

CONFIDENTIAL LEGAL MEMORANDUM
ATTORNEY-CLIENT PRIVILEGED

TO: Joseph M. Cardamone III, Kenosha County Corporation Counsel

FROM: Joseph M. Russell, Independent Counsel
von Briesen & Roper, s.c.
Shareholder, Litigation & Risk Management

RE: Preliminary Factual Findings & Conclusions Regarding “Stipends” Provided to the Kenosha County Sheriff’s Department Admissions and Release Specialists & Support Operations Manager

DATE: August 2, 2022

On May 31, 2022, the law firm of von Briesen & Roper, s.c. (“von Briesen”) was engaged by Kenosha County—specifically by the Kenosha County Corporation Counsel, Joseph M. Cardamone III—as Independent Counsel (“IC”) to conduct a confidential and privileged investigation (the “Investigation”) of “stipends” provided to the Kenosha County Sheriff’s Department Admissions and Release Specialists¹ (“ARSs”) and Support Operations Manager,² pursuant to the orders of the Kenosha County Sheriff, David G. Beth, beginning in early 2022.

This memorandum contains the Investigation’s preliminary factual findings and conclusions as to whether Sheriff Beth’s conduct—in authorizing these “stipends”—violated Wis. Stat. § 946.12 (Misconduct in Public Office), Kenosha County Municipal Code Chapter 20 (Ethics Code for Officials and Employees) or other applicable statutes, laws, codes, ordinances and policies.

SCOPE & METHODOLOGY OF THE INVESTIGATION

Over the course of the Investigation, the IC conducted interviews of the following Kenosha County officials and employees:

¹ An Admission and Release Specialist (“ARS”) (Pay Grade—NE4) (FLSA Status—Non-Exempt) is a clerical position that performs tasks relating to the booking and releasing of Kenosha County inmates. The current job description for an ARS (last revised on December 9, 2021) is attached as Exhibit A.

² The Support Operations Manager (Pay Grade—E1) (FLSA Status—Exempt) serves to provide and execute support operations for the two correctional facilities managed by the Kenosha County Sheriff’s Department: the Kenosha County Detention Center (“KCDC”) and the Pre-Trial Facility (“PTF”). The current job description for the Support Operations Manager (last revised on September 6, 2021) is attached as Exhibit B.

- **David G. Beth**, Kenosha County Sheriff
- **Joseph M. Cardamone III**, Kenosha County Corporation Counsel
- **Tony Gonzalez**, Captain of Operations, Kenosha County Sheriff's Department
- **Kathy Kemen**, Office Manager, Kenosha County Sheriff's Department
- **Samantha Kerkman**, Kenosha County Executive
- **Angela Khabbaz**, Fiscal Services Manager, Kenosha County Sheriff's Department
- **Marc Levin**, Kenosha County Chief Deputy Sheriff
- **Justin Miller**, Captain of Administrative Services, Kenosha County Sheriff's Department
- **James Post**, Support Operations Manager, Kenosha County Sheriff's Department
- **Daniel Ruth**, Lieutenant of Administration (former Captain of Detentions), Kenosha County Sheriff's Department
- **Clara-lin Tappa**, Kenosha County Director of Division of Human Resources

Various background documents were provided by the interviewees, which are referenced and summarized below or are attached as exhibits.

RELEVANT FACTUAL FINDINGS

The Kenosha County Sheriff's Department is the third largest law enforcement agency in the state of Wisconsin and operates the third largest jail facility in the state.³ Approximately two-thirds of the Sheriff's Department staff and budget are committed to corrections.⁴ The Kenosha County Sheriff's Department corrections staff is responsible for maintaining the records, security and health of hundreds of inmates in Kenosha County's two jail facilities.⁵

The Sheriff's Department "Goals and Objectives" include the following: "[t]o provide effective and efficient Sheriff's Department administration and meet the professional needs of its personnel"; "[t]o provide quality custody, care, and control of a large and diverse inmate population."⁶ In 2020, the average daily inmate population in Kenosha County was 522.⁷ In 2020, the total number of bookings was 4,491 and the total number of releases was 4,663.⁸

In 2021, the Kenosha County Sheriff's Department was in the midst of a staffing crisis with regard to retaining and attracting qualified personnel to manage and operate its corrections

³ Kenosha County Sheriff's Department webpage, available at <https://www.kenoshacounty.org/548/Sheriff>.

⁴ Kenosha County Sheriff's Department 2020 Annual Report at 4, available at <https://www.kenoshacounty.org/DocumentCenter/View/12214/2020-Annual-Report>; see also Kenosha County 2022 Budget at 47 (organizational chart indicating 237.20 FTE positions currently budgeted in the Detentions Division, including ARSs and the Support Operations Manager), available at <https://www.kenoshacounty.org/DocumentCenter/View/12926/2022-County-Budget>.

⁵ *Id.*

⁶ Kenosha County 2022 Budget at 42.

⁷ Kenosha County Sheriff's Department 2020 Annual Report at 10.

⁸ *Id.*

facilities. This crisis was not unique—and still is not unique—to Kenosha County. County jails across Wisconsin have been dealing with staffing shortages due to exhausting work conditions and low pay.⁹ The coronavirus pandemic and a statewide labor shortage only made matters worse.¹⁰

However, the Kenosha County Sheriff's Department staffing crisis became more critical and acute in 2021 after the Racine County Board approved approximately \$7 million in American Rescue Plan Act funds ("ARPA funds") to be used over the next several years to raise wages for Racine County employees.¹¹ This included an average pay increase of \$7.50 an hour to \$28.96 per hour for Racine County corrections officers.¹² As a result of Racine County's actions, the Kenosha County Sheriff's Department began losing more experienced corrections personnel at a much faster rate.

In response, the Kenosha County Sheriff's Department attempted to retain—and attract—corrections personnel by raising the wages of corrections staff through the budgeting process. As a result of this process, Kenosha County's 2022 Budget: increased the pay grade of Correctional Officers ("COs") and Direct Supervision Officers ("DSOs") from NE6 to NE8; increased the pay grade of Corrections Corporals from E3 to E5; increased the pay grade of Corrections Sergeants from E6 to E8; and increased the pay grade of Cooks from NE-D to NE-5.¹³

However, certain Kenosha County corrections personnel did not receive any pay increase as a result of last year's budgeting process; namely, the Kenosha County Sheriff's Department ARSs (22.00 total FTE positions currently budgeted) and Support Operations Manager (a single 1.00 FTE position currently budgeted).¹⁴ Shortly after the 2022 budget was approved, this compensation issue became widely known, much to the dissatisfaction of the ARSs and the Support Operations Manager. The Sheriff had grave concerns that the Sheriff's Department could lose these critical employees, thereby jeopardizing the safe and efficient operation of the Detentions Division. An additional concern was that it is time-consuming and costly to attract and train new qualified ARSs to replace those that leave.

The ARS "Stipend"

Sheriff Beth alerted the Kenosha County Board regarding the unique compensation issues pertaining to the ARSs (*i.e.*, that they did not receive a pay raise like most corrections personnel they worked with, including ARS supervisors) during the citizen-comments component of the Board's December 7, 2021 meeting, as follows:

⁹ See, e.g., D. Keading, "Jails and prisons have always struggled to find and keep workers. COVID-19 and a nationwide labor shortage made it worse," Wisconsin Public Radio (Dec. 21, 2021), attached as Exhibit C.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See "Summary of Budgeted Personnel Changes—2022" from the 2022 Kenosha County Budget, attached as Exhibit D.

¹⁴ Kenosha County 2022 Budget at 44.

[D]uring the budget process . . . we did . . . with all of you . . . we did . . . we raised the hourly wage to all of our correctional staff—the DSOs the CSOs—and we gave them good raises . . . About a month ago or so, we were 29 correctional officers short. We’re still about 29 but we weren’t even having people apply to be a correctional officer or a cook . . . Right now, we are going through interviews . . . we have got about 20 . . . 3 started today and 20 are lined up to be starting in January . . . so the efforts that all of you did . . . that all of us did to make this happen . . . it’s working . . .

There’s one group of people . . . I know this can’t be solved tonight . . . I’m going to be bugging you guys in the next few months . . . There [are] 21 people . . . our booking clerks . . . they somehow got overlooked in this budget process and they didn’t get raises like the other correctional staff did . . . so I’m just giving you a heads up that I’m going to be looking at coming and asking . . . to do something to help correct that for next year. All the people they work with . . . the cooks, the correctional officers, the direct supervisor officers, all of them got pretty good raises to help keep them. I want to do the same for the booking clerks too, the ARSs.¹⁵

The following day (December 8, 2021), Sheriff Beth emailed the Kenosha County Director of Finance & Administrative Services, Patricia Merrill (copying Clara Tappa, Brian Beth, Marc Levin, Justin Miller, Dan Ruth, Tony Gonzalez and Kathy Kemen), as follows (with the subject line “RE: Stipend”): “Just so everyone knows, I was at the County Board meeting last night for K9 Riggs getting a Proclamation. I took the opportunity during citizens comments to alert them that after the new year I would be bringing up the stipends for temporary and seasonal employees. I also brought up the ARS’s that were not addressed in the budget process to see if there is a way we can address that as well.”

In January 2022, participants at the Sheriff’s command-staff meetings addressed on-going concerns about losing ARSs due to the absence of pay increases and challenging work conditions. These command staff meetings occurred Tuesday mornings and were attended by Sheriff Beth, Chief Deputy Marc Levin, Captain of Administration Justin Miller, Captain of Operations Tony Gonzalez and Captain of Detentions Daniel Ruth (now Lieutenant of Administration). Over the course of one or more of these meetings, ideas were exchanged as to how to retain ARSs and attract replacement ARSs for those that recently quit.

Retention of ARSs—and attracting new ARSs—has been challenging for many reasons, including the following: ARSs must work scheduled holidays and weekends and must be able to work any of the existing 12-hour shifts¹⁶; mandatory overtime is required of ARSs, with or without

¹⁵ Sheriff Beth’s pertinent comments begin at the 9:59 mark of the 25:53-minute meeting video, available on the Kenosha County website and at https://www.youtube.com/watch?v=8GWV8oo-Emc&list=PLPzXMvx1JsRhW9Ak2TgwbAL2AX_nPG4&index=16.

¹⁶ Ex. A at 2.

advance notice¹⁷; ARSs must possess the self-control and ability in verbal communication skills to manage aggressive, hostile and emotional behavior from incarcerated subjects¹⁸; ARSs are frequently and often exposed to individuals who are rude or irate, as well as individuals with known violent backgrounds¹⁹; ARSs are frequently and often exposed to communicable diseases and bodily fluids (blood, urine, etc.).²⁰ As one interviewee noted, although ARSs fulfill primarily clerical duties, they are still “exposed to all the ugliness of jail.” The pandemic and civil unrest made matters worse, as ARSs still had to report to work regardless of the risks in doing so. ARSs are critical to the Detentions Division. As one interviewee expressed, they are a “cornerstone” and “without them, we cannot function.”

In light of these retention challenges, Sheriff Beth decided—with the agreement of his command staff—that ARSs should be provided “stipends” (the term used by Sheriff Beth) as a “bridge,” stop-gap or interim measure until the budgeting process could address potential pay increases for ARSs in the 2023 Kenosha County budget. Pursuant to Sheriff’s Beth directives, each ARS would receive a weekly “stipend” amounting to two (unworked) hours paid at one and one-half times the ARS regular rate of pay. Sheriff Beth made the decision to pay this “stipend” without consulting with the Kenosha County Director of Human Resources or the Kenosha County Executive.²¹ Sheriff Beth believed that he could unilaterally authorize such “stipends” because he had money in his budget to provide them, in light of the fact that the Sheriff’s Department was significantly understaffed relative to the number of budgeted positions.²² Sheriff Beth also believed it was not a “good time” to bring the ARS compensation issue up again before the County Board because “we were in the process of elections for our County Executive and County Board Supervisors” and because he would “figure it out with the new County Board.”

¹⁷ *Id.*; see also Kenosha County Employee Handbook (2021) 4.2 (“Mandatory overtime is required only under the following circumstances: . . . Employees of the Sheriff’s Department . . . When minimal staffing requirements are not met . . . Employees will be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 in one workweek.”)

¹⁸ Ex. A at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ The Kenosha County Budget authorizes expenditures of up to \$100,000 for wage adjustments and stipends deemed necessary for purposes including but not limited to employee retention, special assignments, in-range market adjustments, etc. See 2021 Kenosha County Employee Handbook at 37-38. Proposals for adjustments must be made to the Human Resources Director by the Department Director. *Id.* The proposal includes operational justification for the recommended increase. *Id.* Fiscal analysis and sign-off is required by the Department Director of Finance and Administration before presentation for approval to the County Executive. *Id.* Sheriff Beth stated he was not aware that the Kenosha County budget authorizes expenditures for stipends; nor did he know that there were such existing protocols for the approval and authorization of such stipends.

²² One interviewee indicated that Custody Policy Manual 1001.4 of the Kenosha County Sheriff’s Department provides that “the Sheriff shall have the ability to authorize expenditures from the [Inmate] Commissary Fund on a case-by-case basis for the overall benefit and operation of the Sheriff’s Department.” However, the Sheriff did not cite the Commissary Fund as a source of funding for the “stipends” discussed herein.

Sheriff Beth also believed that he could unilaterally authorize such “stipends” because they would be similar to the extra compensation field training officers (“FTOs”) have historically received when they provide field training to trainees. In particular, FTOs are paid overtime rates (*i.e.*, one and one-half times their regular rate of pay) when they draft field-training daily observation reports (“DORs”) even though they are not working overtime. This extra compensation has been consistently provided to FTOs for decades (*i.e.*, pre-dating Sheriff Beth) without any known criticism or complaint. The TeleStaff²³ code the Sheriff’s Department uses to pay FTOs this overtime rate is “FTO OT.” This code has been used as long as the TeleStaff system has been used by the Sheriff’s Department.

Once the Sheriff decided to provide this “stipend” to ARSs, he allowed Chief Deputy Levin, Captain of Detentions Ruth (now Lieutenant of Administration) and Captain of Administration Miller to determine how the stipend would be processed. They, in turn, worked with Kenosha County Sheriff’s Department Office Manager Kathy Kemen in creating a unique TeleStaff code that would reflect this ARS “stipend.” Ms. Kemen did not want a code that would inaccurately reflect these ARS stipends as “overtime” payments because they were not payments made to compensate overtime hours.²⁴ Rather, Ms. Kemen created a new TeleStaff code—similar to the “FTO OT” code—named “ARSX.”

No interviewee from the Sheriff’s Department expressed any contemporaneous concern regarding the payment of such “stipends” to the ARSs in this manner; nor did any interviewee question whether the Sheriff had authority to authorize such “stipends.” The Sheriff’s Department command staff all agreed it was fair to provide additional compensation to the ARSs in this manner and that it was critical to retain them for a critical assignment.

On February 8, 2022, to implement this new ARSX code for payroll purposes, Ms. Kemen sent Brian Beth (Kenosha County Fiscal Services Manager—Payroll), copying Captain Miller, an email (with the subject line “New Telestaff Code needs mapping”) that states, in pertinent part, as follows (emphasis in the original):

We have a new code that has been created in Telestaff that needs to be mapped to Kronos.²⁵ It will go into effect this pay period (ending

²³ TeleStaff is the time-management system of record used by the Kenosha County Sheriff’s Department. For background information regarding the capabilities of TeleStaff, *see* <https://www.ukg.com/solutions/specialty-solutions/ukg-telestaff>.

²⁴ All non-exempt employees are paid one and one-half times their regular rate of pay for all hours worked in excess of 40 in one work week, except for those employees covered by the law enforcement exemption in the Fair Labor Standards Act. Employees covered by the law enforcement exemption must work 171 hours over a 28-day period before earning overtime. Kenosha County implements a practice to pay overtime for hours over 80 in a per pay period for a 12-hour work schedule as allowed under the Fair Labor Standards Act. *See* 2021 Kenosha County Employee Handbook at 33.

²⁵ Kronos is the payroll management system that interfaces with TeleStaff.

2/12/22). The code is **ARSX**. It is set up like the FTO code, where it is paid at **1.5 X** the employees wage rate.

Can you get this mapped in Kronos so I can run a test on it? I'm hoping to be able to test it tomorrow [. . .]

On the same day (February 8, 2022), Manager Beth responded to Ms. Kemen's email, copying Captain Miller, as follows: "I have mapped the code in Kronos to Overtime which is similar to FTO."

As a result of these actions, and as ordered by Sheriff Beth, all Kenosha County Sheriff's Department ARSs began receiving monthly "stipends" amounting to approximately ten (unworked) hours paid at one and one-half times the ARS regular rate of pay. A TeleStaff report reflecting all uses of the "ARSX" code is attached as Exhibit E. Although reflected in TeleStaff as "ARSX," these stipends are recorded in Kronos with the pay code "OVERTIME." A payroll report reflecting these monthly payments to all of the ARSs is attached as Exhibit F.

On April 26, 2022, shortly after taking the oath of office (April 18, 2022), County Executive Samantha Kerkman attended one of the Sheriff's command-staff meetings, at which she took notes. Among the topics discussed were the following: current recruitment within the Sheriff's department (*e.g.*, there were 96 candidates but many had not passed their physicals); a cadets program to help recruitment, especially with regard to dispatchers and jailers; the jail budget; addressing staffing concerns through prospective pay increases. The County Executive, however, did not record any discussion—nor does she recall any discussion taking place—regarding the current payment of any "stipends" or unworked overtime in order to retain ARSs or any other employee within the Sheriff's Department.

On April 11, 2022, an anonymous letter was received by Kenosha County Director of Human Resources, Clara-lin Tappa, and Assistant Director of Human Resources, Ashley Lutterman. The letter contained the following allegations:

The Sheriff himself has personally ordered multiple supervisors to record hours in Telestaff knowing the employees did not work those hours. I repeat—Sheriff Beth has ordered several supervisors of the KSD to enter hours into Telestaff that were not worked, thus stealing from the County. When jail staff and jail supervisors were recently given raises, ARSs and employee Jamie [sic] Post did not receive raises. The Sheriff asked the board for raises for them but the board denied those raises. The Sheriff then ordered jail Operations Supervisors to log overtime hours for the ARSs and Jamie [sic] Post into Telestaff even though they did not work them. The Sheriff said each person is to received [sic] at least 10 hours of unearned, unworked overtime per week. The Sheriff further ordered that nothing about this is to be put in writing. But looking at Telestaff and speaking with ARSs and supervisors will show this happened and is ongoing. CD Levin and CPT Miller were all involved in this scheme and Beth, Levin, and Miller all gave direct orders to

different people to enter these unearned hours. Beth, Levin and Miller also ordered supervisors not to put anything in writing.

Upon receipt of the anonymous letter, Director Tappa discovered that there appeared to be monthly entries for ten hours of overtime for ARSs and determined further investigation was required. Director Tappa and Corporation Counsel Cardamone met with Sheriff Beth and informed him outside counsel would be retained to conduct an independent investigation. The payment of the ARS “stipends” thereafter ended. In total, Kenosha County paid eighteen (18) ARSs \$21,736.95 as a result of Sheriff’s authorization of these ARS “stipends.”²⁶

The IC has found no evidence that the Sheriff or his command staff ordered or instructed any Kenosha County officer or employee to refrain from discussing or writing about these ARS “stipends.”

The Support Operations Manager “Stipend”

Similar to the ARSs, the Sheriff’s Department Support Operations Manager (“SOM”), James Post, did not receive a pay increase in 2022. SOM Post alerted Chief Deputy Levin and Sheriff Beth of this fact and met with them (around the first week in February 2022) to explain why he should be considered for a pay increase due to his employment history (he has served in the SOM position—formerly titled “Laundry Manager” until 2022—for approximately 14 years) and unique responsibilities within the Sheriff’s Department. In particular, he questioned why he, who has supervisory duties and is a certified CO, was excluded from a pay increase, which even the DSO he supervised had received. A portion of the materials SOM Post used to prepare and present his position to Chief Deputy Levin and Sheriff Beth is attached as Exhibit G, in which his “Closing” consists of the following (emphasis in original):

Yet, taking this position in 2008, I never came to either of you complaining or questioning why. But, now come this June when someone . . . I supervise and do evaluation on . . . will be making approx. \$.11 less than me . . . **Then, MORE than me in 2023.** Yet, with none of the duties or responsibilities.

I truly believe that my responsibilities ride the same guidelines as the other Supervisors. Yet, I can’t make a mistake and have someone else pick up for me. My mistake can shut down the operations of both facilities. This is where I feel I’m not riding the guidelines of complaining or be[ing] self-centered. But, it’s about Equality and the right thing to do.

Following this meeting, Sheriff Beth authorized that SOM Post receive a monthly “stipend” amounting to eight hours of (unworked) hours at one and one-half times his regular pay. Sheriff Beth made the decision to pay this SOM “stipend” without consulting with the Kenosha County Director of Human Resources or the Kenosha County Executive. The work code “Overtime

²⁶ Ex. F.

Detentions” was entered in TeleStaff to record this SOM “stipend,” as detailed in the TeleStaff report attached as Exhibit H. SOM Post’s payroll detail memorializing this “stipend” (described as “CO DSO Special Assignment” in Kronos) is attached as Exhibit I. This SOM “stipend” was discontinued following Director Tappa’s receipt of the anonymous letter.

The IC has found no evidence that the Sheriff or his command staff ordered or instructed any Kenosha County officer or employee to refrain from discussing or writing about this SOM “stipend.”

**APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES AND CODES**

Wisconsin Constitution, Article IV, Section 4

“[S]heriffs shall be chosen by the electors of the respective counties . . . for the term of 4 years . . . The governor may remove any [sheriff] . . . giving to [the sheriff] . . . a copy of the charges and an opportunity of being heard . . . When a vacancy occurs in the office of sheriff, the vacancy shall be filled by appointment of the governor, and the person appointed shall serve until his or her successor is elected and qualified.”²⁷

Wis. Stat. § 17.09 (Resignations, Vacancies, and Removals from Office)

Chapter 17, which governs resignations, vacancies and removals from office, provides that a sheriff can be removed “by the governor, for cause.” Wis. Stat. § 1709(5). “Cause” is defined as inefficiency, neglect of duty, official misconduct, or malfeasance in office.” Wis. Stat. § 17.001.

Wis. Stat. § 946.12 (Misconduct in Public Office)

Any public officer or public employee who does any of the following is guilty of a Class I felony:

- (1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer’s or employee’s office or employment within the time or in the manner required by law; or
- (2) In the officer’s or employee’s capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer’s or employee’s lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer’s or employee’s official capacity; or
- (3) Whether by act of commission or omission, in the officer’s or employee’s capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer’s or employee’s office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

²⁷ *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 301 Wis. 2d 266, ¶ 84 (2007) (citing constitutional provision regarding county sheriffs).

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

**Excerpts from Municipal Code of Kenosha County, Chapter 20
(Ethics Code for Officials and Employees)²⁸**

20.02-1 DECLARATION OF POLICY The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policies be made in proper channels of the government structure; that public office and employment not be used for improper personal gain; and that the public have confidence in the integrity of its government. The County Board believes that a code of ethics for the guidance of County officials and employees will help them avoid conflicts which are substantial and material between their personal interests and their public responsibilities. In recognition of these goals, there is hereby established a Code of Ethics for Kenosha County officials and employees. Except as hereinafter provided it is intended that this code shall apply to all persons whose functions require the exercise of discretion and judgment including all County government officials elected by ballot in Kenosha County and members of boards and commissions or committees which are considered part of Kenosha County government. Specifically exempt from the provisions of this ordinance are the Kenosha County Board of Supervisors and the following State employees who are governed by separate codes of ethics: Circuit Court Judges, the District Attorney and Assistant District Attorneys. Nothing herein contained is intended to deny to any individual, rights granted by the United States Constitution, the Constitution of the State of Wisconsin, the laws of the State of Wisconsin.

20.03-1 RESPONSIBILITY OF PUBLIC OFFICE Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Wisconsin and to carry out impartially the laws of the nation, state and county, and to observe in their official acts the highest standards of ethics and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in their official actions is to be above reproach so as to foster respect for all government. All current employees and job applicants and any individual applying for membership on a County board or commission shall be given notice of the fact that they will be subject to the provisions of this Code of Ethics, any financial disclosure requirements that they will be subject to and the need to reveal any potential or actual conflict of interests.

20.04-1 STANDARDS OF CONDUCT . . .

²⁸ Pursuant to Wis. Stat. § 19.59(1m), "any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices."

(4) Special Conflicts and Standards of Conduct Enumerated. Conflicts of interest prohibited under this section and expected standards of conduct by county employees and officials include: . . .

(m) Falsifying Claims or Records. No county employee or official shall intentionally engage in submitting any falsified claim including time cards or in preparing or presenting any false information or record or misrepresentation, either oral or written, in the course of any work falling within the scope of their employment. Time cards for non-represented or exempt employees, however, shall be submitted in compliance with Federal FLSA guidelines.

(n) Misuse or Misappropriation of County Property or Funds. No county official or employee shall misuse or misappropriate any county funds or property including, but not limited to, the use of County copiers, computers, or cell or land-based phones for personal use on County time. The County maintains the right to access, monitor and review the use of such equipment and recognizes no claim of confidentiality regarding the use of such County equipment. No County property, facility or personnel on County time may be used to repair or maintain an official's or employee's personal property . . .

20.06-1 ACTION UPON CONFLICT . . .

(6) In cases where an official or employee is aware that a violation has occurred, the matter shall be reported to and reviewed by the Corporation Counsel's Office and reported by that Office to the Kenosha County Executive, the immediate supervisor of an employee, and to the employee, and if the situation warrants to the, the Kenosha County Sheriff's Department and the Office of the Kenosha County District Attorney. When, in the opinion of the Corporation Counsel's Office there is a finding of probable cause that a violation of this ordinance has occurred, he may issue a warning or citation for violation of this ordinance and in cases involving a value of more than \$500, he shall refer the matter to the District Attorney.²⁹

CONCLUSION

The IC concludes that Sheriff Beth did not violate Wis. Stat. § 946.12 (Misconduct in Public Office). In particular, Sheriff Beth did not believe that providing the "stipends" to the ARSs and the SOM exceeded his lawful authority; Sheriff Beth did not intend to obtain a dishonest advantage for certain Kenosha County employees; and Sheriff Beth did not intentionally try to falsify—or order any one to falsify—an entry in an account or record book.

The IC concludes that Sheriff Beth did not intend to violate the "Standards of Conduct" articulated within Municipal Code of Kenosha County, Chapter 20 (Ethics Code for Officials and Employees). In particular, the IC concludes that Sheriff Beth did not knowingly or intentionally falsify records in authorizing the payment of the ARS and SOM "stipends."

²⁹ See also 20.11-1 (Penalty): "Violations shall be prosecuted by the District Attorney's Office."

However, the IC concludes that Sheriff Beth did “misuse or misappropriate” county funds with regard to the payment of these “stipends,” pursuant to 20:04-1(4)(n), because he did not work within the proper channels of Kenosha County’s government structure to authorize them. Notwithstanding the Sheriff’s belief that these “stipends” were fair and were necessary to retain the Sheriff’s Department ARSs and SOM, such “stipends” should only have been authorized after approval was obtained from the County Executive, the Director of Finance & Administration and the Director of Human Resources. In particular, the Kenosha County Budget authorizes expenditures of up to \$100,000 for wage adjustments and stipends (such as those here) deemed necessary for purposes including but not limited to employee retention, special assignments, in-range market adjustments, etc. See 2021 Kenosha County Employee Handbook at 37-38. Proposals for adjustments must be made to the Human Resources Director by the Department Director. *Id.* The proposal includes operational justification for the recommended increase. *Id.* Fiscal analysis and sign-off is required by the Department Director of Finance & Administration before presentation for approval to the County Executive. *Id.* Here, none of those approvals were sought or obtained.

Sheriff Beth stated he was unaware that the Kenosha County Budget authorizes expenditures for stipends, pursuant to such existing protocols. Nonetheless, Sheriff Beth also does not recall ever unilaterally authorizing employee “stipends”—before he did so with regard to the ARSs and SOM—in a manner authorized or condoned by other channels of Kenosha County’s government structure. In addition, Sheriff Beth had previously emailed (on December 8, 2021) the Director of Human Resources (Clara Tappa) and the Director of Finance & Administrative Services (Patricia Merrill) that he had spoken to the County Board about providing the ARSs “stipends” and “to see if there is a way we can address this as well.” Considering his length of service to Kenosha County, Sheriff Beth should have known to seek subsequent approval and authorization of these unique and unprecedented ARS and SOM “stipends” with other channels of Kenosha County government before he did so, including the Director of Human Resources, the Director of Finance & Administrative Services and the County Executive. However, he chose not to seek such approvals and authorization.

The existing collaborative manner of approving and authorizing such “stipends” is consistent with the Kenosha County Ethics Code “Declaration of Policy” (20.02-1) (emphasis added): “The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; **that government decisions and policies be made in proper channels of the government structure**; that public office and employment not be used for improper personal gain; **and that the public have confidence in the integrity of its government.**” The Sheriff’s actions, on the other hand, were inconsistent with the Kenosha County Ethics Code because they undermine public confidence in the integrity of government. His actions suggest that any Kenosha department head can unilaterally provide “stipends” to any Kenosha County employee based on his or her subjective beliefs of fairness or equality.

The Sheriff’s explanation that it was not a “good time” to bring up the ARS compensation issue before the County Board (following his citizen comments on December 7, 2021)—because “we were in the process of elections for our County Executive and County Board Supervisors”—does not justify his unilateral actions with regard to the payment of these anomalous “stipends.” Although he believed he could “figure it out with the new County Board,” he did not do so (nor

did he consult with the former or current County Executive, the Director of Human Resources or the Director of Finance & Administration) before unilaterally authorizing them. The SOM “stipend,” a unique compensation issue in itself, was also handled unilaterally without the authorization of the Director of Human Resources, the Director of Finance & Administration or the County Executive.

The Sheriff’s justification that these “stipends” correlated with the “FTO OT” payments historically made to field training officers does not bear close scrutiny, notwithstanding the fact that the correlation appears to have been made in good faith. With regard to “FTO OT” payments, those receiving such payments have actually worked the hours paid, albeit at one and one-half times their regular rate of pay.³⁰ Here, the ARSs and SOM were being paid for hours not worked; in effect, these “stipends” constituted retention bonuses. Such bonuses were not approved by any channel of government structure outside of the Sheriff’s Department.

Sheriff Beth will not be running for office again after his current term expires. Under these circumstances, potential sanction of Sheriff Beth (such as official censure by the Kenosha County Board) may have little practical effect and may cause lasting damage to the Sheriff’s Department’s working culture and morale, at a time when Kenosha County is electing a new Sheriff. Furthermore, Kenosha County should avoid action that may increase attrition among its correctional staff, or deter future qualified applicants who are interested in becoming employees within the Sheriff’s Department.³¹ The IC also concludes that no further investigation is warranted regarding other officials or employees of Kenosha County with regard to these “stipends,” as it is firmly established that Sheriff Beth ordered them to be provided.

However, Kenosha County must hold all elective officers to its standards of ethics in the name of the residents that they are elected to represent. It is for this reason that Kenosha County’s Ethics Code (*see* 20.06-1(6)) requires, if there is a finding of probable cause that a violation of the Ethics Code has occurred, that the Corporation Counsel “shall refer the matter to the District Attorney” in cases involving a value of more than \$500. The IC concludes that there is such probable cause here.

³⁰ The IC recommends Kenosha County reconsider the manner in which its time-management and payroll systems record the payment of additional compensation for field training activities, such as drafting of Daily Observation Reports (“DORs”). As currently recorded, such compensation ambiguously reflects worked “overtime” hours when, technically, they are not.

³¹ Due to such attrition concerns and possible deterrent effects, the IC does not recommend action by which Kenosha County seeks to claw back the “stipends” already paid to the ARSs or the SOM. As a recent ARS exit interview reflects, retention of ARSs remains a challenge due to compensation issues. *See* Exhibit J (reporting that the departing ARS “was ‘beyond livid’ over the pay problems for ARS’s”).