

## **Townhalls – Common Law**

In a Constitutional Republic, it is imperative that those who represent the public, should be in dedicated contact with the public. I am not particularly a fan of board meetings as public comment segments are necessarily an engagement of the public to the representative officials. As such, upon my election to office of Jackson County Sheriff, I will enthusiastically engage the public in discussions and forums in regularly promoted townhalls. The venues of the town halls will migrate to different locations across the county.

I am emphatic that the public shall have an opportunity to offer contributions and input as to the execution of law enforcement pertaining to criminal and civil statutes, and to the administration of the Jackson County Sheriff's Department. Additionally, I will apply the enforcement of Common Laws within Jackson County.

Much of our legal system and rights are rooted in common laws, but through time and actions within our political, judicial, and policing segments, a depreciation in enforcement of common laws have occurred. This needs to change and a return in emphasis in common laws.

In addition to our hierarchy of God-given common law rights, there must be enforcement of common laws crimes committed by public officials. One such which I will address is "Misconduct In Office by a Public Officer". County public officers are defined in MCL 168.200 as being "a county clerk, a county treasurer, a register of deeds (unless position is abolished/combined with clerk by the county), a prosecuting attorney, a sheriff, a drain commissioner, and a surveyor. In 2016, the Michigan Municipal League provided a more detailed analysis of this common law crime which:

*"Misconduct in office applies only to public officers as distinguished from public employees. See People v Coutu, 450 Mich 348 (1999). In the Coutu decision, the Michigan Supreme Court held that deputy sheriffs are "public officers" for the purposes of the common law offense of misconduct in office. In order to be considered a public officer, five elements are required."*

Common Law criminal violations against the public must be charged and prosecuted. As Sheriff, I will initiate investigations where common law complaints are made and file charges as Common Law and Michigan Compiled Law provide for.

## Ethics—Misconduct in Office by Public Officers

### Common law criminal offense

Misconduct in office by a public officer is a common law offense subject to the provisions of MCLA 750.505, MSA 28.773:

Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than five years or by a fine of not more than \$10,000.00, or both, in the discretion of the court.

### Misconduct in office applies only to public officers

Misconduct in office applies only to public officers as distinguished from public employees. See *People v Coutu*, 450 Mich 348 (1999). In the *Coutu* decision, the Michigan Supreme Court held that deputy sheriffs are “public officers” for the purposes of the common law offense of misconduct in office. In order to be considered a public officer, five elements are required:

1. The position must have been created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature.
2. The position must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public.
3. The powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority.
4. The duties of the position must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body.
5. The position must have some permanency and continuity, and not be only temporary or occasional.

### Malfeasance, misfeasance, and nonfeasance

The offense of misconduct in office includes **malfeasance**, which is the doing of a wrongful act;

**misfeasance**, which is the doing of a lawful act in a wrongful manner; and

**nonfeasance**, which is the failure to perform an act required by the duties of the office.

It does not include acts done by officers in good faith or honest mistakes. The crime requires evidence of corrupt intent which does not necessarily mean, however, an intent to profit.

See also Fact Sheets covering Standards of Conduct for Public Officers and Employees, Incompatible Public Offices, and Contracts of Public Servants with Public Entities.