WEST VIRGINIA CODE CHAPTER 7 ARTICLE 14C

WV Legislature

§7-14C-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Deputy sheriff" means any person appointed by a sheriff as his or her deputy whose primary duties as deputy are within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners. This definition may not be construed to include any person or persons whose sole duties are the service of civil process and subpoenas as provided in section fourteen, article one, chapter fifty of this code, but the exclusion does not preclude the service of civil process or subpoenas by deputy sheriffs covered by the provisions of this code.

(2) "Under investigation" or "under interrogation" means any situation in which any deputy sheriff becomes the focus of inquiry regarding any matter which may result in punitive action.

(3) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(4) "Hearing board" means a board which is authorized by the sheriff to hold a hearing on a complaint against a deputy sheriff and which consists of three members, all to be selected from deputy sheriffs within that agency, or law-enforcement officers or firefighters of another agency with the approval of the sheriff and who have had no part in the investigation or interrogation of the deputy sheriff under investigation. One of the members of the board shall be appointed by the sheriff, one shall be appointed by the deputy sheriff's association and these two members of the board shall, by mutual agreement, appoint the third member of the board: Provided, That if the first two members of the board fail to agree upon the appointment of the third member of the board within five days, they shall submit to the sheriff's civil service commission a list of four qualified candidates from which list the commission shall appoint the third member of the board: Provided, however, That in the event one or more members of the board cannot be appointed as otherwise provided in this section, then the chief judge of the circuit court of the county shall appoint a sufficient number of citizens of the county as may be necessary to constitute the board. At least one member of the hearing board shall be of the same rank as the deputy sheriff against whom the complaint has been filed.

(5) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

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§7-14C-2. Investigation and interrogation of a deputy sheriff.

When any deputy sheriff is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the department, which could lead to punitive action, the interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the deputy sheriff is on duty, or during his or her normal working hours, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during the off-duty time of the deputy sheriff being interrogated at any place other than his or her residence, the deputy sheriff shall be compensated for that off-duty time in accordance with regular department procedure. If the interrogation of the deputy sheriff occurs during his or her regular duty hours, the deputy sheriff may not be released from employment for any work missed due to interrogation.

(b) Any deputy sheriff under investigation shall be informed of the nature of the investigation prior to any interrogation. The deputy sheriff shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers and all other persons to be present during the interrogation. No more than three interrogators at one time may question the deputy sheriff under investigation.

(c) No deputy sheriff under interrogation may be subjected to offensive language or threatened with punitive action. No promise of reward may be made as an inducement to answering questions.

(d) The complete interrogation of any deputy sheriff shall be recorded, whether written, taped or transcribed. Upon request of the deputy sheriff under investigation or his or her counsel, and upon advance payment of the reasonable cost thereof, a copy of the record shall be made available to the deputy sheriff not less than ten days prior to any hearing.

(e) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any deputy sheriff, then that deputy sheriff shall have the right to be represented by counsel who may be present at all times during the interrogation.

Nothing herein prohibits the immediate temporary suspension from duty, pending an investigation, of any deputy sheriff who reports for duty under the influence of alcohol or a controlled substance which would prevent the deputy from performing his or her duties as defined in chapter sixty-a of this code, or under the influence of an apparent mental or emotional disorder.

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§7-14C-3. Hearing.

(a) If the investigation or interrogation of a deputy sheriff results in the recommendation of some punitive action, then, before taking punitive action the sheriff shall give notice to the deputy sheriff that he or she is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved and be delivered to the deputy sheriff not less than ten days prior to the hearing. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) The hearing shall be conducted by the hearing board of the deputy sheriff except that in the event the recommended punitive action is discharge, suspension or reduction in rank or pay, and the action has been taken, the hearing shall be pursuant to the provisions of section seventeen, article fourteen of this chapter, if applicable. Both the sheriff and the deputy sheriff shall be given ample opportunity to present evidence and argument with respect to the issues involved.

(c) With respect to the subject of any investigation or hearing conducted pursuant to this section, the hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts and other documents.

(d) Any decision, order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the deputy sheriff or to his or her attorney of record.

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§7-14C-4. Right to refuse to disclose personal finances; exceptions.

For the purposes of job assignment or other personnel action, a sheriff may not require or request a deputy sheriff to disclose any item if his or her property, income, assets, sources of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the deputy sheriff to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

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§7-14C-5. Appeal.

Any deputy sheriff adversely affected by any decision, order or action taken as a result of a hearing as herein provided has the right to appeal the decision, order or action to the deputy sheriff's civil service commission, in the manner provided for in section fifteen, article fourteen of this chapter.

The sheriff may also appeal the decision of the hearing board if he or she believes the department would be adversely affected by the order or action of the hearing board.

The order or action of the hearing board is binding upon all involved parties unless overturned in the appeal process by the deputy sheriff's civil service commission or the circuit court of the county wherein the affected parties reside.

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