

Stephen A. Gannon
Chouteau County Attorney
P.O. Box 459
Fort Benton, MT 59442

Dear Mr. Gannon:

You have requested my opinion on the following question:

Must the county sheriff deposit the fees for concealed weapons permits in either a designated account with the county treasury or the general fund of the county treasury depending on the intended use of those fees?

In preparing this Opinion, I have considered the analysis in your Legal Memorandum accompanying your request for an Attorney General Opinion and written comments received in response to a draft opinion circulated by my office.

1. Background

The administration of granting concealed weapon permits (CWP) lies with county sheriffs. See Mont. Code Ann. § 45-8-321 to 45-8-325. "The fee for issuance of a permit is \$50. The permit must be renewed for additional 4-year periods upon payment of a \$25 fee for each renewal" *Id.* § 45-8-322(2). Additionally, a county sheriff may charge \$5 for fingerprinting to conduct the mandatory background check. *Id.* § 45-8-322(4). County sheriffs are permitted to retain these fees for the purpose of implementing CWP statutes. *Id.* § 45-8-322(5) ("Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325."). This statute is silent on how CWP fees are to be held pending their use in implementing CWP statutes. According to your request for an Attorney General Opinion, prior to 2009, the Chouteau County Sheriff deposited CWP fees into a designated county treasury revenue account. Since then, however, the Chouteau County Sheriff has deposited all CWP fees into a bank account not controlled by the county. Recently, this process was flagged in an audit resulting in your request.

2. The Law of Collection of Fees by County Officers in Montana

County sheriffs have a legal duty to collect CWP fees and implement CWP statutes. *Id.* § 45-8-321 to 45-8-325. Accordingly, these tasks are an official service of the office and may not be held by the officer for their personal use. See, e.g., *Platz v. Hamilton*, 653 P.2d 144, 201 Mont. 184 (1982) (holding because a county clerk of court had no statutory obligations concerning passport applications and voluntarily chose to execute passport applications, the clerk was not required to remit the passport fees to the county treasurer); 49 Mont. A.G. Op. 12 (2001) (holding "[a] sheriff may receive compensation from a federal agency under the terms of a

cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her 'official duties'"); 45 Mont. A.G. Op. 14 (1993) (holding "[a] full-time County Attorney serving as city attorney pursuant to an interlocal agreement may not personally receive a fee from a private company for work performed on a city-county bond issue. Attorney fees so paid should be remitted to the county general fund."); 43 Mont. A.G. Op. 75 (1990) (holding the preparation of abstracts of instruments recorded in their offices is an official service and clerks may not personally retain compensation for performing these tasks).

Fees collected for an official service or duty are controlled by Mont. Code Ann. § 7-4-2511(1). This statute provides general guidance on how fees collected by county officers in their official capacity are to be processed and deposited:

Each salaried county officer shall charge and collect for the use of the county and pay into the county treasury by the 10th day in each month *all fees* allowed by law, paid or chargeable in *all cases*, except as provided in 25-10-403. This subsection does not apply to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in the sheriff's custody.

(Emphasis added.) This statute thus covers all fees collected by county officers—including sheriffs—unless expressly excepted. See Mont. Code Ann. § 7-32-2141 (mandating the county sheriff to deposit other fees into the general fund of the county treasury as required by Mont. Code Ann. § 7-4-2511).

None of the exceptions to Mont. Code Ann. § 7-4-2511(1) apply here. The exception for mileage reimbursements does not apply, and the exception in Mont. Code Ann. § 25-10-403 allowing sheriffs to receive payments from "[e]ach party to a civil action" does not apply. "A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong." Mont. Code Ann. § 27-1-103; *see also Messenger v. Board of Comm'rs*, 19 Wyo. 309 117 P. 126 (1911) (finding fees paid to sheriffs for performing horse inspections could not be personally retained because it was not a service performed in civil cases and constituted a duty "for the protection of the public against fraud or crime"). Because none of the exceptions apply, CWP fees must be paid into the county treasury by the 10th day in each month.

Montana Code Annotated § 7-4-2511(2) then discusses the specific use and accounting of collected funds:

Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the *sole use of the county* and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the *general fund* of the county.

(Emphasis added). Because CWP fees "may be retained by the sheriff and used to implement" CWP statutes, Mont. Code Ann. § 45-8-322(5), these fees fall within the "[u]nless otherwise provided" language of Mont. Code Ann. § 7-4-2511(2). Therefore, CWP fees are not required to be for the sole use of the county and credited to the general fund so long as the fees are used to implement the CWP statutes.

Nevertheless, CWP fees are still subject to the requirements of Mont. Code Ann. § 7-4-2511(1) and must be paid into the county treasury by the 10th day of each month. To ensure that these CWP fees intended to implement CWP statutes are not mixed with the county's general fund, they should be deposited in a separate and distinct account within the county treasury for that purpose. See Mont. Code Ann § 7-6-2111("The county treasurer shall . . . keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited *in separate and distinct accounts*, with the whole receipts and expenditures shown in one general or cash account") (emphasis added). This process does not require the disclosure of individual CWP applicants' information to the county treasurer. See Mont. Code Ann. § 45-7-322(7) ("All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information"). If a county treasurer required additional information about the CWP fees collected in a county, a county sheriff would only have to provide generalized information about the revenue attributable to CWP applications. CWP fees may also accumulate year after year until the funds are used to implement CWP statutes. See Mont. Code Ann. § 45-8-322(5) (providing no time limit on period of retention of CWP fees).

The use of "retained" does not undercut this analysis. Under Mont. Code Ann. § 45-8-322(5), "[p]ermit, background, and fingerprinting fees may be *retained* by the sheriff and used to implement 45-8-321 through 45-8-325." (Emphasis added.) Retain means to "[t]o hold in possession or under control; to keep and not lose, part with, or dismiss." *Retain*, Black's Law Dictionary (10th ed. 2014). Montana Code Annotated § 45-8-322(5) should not be read in isolation. The Montana courts will "harmonize statutes relating to the same subject in order to give effect to each statute." *State v. Brendal*, 2009 MT 236, ¶ 18, 351 Mont. 395, 213 P.3d 448. Allowing sheriffs to retain control of CWP fees, while at the same time following the general requirements for handling fees collected by county officials, does not result in conflict.

Although sheriffs do not have physical possession of these fees when they deposit these fees over into a separate and distinct account within the county treasury, they still maintain control over these fees to implement CWP statutes and the fees are not mixed with the general fund. By creating these overlapping statutes, the Legislature has provided independent verification by the county treasurer that CWP fees are strictly used to implement the CWP program. Mont. Const., Art. VIII § 12 ("The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities."); *State ex rel. Erwin v. Warren*, 124 Mont. 378, 381, 224 P.2d 142, 143 (1950) ("When fees are imposed the presumption is that they are for the benefit of the state and when a salaried officer receives fees, he is receiving them as an agent

of the state."); see *also* Mont. Code Ann. § 7-6-2111 ("The county treasurer shall . . . receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, apply and pay the money out, and *account for the money as required by law . . .*") (emphasis added). This process guarantees that CWP fees are not put to personal or unlawful use. See Mont. Code Ann. § 7-4-2511(2) ("A salaried county officer may not receive for the officer's own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered.").

THEREFORE, IT IS MY OPINION:

Montana law requires CWP fees be deposited in a separate and distinct account within the county treasury by the 10th day in each month if the county sheriff intends to use these fees to implement CWP statutes. If CWP fees are not used to implement CWP statutes, then these fees must be deposited into the general fund of the county by the 10th day in each month.

Sincerely,

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General