other than Colorado have directly addressed the duty of a county sheriff to provide police services in incorporated municipalities within their counties and have determined the sheriff's duties are the same in incorporated town as in unincorporated parts of their county.

The Missouri Supreme Court has held that not only is a sheriff obligated to provide police services within municipalities in their county, but the failure to do so when they are aware of violations of state laws constituted a willful violation and neglect of duty. *State v. Orton*, 465 S.W.2d 618 (Mo. 1971), cert. denied, 404 U.S. 852 (1971), involved a proceeding initiated by Missouri's attorney general seeking to remove a county sheriff, in part, because the sheriff failed to enforce state laws regarding gambling and liquor within the incorporated limits of municipalities within the county when he knew or should have known there was no effective local law enforcement. See also *Thompson v. Reichman*, 188 S.W.597 (Tenn. 1916) (It is "a distinct neglect of the duty" for sheriffs and their deputies "to ignore common knowledge of law violations or to intentionally avoid being where they have reason to believe that such offenses are being committed."), cited with approval in *Brownstown Township v. County of Wayne*, 242 N.W.2d 538, 540 (Mich. App. 1976).

The sheriff in *Orton* argued that he relied on the city police to enforce the laws in the cities. It was apparent to the court that the city police made little effort to stop gambling or liquor violations. However, the court held that the failure of city police to enforce the laws within cities did not excuse the sheriff's failure to do so, when no one else was providing such enforcement. The Court held:

His sheriff authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance the cities and towns have their police departments or their town marshals. ... Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law...[T]he sheriff may leave local enforcement in local hands, but only so long as reasonable efforts in good faith are made to enforce the law. ...If the sheriff has reason to believe that the police force is neglecting its duty it is his duty to inform himself. And if he knows that the police are ignoring or permitting offenses his duty to prevent and suppress such offenses is the same as it would be if there were no municipality and no police force.

465 S.W.2d at 626. (cited with approval in *State v. Knight* 904 P.2d 1159, 1165 (Wash. App. 1995). See also *In re Sulzman*, 183 N.E. 431, 431 (Ohio 1932) (“A stricter duty is imposed upon the sheriff to maintain law and order in those areas of the county not adequately policed by local authorities.”) cited with approval in *Brownstown Township v. County of Wayne*, 242 N.W.2d 538, 541 (Mich. App. 1976)

In *Windham v. LaFever*, 486 S.W.2d 740 (Tenn. 1972), the Tennessee Supreme Court ultimately determined a sheriff could receive additional compensation for patrolling all roads and highways in the county because regular patrol of all roads and highways in a county was not a required service as part of his common law duties or expressly required by statute, but rather, was an additional service on top of his required base services. In order to render its decision, the Court examined what services a sheriff must provide that are not additional services, but are the required services and where a sheriff is obligated to provide them. The Court held:

...it is clear that the duties and powers of a sheriff within the limits of an incorporated city are precisely the same that they are in the remainder of the county. The law draws no distinction.

486 S.W.2d at 744.

In addition, the *Windham* court emphasized an enhanced need for the county sheriff to provide police services within an incorporated town where the town does not have its own police force. *Id.*

Washington state’s attorney general has addressed the issue of a county sheriff’s obligation to provide police services in incorporated municipalities within their county under a Washington statute that is very similar to Colorado’s law. (Office of the Attorney General, State of Washington, Formal Opinion 1990, No. 4, May 24, 1999). The Washington attorney general was asked to address two specific questions:

1. To what extent does a county sheriff have an obligation to enforce state law in an incorporated city or town within the county?
2. Does the answer to question 1 differ depending upon the existence of a functioning city or town police department?

Washington’s attorney general noted that “where territorial references are made, the statutes direct the sheriff to ‘defend the county’ and to take various actions ‘within the county’ or ‘in their respective counties. “Nowhere has the Legislature indicated that the sheriff’s powers and duties are limited to the unincorporated areas of the county. Nor is there any statutory language from which such a limitation might be inferred.”

As mentioned above, the same is true for Colorado’s statute governing a county sheriff’s duties. Under Section 30-10-516, C.R.S., sheriffs are to keep and preserve the peace “in their respective

counties.” The statutory language that references where the county sheriff’s duties extend is to “their respective counties” without any express or implied limitations to only unincorporated areas in the county.

Washington’s attorney general went on to discuss a sheriff’s duty under the common law, noting that, “the sheriff at common law was the chief law enforcement officer of the county, and that the office of sheriff retains its common law powers and duties unless modified by the constitution or statutes.” According to the Washington attorney general, “We thus conclude that the sheriff has a general duty to enforce state law in both unincorporated and incorporated areas of the county... Thus the statutory duties of the sheriff apply equally within and without municipal boundaries.”

It should be pointed out, however, that Washington’s attorney general concluded the statutes do not obligate a sheriff to provide municipalities with a specific number of police officers, or with a specific level of police services. If a municipality wants law enforcement services beyond those provided by the sheriff to the unincorporated parts of the county, the municipality would need to enter into a specific contract with sheriff or establish their own police department for such additional services.

With regard to the second question posed to Washington’s attorney general of whether the analysis changes if the municipality lacks its own independent police force, based on the courts’ analyses in the *Orton* and *Brownstown Township* cases, the attorney general concluded that where a municipality is unable to afford its own police department, “the sheriff must take this factor into account in allocating his office’s resources between the cities and the unincorporated areas of the county. To the extent that certain areas are not adequately policed by local authorities, the sheriff’s duty to provide police protection increases.” Washington AG Opinion, p. 4.

B. As a Colorado statutory town, the Town of Bennett is under no legal obligation to provide municipal police services in addition to what the county sheriff is obligated to provide.

Colorado statutes classify municipalities into several categories based on their size, nature and form of governance. The only category of Colorado municipality that requires appointment of a police chief or police department is a city that has adopted the city manager form of government. Under that structure, the city manager has an obligation to propose a plan of administrative organization to the city council and that plan “shall...provide for a chief of police...and such other officers as are deemed necessary for the efficient administration of the city.” See Section 31-4-215, C.R.S. There is no parallel requirement placed on Colorado municipalities that fall within the category of statutory towns, such as Bennett.

The Town of Bennett is a statutory town. The statute governing appointment of officers by statutory towns only mandates appointment of three municipal officers - a town clerk, a town treasurer, and a town attorney. Although a statutory town may appoint other officers it deems necessary, such as a police chief, it is under no obligation to do so. Section 31-4-304, C.R.S.

If a municipality desires to have law enforcement services in addition to those the sheriff is obligated to supply, then a municipality would need to obtain those additional services either through a contract with the sheriff or through establishment of its own municipal police chief and police department. Section 30-11-401, C.R.S., specifically contemplates such contracts between municipalities and county sheriffs. These mechanisms are the only way a municipality can assure itself it will receive certain specific levels of police protection or specific law enforcement services it desires such as a minimum number of officers on duty at any given time, or regular traffic patrol within the municipality. However, a contract with the sheriff or establishment of its own municipal police force is never required for statutory towns and is only appropriate if the town desires something more than what the sheriff is statutorily obligated to provide.

C. It is unlawful for a county sheriff to charge a municipality a fee for providing services they are obligated by statute to provide. It is unlawful for a sheriff to charge a fee for additional services beyond those they are required by statute to provide, unless they have a valid contract with the municipality agreeing to those fees.

The Colorado statutes contain a strong prohibition against a county sheriff charging fees that do not have a basis in law. Section 30-10-521, C.R.S., sets forth heavy consequences if a sheriff even indirectly asks for or demands, much less receives, an unlawful fee. It provides:

No sheriff shall directly or indirectly ask, demand, or receive for any service to be performed by him in the discharge of any of his official duties any greater fees than are allowed by law, on penalty of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

As demonstrated above, a county sheriff is obligated by statute to keep and preserve the peace in their county, under Section 30-10-516, C.R.S. No statute authorizes a county sheriff to charge a fee to fulfill their statutory obligations. If a municipality desires services from the sheriff in addition to the minimum services the sheriff is statutorily obligated to provide, the sheriff and municipality are authorized to enter into an contract for such services. In the absence of such a contract there is no lawful basis for a sheriff to unilaterally charge a municipality for such additional services. Unless the sheriff has a separate, enforceable contract entitling them to a fee for additional services, it is unlawful to demand payment for such services and Section 30-10-521, C.R.S. entitles the municipality aggrieved by such request to recover treble damages from the sheriff.

IV. Conclusions

1. The Adams County sheriff has a duty to keep the peace to the best of his ability and to protect the public by stopping criminal acts and arresting the offenders for crimes defined under Colorado statute or established by the common law.

2. The sheriff does not have a duty to provide a specific number of police officers or a specific level of police services to the incorporated or unincorporated parts of the county, so long as he is satisfying his duties as sheriff.
3. The sheriff owes his duty to the incorporated municipalities within the county such as the Town of Bennett, to the same extent as it is owed to the unincorporated portions of the county.
4. Failure of the sheriff to fulfill his duty to all parts of the county, including incorporated municipalities, could constitute willful neglect of duty.
5. The sheriff's duty may be even greater with regard to municipalities in the county where he knows they do not have their own police department, as is the current situation in Bennett.
6. There is no independent statutory obligation on Bennett to provide police services either by contract or by creating its own department unless it desires to obtain services greater than those the sheriff is obligated to provide throughout the county, or unless Bennett wants to ensure that certain specific police services, such as patrol services, or specific levels of services such as a certain number of deputies on duty at all times, are provided to Bennett.
7. The sheriff is prohibited by statute from asking or collecting a fee from Bennett for the services he is obligated by statute to provide. He is also barred from collecting a fee for additional services beyond his statutory duties in the absence of a valid contract with the municipality agreeing to pay such fee. If the sheriff demands such payment, he owes Bennett three times the amount he demanded or collected.