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SPRINGFIELD

January 9, 1978

FILE NO. S-1328

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Contract Between County
and Sheriff For Sheriff to
Provide Automobiles

Honorable Raymond W. McCamy
State's Attorney
Crawford County
Robinson, Illinois 62454

Dear Mr. McCamy:

You have asked for my opinion on the legality of a contract under which the sheriff of Crawford County supplies automobiles for use by the sheriff's department, receiving from the county \$200 per month per car plus 15¢ for each mile a car travels. You also ask whether this contract must be reported by the sheriff under the Illinois Governmental Ethics Act. Ill. Rev. Stat. 1975, ch. 127, par. 601-101 et seq.

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In answer to your first question, I am of the opinion that this contract is prohibited by section 3 of "AN ACT to prevent fraudulent and corrupt practices" (Ill. Rev. Stat. 1975, ch. 102, par. 3). This section reads in part as follows:

"§ 3. No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void."

In Peabody v. Sanitary District (1928), 330 Ill. 250), the Supreme Court determined that a person is an officer who may be called upon to act or vote upon a contract even if he has only the duty to advise a board which enters into the contract. One of the inherent duties of a sheriff is to advise the county board on the needs of office which would include advising on the number of sheriff's cars needed. There is a public policy to forbid interests by public officials or employees in public contracts. (Peabody v. Sanitary District (1928), 330 Ill. 250, 262.) This contract falls within that prohibition.

I note that "AN ACT to prevent fraudulent and

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corrupt practices" has been amended by Public Act 80-938, but does not affect the result in this situation.

Your second question is whether the sheriff must list the contract in his statement of economic interests. The sheriff must file a statement under section 4A-101(g) of the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1976 Supp., ch. 127, par. 604A-101(g)). Section 4A-102 of the same Act lists the kinds of interests that must be reported. Subsections (a) and (b) of that section clearly do not apply to the contract about which you have asked. Subsection (c), however, provides in part as follows:

"(c) The following interests shall also be listed by persons listed in items (g), (h) and (i) of Section 4A-101:

(1) The name and instrument of ownership in any entity doing business with the unit of local government in relation to which the person is required to file if the ownership interest of the person filing is greater than \$5,000 fair market value * * * .

(2) Except for professional service entities, the name of any entity and any position held therein from which income in excess of \$1,200 was derived during the preceding calendar year if the entity does business with the unit of local government in relation to which the person is required to file. * * * "

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The question is whether the sheriff's ownership of the cars causes him to have an interest in an "entity" within the meaning of the Act. "Entity" is defined in section 1-111 (Ill. Rev. Stat. 1975, ch. 127, par. 601-111) to include, among other things, an individual or proprietorship. Thus, the Act clearly requires that any contracts held by the sheriff in his own name be reported in accordance with section 4A-102.

Very truly yours,

A T T O R N E Y G E N E R A L