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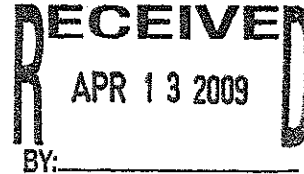
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April 9, 2009

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Re: County Reduction in Salary and Office of Routt County Sheriff

Dear John:

I have spoken to Sheriff Wall about his concerns with the Board of County Commissioners Resolution decreasing salaries and its impact on the Sheriff's role in governing the Office of Sheriff. I have not seen the precise Resolution passed by the Routt County Board of County Commissioners ("BCC") last week, but I understand that generally the BCC reduced the pay of the employees of Routt County, Colorado by ten percent (10%) without any reduction in the time they are obligated to provide to Routt County pursuant to their employment. This Resolution appears to include the deputies and administrative staff of the Office of the Sheriff.

Speaking only for the Office of Sheriff, I am concerned that this reduction in salary effects the ability of the Sheriff to fully and completely run the Sheriff's Office as contemplated by statute and case law in Colorado. As this firm has stated before, the responsibility of the Board of County Commissioners as to the Sheriff's Office begins and ends with the budgeting of money.

The Office of Sheriff does not contest the ability and responsibility of the BCC to conduct the fiscal affairs of the County nor its responsibility for the construction of the annual budget in consultation with the various department heads. See Wadlow v. Kanaly, 511 P.2d 484 (Colo. 1973).

I am mindful that C.R.S. §29-1-109(1)(c) states:

In the event that revenues are lower than anticipated in the adopted budget, the governing body may adopt a revised appropriation ordinance or resolution as provided in Section 29-1-108.

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Further, I acknowledge that C.R.S. §29-1-108 includes:

The governing body shall revise, alter, increase, or decrease the items as it deems necessary in view of the needs of the various spending agencies and the anticipated revenue of the local government.

The language of Section 108 seems to address the formation of the budget at its inception and includes the language: "at which time objections of the electors of the local government shall be considered".

C.R.S. §30-2-104 addresses the compensation of deputies and assistants referring to the County Clerk, Treasurer, Assessor, and Coroner in their appointing deputies, assistants, and employees "as shall be necessary and at such compensation ... as shall be fixed by said officers with the approval of the Board of County Commissioners ..."

This same provision addresses the Office of Sheriff. C.R.S. §30-2-106. That statute has been cited often, and generally stands for the proposition that salaries for employees of the Sheriff's Office are set by the Sheriff with the approval of the Board of County Commissioners. That setting of salaries for the Sheriff's Office has already been accomplished by the BCC for 2009. Thereafter, the operation of the Office of Sheriff is exclusively that of the Sheriff. The Sheriff is responsible for his deputies and employees.

This responsibility of the Sheriff for his employees was affirmed in Bristol v. Board of County Commissioners, 281 F.3d 1148 (10th Cir. 2002). Schroeder v. Board of County Commissioners of Jefferson County, 381 P.2d 820 (Colo. 1963), a predecessor to our current statutes, required the Commissioners to provide necessary funds for the Superintendent as well as the County Clerk, Assessor, Treasurer, and Coroner. After two years of funding the secretary for the Superintendent, the Commissioners tried to eliminate that position. The Colorado Supreme Court ruled that the Superintendent had the exclusive authority to determine the Clerical Assistant as necessary (my emphasis). Once that Board of County Commissioners agreed upon the funding of the position, the Board thereafter had no unilateral power to diminish the compensation determined and approved by the Board of County Commissioners previously. The Colorado Supreme Court in Schroeder cited a 1921 case that also followed this line of analysis that the legislature, after giving authority to set the budget in the first instance with the County, the approved salaries thereafter fell solely under the purview of the elected officials. Quoting from the Morning case, the Court in Schroeder stated that the statutes:

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...clearly gives the County Judge authority to fix the salary of his assistant, subject only to the approval of the Board of County Commissioners. They have no independent authority in the matter. When the salary has been fixed by the Judge and approved by the Board, it is the established salary until the two parties which established it agree to change it.

Therefore, Sheriff Wall would submit that the BCC does not have any legal authority to unilaterally reduce the salary of the Sheriff's deputies and personnel after having approved the Sheriff's Office budget. The Sheriff was given an operating budget for 2009 and the Sheriff has the authority to operate the Office of Sheriff within that budget. To now unilaterally reduce that budget interferes with the operation of the Office of Sheriff and interferes with the salary structure approved by the BCC in that budget. This is particularly so because there are many functions that are the responsibility of the Sheriff over which the Sheriff has no discretion.

I understand that this is a difficult and sensitive matter. By this letter, I would welcome a forthwith response. I am mindful that there might be other statutes impacting the authority of the BCC in the area of salaries that may effect the statutory and case law cited by myself in this letter. If I am mistaken as to any matter of fact or law, this is an invitation for you to present legal authority along those lines.

At first review, there seems to be no legal authority for the BCC to unilaterally reduce the salaries of the Sheriff's Office personnel based upon the cases and statutes cited herein.

Yours truly,



Mark J. Fischer
FOR THE FIRM

Xc: Gary Wall, Routt County Sheriff
Ralph A. Cantafio, Esq.

MJF/sm