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January 23, 2024

Chris Coulter
VIA EMAIL—ccoulter@greenecountymo.gov

RE: **Opinion Letter**
Sheriff's Retirement
Matter ID 1500-002

Dear Chris:

In light of the passage of Senate Bills 20, 75, and 186, you have asked me for an opinion as to whether the County can cover the cost of the new retirement fund contribution for County Sheriffs or whether any contribution from the County would result in a deduction in the Sheriff's pay by statute.

To begin, our legislature has authorized, by way of RSMo. § 57.952, the creation of a statutory "Sheriffs' Retirement Fund," which was originally passed in 1983. As amended by the most recent legislation, the statute now reads:

"1. There is hereby authorized a 'Sheriffs' Retirement Fund' which shall be under the management of a board of directors described in section 57.958. The board of directors shall be responsible for the administration and the investment of the funds of such sheriffs' retirement fund. The general assembly **and the governing body of a county may appropriate funds for deposit in the sheriffs' retirement fund**. If insufficient funds are generated to provide the benefits payable pursuant to the provisions of sections 57.949 to 57.997, the board shall proportion the benefits according to the funds available.

2. The board may accept **gifts, donations, grants, and bequests** from **public** or private sources to the sheriffs' retirement fund.

3. Each county shall make the payroll deductions for member contributions mandated under section 57.961, and the county shall transmit such moneys to the board for deposit into the sheriffs' retirement fund." (emphasis added).

I have read the opinion letter from Damon Phillips, the Sheriff's personal counsel, regarding the implementation of the new bill. I agree with Damon's opinion that "subsection 1 of § 57.952, RSMo. does clearly authorize the County appropriating funds, not just limited to mandatory contributions..." I also agree, especially given the legislative history, that there is a "clear legislative intent" to expand potential funding sources to the Counties.

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While previous iterations of the statute expressly **prohibited** the County from appropriating funds to the Sheriffs' Retirement Fund ("**Neither** the general assembly, **nor** the governing body of a county may appropriate funds..."), the latest iteration of the statute expressly authorizes the practice ("The general assembly **and** the governing body of a county **may** appropriate funds.").

Moreover, I see nothing in the plain language of the statute that would *limit* such appropriation of funds to donations, grants, bequests, or matching funds. Surely if the legislature had intended to limit the application of this statute to matching funds, it would have clearly told us so.

The question, as I understand it from the Auditor, is if the County pays contributions into the retirement fund, whether such contributions "will be added to [the Sheriff's] taxable wage base as a benefit and then by the end of the year [whether] he will exceed his statutory annual salary." This question, I presume, is based in part off of the letter from the MSRS, which concludes that their accountants recommend treating any such contributions as "an after-tax contribution and it should be included as part of the **taxable income** **no matter who is paying the contribution**."

While I agree the amendments do not provide a lot of clarity on the topic of how these contributions are to be taxed, I do not believe our legislature intended for these contributions to be treated as part of the Sheriff's **salary** base.

The Sheriff's salary, as well as his retirement benefits, are set by Chapter 57 of the Missouri Revised Statutes.

RSMo. § 57.317 provides that "[e]xcept in a noncharter county of the first classification with more than one hundred fifty thousand and less than two hundred thousand inhabitants, the county sheriff in any county of the first or second classification shall receive an annual **salary** equal to eighty percent of the compensation of an associate circuit judge of the county."

Though there are no cases or Attorney General's opinions that I could find on point, the key word to me is "salary." That word is important because later in Chapter 57, specifically in the sections relating to the retirement fund, the word "compensation" is used frequently. For example, RSMo. § 57.961 provides that "[t]he officer or officers responsible for making up the payrolls for each county shall cause the contribution provided for in this section to be deducted from the **compensation** of the member in the employ of the county, on each and every payroll, for each and every payroll to the date his or her membership terminates. When deducted, each contribution shall be paid by the county to the system; the payments shall be made in the manner and shall be accompanied by such supporting data as the board shall from time to time prescribe. When paid to the system, each of the contributions shall be credited to the member from whose **compensation** the contributions were deducted. The contributions so deducted shall be treated as employee contributions for purposes of determining the member's pay that is includable in the member's gross income for federal income tax purposes."

The word "salary" is not defined by Chapter 57. However, RSMo. § 57.949 does have a definition of the word "compensation," to include "**all salary and** other compensation payable by a county to an employee for personal services rendered as an employee, but not including travel and mileage reimbursement, uniform allowance, or housing allowance."[1] We know from that definition that a Sheriff's

[1] For whatever reason, the legislature chose to use at least three different terms in Chapter 57 to describe monies that get paid to Sheriffs. As noted above, RSMo. § 57.317 uses the term "salary," which is undefined by the statute, to describe monies paid to the Sheriff equal to an associate circuit judge. When dealing with the retirement section of the Chapter, RSMo. § 57.961 and other statutes use the word "compensation," which is defined to include the Sheriff's salary **and** any other monies paid to the Sheriff. Additionally, RSMo. § 57.961.2

"salary" may not always be his "compensation," as the definition contemplates that "compensation" includes the Sheriff's salary **and** potentially other monies made payable to the Sheriff.

In my opinion, the Sheriff's "salary" (which would be 80% of the salary of an associate circuit judge), along with any other monies paid by the County to the Sheriff for his services (which I believe would include retirement benefits), would constitute his "compensation." That total "compensation," to include any retirement contributions from the County, may very well be taxable as part of the Sheriff's income. I do not have an opinion on that and will defer to the Sheriff's accountants on that question (though I note that the statute seems clear that the 5% would be taxable as gross income and it appears that the MSRS has concluded that any benefits provided from the County would be taxable as income). But I do not believe that every dollar contributed by the County to the Sheriff's retirement fund would require an offset from his statutory "salary" as contemplated by RSMo. § 57.317.

If you have any further questions, please let me know.

Very truly yours,

OFFICE OF COUNTY COUNSELOR,

N. Austin Fax

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states that "[n]otwithstanding any other provision of law to the contrary, each person who is a member of the system on or after January 1, 2024, shall be required to contribute five percent of the member's **pay** to the retirement system." The word "pay" is also not defined. Black's Law Dictionary defines "pay" as "[c]ompensation for services performed; **salary**, wages, stipend, or other remuneration given for work done." Given Black's Law Dictionary defines "pay" as synonymous with "salary," it is my opinion that our legislature intended those terms to be used interchangeably in Chapter 57. Though I note that is not at all clear from the statute itself.