

RICHARD HODSDON
ATTORNEY AT LAW

September 21, 2023

Chippewa County Board of Supervisors
Sent by Email to Each Member

Commissioners:

I represent Chippewa Sheriff Travis Hakes and I write on his behalf to express grave concerns about the action taken by the Chippewa County Board of Supervisors and memorialized in a letter to Sheriff Hakes dated September 20, 2023. I would not think it necessary to do so, but since it would seem based upon the letter, public reports and my preliminary investigation that you have been fed inaccurate and even false information, while at the same time crucial information has been withheld from you either intentionally or in an act of gross negligence by one or more officials of county government, I feel it prudent to send you a copy of the letter delivered to Sheriff Hakes in your collective names. Because the letter, if truthful, states that the vote you took in secret closed session was unanimous with one abstention, the letter in your name to Sheriff Hakes is effectively a letter that all but one of you personally sent to Sheriff Hakes and for which you bear ultimate responsibility. By this letter I intend to try to start down the path that will allow you, if you have the political and personal courage to do so, to make amends for the grave injustice, and perhaps even illegal acts, by which you have maligned this honorable and dedicated public servant.

The Board met in secret closed session on September 19, 2023, out of the public eye, which is your right under the Wisconsin Open Meeting Law, so long as your discussion falls within one of the exceptions to the law and so long as any formal action is subsequently taken at a public meeting. My evidence indicates that after the meeting was formally closed to the public it was never re-convened in a public setting to take formal action in the form of a vote to act against Sheriff Hakes. If I am incorrect in that record because the vote has yet to be published, I am prepared to amend this statement once you or someone on your behalf produces a ledger of the role call vote in which you voted to sanction and threaten Sheriff Hakes.

If you did not take such a vote in public, since the letter of September 20, 2023, does say you “unanimously approved, with one abstention, a motion”. Then based upon the announced subject matter of the meeting and the fact a vote appears to have been taken in closed session I have strong reason to believe both the meeting you attended and more importantly the vote taken, was a violation of Wis. Stat. 19.85 because none of the exceptions listed therein to the provisions of Wis. Stat. 19.81 et. seq. apply. Therefore, you should consider this letter as notice that unless further investigation convinces me to do otherwise, I will be seeking relief against you under Wis. Stat. 19.97, including referral to the Office of District Attorney and/or Attorney General for proper enforcement actions against any and all persons who violated the Open Meeting Law.

The record should also reflect that although Sheriff Hakes was clearly the subject of your meeting he was never advised of that fact prior to the meeting nor was he ever given the opportunity to appear personally or in writing to defend himself from what appears based on secondhand information I have received to date to be false, defamatory and spurious allegations of misconduct. In a system of justice based on due process a fundamental right that even the vilest of criminals has is that right to due process. Fundamental fairness requires that you provide Sheriff Hakes with a written notice of any alleged misconduct, a chance to review the evidence you think supports the charges and a chance to present a defense. You gave him none of those basic rights that every American is entitled to. I realize among the people in our society today that dislike law enforcement officers those people do not think the protectors of the public deserve any fundamental constitutional rights. It is sad to see that by your actions on September 19, 2023, you also apparently ascribe to that belief. I urge you to really consider and ask yourself the question that if you traded places with Sheriff Hakes, would you think you were fairly treated, or has the Golden Rule also been abandoned by the members of the Board?

The meeting of September 19, 2023, was not the first injustice done in this matter. For example, it appears you as a body voted to authorize an investigation of Sheriff Hakes at Chippewa County taxpayer expense over a personnel matter for which there never was nor has there still ever been, an actual misconduct complaint. I personally spoke with the attorney hired by the county to do that investigation and was advised that instead of simply investigating that one matter, she was assigned, apparently by the county administrator, to conduct an "investigation" into multiple and far-ranging matters that had nothing at all to do with the original issue. This reality might cause a reasonable person to ask if it is possible that the administrator once given the green light and approval to hire an attorney at taxpayer expense to look into one small, limited subject, used that as an opportunity to commission a wide-ranging witch hunt with the objective to harm the professional reputation and effectiveness of Sheriff Hakes. Since it seems that no formal record or minutes of the actual mission of the investigation have ever been published or made public, itself perhaps another Open Meeting Law violation, one can only speculate at this point. However, as Board members who supervise and control county administration you do not have to speculate about the direction given to the investigator and the motives of those who gave that direction. You can ask those questions directly and I encourage you to do so.

As to the substance of the letter it seems to reflect that whoever was its actual writer either does not understand or is unwilling to accept the fundamental and literally constitutional fact that the Office of Sheriff in each Wisconsin county is a separate and independent legal and political office and that the sheriff ultimately does not report to a county board or county administration. Article VI, Section 4 of the Wisconsin Constitution clearly establishes the independent elected officer of sheriff. A plethora of case law, such as *Brown County Sheriff's Dept. Non-supervisory Labor Association v. Brown County*, 318 Wis. 2d 774 (Wis. App. 2009) and *Milwaukee Deputy Sheriffs' Assn. v. Clarke*, 772 N.W. 2d 216 (Wis. App. 2009) establish severe limits on what a county board or its agents may require of a sheriff. The letter of September 20, 2023, is a prime example of gross over-reaching by you and your agents and a disregard for the

Wisconsin Constitution and doctrine of separation of powers, which is a fundamental element of our American system of government.

As a county board you have absolutely no authority to require Sheriff Hakes to “read and sign off on all sheriff’s department (sic) policies.” The Sheriff, as the person responsible for those policies has absolute control over sheriff’s office policies subject only to the mandates of the constitution and state and federal law. Sheriff Hakes has the absolute right to add, amend, change or repeal office policy as he sees fit. To put it very simply and bluntly, the policies of the sheriff’s office on operational and non-personnel matters are simply none of your business.

With regard to the two training mandates referenced in the letter once again you completely lack any authority to require Sheriff Hakes to participate in any training. As a certified peace officer Sheriff Hakes has certain mandated training and he advises me he continues to meet all those mandates and his job-related training agenda easily exceeds any legal requirements. Once those peace officer mandatory requirements are met the State of Wisconsin can mandate no more of him and so you as a board certainly cannot require anything else of him. My client advises me that as he can fit various trainings into his very busy schedule and his official budget he might very well want to participate in some of the training suggested in the letter of September 19. The decision in that regard is solely his and for you to agree or vote to “order” him to attend specific training on a specific timeline is nothing more than your support for an ultra vires act and one that gives the impression of nothing more than an effort by certain county officials to “show the sheriff who is boss”. The answer to who is boss has already been answered by the constitution, statutes, case law and the overwhelming number of Chippewa County voters who selected their sheriff in a free and open election. It is Sheriff Hakes when it comes to his role and duties as sheriff and the Office of Sheriff.

The fourth element of mandating the sheriff “check on” and “check off” under the stated guise of preventing a “safety incident” would frankly be laughable in most other contexts. The sheriff as the duly elected and sworn sheriff is on duty 24/7/365 so to the extent clocking on or off is used for any employment law purposes it simply does not apply. The letter does not even attempt to explain how the Sheriff checking in on the radio or not would relate to a security incident. With all due respect to your expertise in life, by far and away the elected official of Chippewa County who knows the most about proper security procedures and protocols is Sheriff Hakes and not a member of the board or someone in county administration. The level of relative expertise in safety and security matters is perhaps best evidenced by the fact that the county administrator himself and many other county officials are relying on Sheriff Hakes to provide the county and its staff with safety and security training. Likewise the judiciary relies on the Sheriff’s Office for its own security. You do not try to tell corporation counsel how to practice law or the elected District Attorney how to prosecute cases because you know that they know far more about that subject than you do. The same point exists with Sheriff Hakes and matters of safety and security.

It is not too late for you individually and collectively to mitigate the injustice that you have inflicted upon Sheriff Hakes, the Chippewa County Sheriff's Office and the voters, citizens and residents of Chippewa County. This matter is set to come before you as a body again on October 10, 2023. If you have the courage to do so you can vote to withdraw the letter and state for the record and on the record you acted upon incomplete information and based on what you now know you believe the action taken on September 19, 2023, was in error and the matter is fully and finally concluded with a rescission of your action of September 19. I urge you to do the right thing and in at least some measure undo the harm already inflicted upon the public, Sheriff Hakes and the Chippewa County Sheriff's Office.

S/Richard Hodsdon
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