

CRIMINAL JUSTICE COMMITTEE

Allegations of Violation of Ethics in Government Act

Citizen Complaint #01/02-C-025

Reason for the Report

A citizen complained that he gave two guns to the Sheriff's Department to be raffled and the money used to provide protective vests for the Sheriff's Department police dogs (K-9 Unit). The proceeds from the sale of the guns were not used for the intended purpose. The Grand Jury elected to inquire into the propriety of these events.

Scope of the Investigation

The Sheriff's Department property room was checked on April 17, 2002.

The following persons were interviewed:

- The Sheriff, twice;
- The Complainant, twice; and
- An Elections Department clerk.

The following documents were reviewed:

- Citizen Complaint #01/02-C-025; and
- The Sheriff's Form 700, Statement of Economic Interest, and Schedule E, Income-Gifts, for entries on April 1, 2001, April 1, 2002, and May 8, 2002.

Findings

- F1: The complainant personally gave two guns (a Weatherby rifle and a shotgun) to the Sheriff to be raffled with the intention that the proceeds be used to buy protective vests for the K-9 Unit. He claimed that on several occasions dogs were injured because such vests did not protect them.
- F2: It is the position of the Sheriff that there was no need for protective vests for the K-9 Unit, and that if there were such a need the Department would find the money to buy the vests.
- F3: It is the position of the Sheriff that the guns were a personal gift to him from the complainant.
- F4: The guns were not logged into the property records of the Sheriff's Department, as they should have been if they were a gift to the Department.

- F5: The Sheriff is a "designated employee" as described in the County's Conflict of Interest Code, Resolution No. 25-98, adopted by the Board of Supervisors (Board) on February 24, 1998, and as amended by the Board by Resolution No. 036-2001 on February 27, 2001. Accordingly, pursuant to Title 2, California Code of Regulations, Section 18730(b)(7)(B)(1), the Sheriff was required to file, with the County Elections Department, a Form 700, Schedule E, disclosing the value of each gift which he received if the gifts exceeded fifty dollars (\$50) in value.
- F6: Section 89503(a) of the California Government Code, a portion of the Ethics in Government Act of 1990, provides that "[n]o ... elected officer of a local government agency ... shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250)." Pursuant to Section 89503(f) of the Government Code, see Title 2, California Code of Regulations, Section 18730(b)(8.1), that monetary limitation has been adjusted upward to meet inflation, to the point where it is now three hundred twenty dollars (\$320).
- F7: The instruction form for Schedule E of Form 700 informs that it is the acceptance of a gift, not the ultimate use to which it is put, that imposes a reporting obligation. Such gifts must be disclosed even if they are never used and even if they are given away to another person, unless, within thirty (30) days after receipt, they are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- F8: When the Sheriff filed his various Annual Statements of Economic Interest, he did not declare the receipt of or the value of the rifle or the shotgun, as he should have if they were personal gifts.
- F9: The Sheriff sold the Weatherby rifle, through a consignment arrangement with a gun store for \$500.00. The \$500 was credited to the Sheriff's personal account at the store. The shotgun is still in the Sheriff's personal possession.
- F10: The Sheriff decided to turn over the sale proceeds and the shotgun to the complainant to resolve the matter.
- F11: As of April 20, 2002, the complainant has received neither the money nor the gun.
- F12: On May 8, 2002, the Sheriff filed an amended Schedule E to Form 700, Statement of Economic Interests (Income – Gifts), with the County Elections Department. That amended Form 700 was "certif[ied] under penalty of perjury," with a representation that the Sheriff had "used all reasonable diligence in preparing this statement," and that "to the best of [his] knowledge the information contained [in it] and in any attached schedules is true and correct." Although the Form 700 indicated that "[t]he period covered [was] 12/31/99 through December 31, 2001," and not a "leaving office" type of statement, the amended Schedule E indicated that it was both a "2001/2002 Annual" and a "Leaving" type of statement.

F13: The amended Schedule E filed by the Sheriff on May 8, 2002, contained the following statements:

- The Sheriff had received a Weatherby rifle and a single-barrel shotgun from a named individual
- The rifle was attributed a value of \$275 to \$375 as of 1999.
- The shotgun was attributed a value of \$25, with the explanation "used gun, hard to estimate."

F14: There is a \$125 - \$225 discrepancy between the \$500 actual credit received by the Sheriff and the valuation amount reported by him.

F15: In the "Comments" section of Schedule E, the Sheriff made the following statements:

"This man gave me a rifle and shotgun in 1999, I think. At the time I saw it as he wanted to ge [sic] rid of them and so he gave them to me. At the time I did not think them a reportable gift. As I am finishing my term and leaving elected office I was advised that maybe I should file to set the record straight."

Recommendations

R1: The Sheriff's Department should review the need to purchase protective vests for its dogs.

R2: The Sheriff should turn over to the complainant both the proceeds from the sale of the Weatherby rifle, and the shotgun.

R3: The County should review its Conflict of Interest Code policy regarding receipt of gifts by elected County officials.

R4: Gifts received by County Officials should be recorded by their departments and letters of acknowledgement sent to the donors.

R5: The Board of Supervisors should review the list of "designated employees," the limitations on personal gifts from reportable sources, the County's Conflict of Interest Code, the Ethics in Government Act and the rules and regulations promulgated by the Fair Political Practices Commission thereunder, and disseminate all necessary information to ensure that all county employees are fully aware of gift acceptance and gift reporting requirements.

R6: The El Dorado County District Attorney should investigate the conduct of the Sheriff described above.

Responses Required for Findings

F1 through F14 El Dorado County Sheriff
El Dorado County Board of Supervisors
El Dorado County District Attorney

Responses Required for Recommendations

R1 through R6 El Dorado County Sheriff
El Dorado County Board of Supervisors
El Dorado County District Attorney