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STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-327

COUNTIES:  
Sheriff's Office  
Merit Commission

Honorable Jack Hoogasian  
State's Attorney  
Lake County  
County Building  
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

In your recent inquiry you say:

"Considerable misunderstanding and interpretation of the Merit Commission Act as defined in Section 859.1 of Chapter 34, Illinois Revised Statutes 1969, has occurred between the appointed Merit Commission of Lake County, Illinois, and the Sheriff of Lake County, Illinois. As a result, the Sheriff has requested me to contact you for an opinion in respect to the following proposition in relation to the interpretation of said Act.

"The Sheriff states that it is the contention of

the Commission that the Sheriff may not hire any personnel without prior approval from the Commission. The Sheriff is of the conviction that he does not require prior approval from the Commission to hire personnel other than the regular deputies. The Sheriff questions the Merit Commission's claim of administrative authority on prior approval of all personnel. Because of the Merit Commission Act and formation of the Lake County Sheriff's Office Merit Commission, rules and regulations were adopted by the County Board of Supervisors, inter alia, as follows:

#### Rules and Regulations

'The following Rules and Regulations, as adopted and revised by the Lake County Sheriff's Office Merit Commission shall apply to all personnel, deputized by the Sheriff and compensated by the County of Lake.'

#### Article I Definitions

'Classified Personnel: Male or female employees of the Sheriff's Office, whether in uniform or civilian attire, who were in the office on September 14, 1965, regardless of their duties at that time, and all Deputy Sheriffs, including Special Deputies.'

'Special Deputy-Classified: Personnel hired and deputized on a temporary basis by the Sheriff with the approval of the Commission and compensated by the County of Lake.'

'Special Deputy-Unclassified: Any personnel deputized by the Sheriff and who are not compensated by the Sheriff's Office or the County of Lake.'

**'Unclassified Personnel:** All employees of the Sheriff's Office designated as Deputies and having only limited police power, whether in uniform or civilian attire, including stenographers, secretaries, bookkeepers, elevator operators, jailers and other officers.'

"As a result of the adopted rules by the Lake County Board of Supervisors several years ago, as a guide for the Merit Commission, the Sheriff requests a legal opinion in respect to the following propositions.

"If the Merit Commission is empowered and authorized, at its discretion, by the ordinance, to place all personnel in the Sheriff's Office under the Merit System, then the phrase 'all personnel' should have been applied literally in the ordinance. Since there is a standard or guide for the Sheriff to follow, and since the language of the ordinance and the Merit System's definitions of personnel in their classification is not clear and ambiguous, an opinion of the following questions is needed;"

You then ask my opinion on the following questions:

"1. Since the ordinance which created the Merit System and subsequent ordinance dealing with training of Deputies does not say 'all' personnel will or shall be under the Merit System, does the Merit Commission have the authority to include all personnel under their jurisdiction?"

"2. Does the Merit Commission have the power and the authority under the present County ordinance which established the Merit System for 'officers and deputies' to demand of the Sheriff that he must obtain prior approval from the Commission to hire personnel on a temporary basis?"

"3. Does the Merit Commission have the authority to include stenographers, secretaries, and bookkeepers

under the Merit System which was created by the ordinance for 'officers and deputies' only?

"4. Does the Merit Commission encompass within its scope the positions of special deputies and jailers?

"5. Since the Sheriff is the only person who has the power of appointment of his deputies and/or to employ personnel and assign such personnel to any task in his office, must he seek Merit Commission's approval to hire personnel for positions other than Deputy Sheriffs?

"6. County ordinance requires that before an individual may commence employment as a Deputy Sheriff, he must be certified by the Illinois Local Government Law Enforcement Training Board and must complete basic training during a probationary period of 12 months. Does this mean that a person who has not completed the training since the ordinance became effective and/or has not completed the basic police training within the probationary period, is not, in fact, a Deputy Sheriff and may not hold that office even though he was deputized by the Sheriff?

"7. Is the Sheriff liable for the acts of the Deputies who have been appointed under the Merit System?"

Section 58.1 of "An Act to revise the law in relation to counties," as amended, reads as follows:

"859.1 Merit Commission - Appointment - Term - Election for adoption of system.] §58.1. The County Board in any county having a population of less than 1,000,000 may, by ordinance, provide for all deputies other than special deputies, employed on a full time basis in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a

standard pay plan approved by the board. Such ordinance shall provide for the appointment of a Merit Commission consisting of 3 or 5 members appointed by the county sheriff and approved by the county board. \* \* \* \* Such Commission shall promulgate rules, regulations and procedures for the operation of the merit system and administer the merit system. The County Board may establish per diem compensation for members of the Merit Commission and may allow reimbursement for reasonable and necessary expenses. However, in no event shall the amount of per diem compensation established for members of the Merit Commission exceed the per diem received by the members of the county board.

"If a petition signed by not fewer than 5% of the registered electors in the county is filed with the county clerk, requesting that the question of adopting a merit system for deputies in the office of the Sheriff, the county board shall, by appropriate ordinance, cause the question to be submitted to the electors of the county, at a special or general election specified in such ordinance, in accordance with the provisions of Section 28-3 of 'The Election Code', approved May 11, 1943, as now or hereafter amended. Notice of the election shall be given as provided in Article 12 of such code.

"If a majority of those voting on the proposition at such election vote in favor thereof, the county board shall adopt an ordinance providing for a merit system as provided in the first paragraph of this Section.

"Amended by act approved Sept. 12, 1968. L. 1968, p. 535, §1, eff. July 1, 1969 and P.A. 76-636, § 1, eff. Aug. 5, 1969."

The original statute creating a Merit System for

Deputy Sheriffs became effective June 22, 1965. The Definitions

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adopted by your Merit Commission refer to "employees of the Sheriff's Office . . . . in office on September 14, 1965" which was apparently the date the Commission became effective. The present 1969 statute, quoted above, is more restrictive than that of 1965. Each statute provided that the Commission should promulgate rules, regulations and procedures but only the 1965 required them to be approved by the County Board. The 1965 statute applied to "all deputies", the present applies to "all deputies, other than special deputies, employed on a full time basis". Under the present statute a Merit Commission would have no authority whatever over special deputies, or anyone except full time deputy sheriffs.

In the absence of statutory definitions indicating different legislative intention, courts will assume that words have their common dictionary meaning or their popularly understood meaning. Conlon-Moore Corp. v. Cumming, 28 Ill. App. 2d 368, affirmed 23 Ill. 2d 341; Stice v. Beard, 46 Ill. App. 2d 304.

Webster's Second International Dictionary defines the word "all" in part as follows:

"Every member or individual component of; each one

of; - used with a plural noun. In this sense, all is used generically and distributively, meaning that a statement is true of every individual or case; as, all men are mortal."

Applying the above rule of statutory construction to the question under consideration, it is obvious that the words "all deputies", as used in Senate Bill 293, which was approved on June 22, 1965, mean each and every deputy sheriff in the office of the sheriff.

The words "deputy sheriff" have a specific meaning in Illinois. Our Supreme Court in County of Winnebago v. Industrial Commission, 39 Ill. 2d 260, at page 261 said:

"Deputy sheriffs are recognized in Section 9 of Article X of the Illinois Constitution, S.H.A.: 'The number of the deputies and assistants of such officers [including sheriffs] shall be determined by rule of the circuit court, to be entered of record, and their compensation shall be determined by the county board.'

"Our statutes specifically provide for the appointment, the powers, and the duties of deputy sheriffs. Section 7 of the Act relating to sheriffs and deputies (Ill. Rev. Stat. 1967, chap. 125, par. 7) provides that a sheriff may appoint one or more deputies not exceeding the number allowed by rule of court and may take a bond from him for his indemnity . . . Section 12 of the same act authorizes a deputy sheriff to perform any and all duties of the sheriff and provides that the acts of the deputy are the acts of the sheriff. (Ill. Rev. Stat. 1967, chap. 125, par. 12.) Also, the sheriff is liable for any

neglect or omission of the duties of office occasioned by a deputy as he would be for his own personal neglect or omission. Ill. Rev. Stat. 1967, chap. 125, par. 13."

In Saxby v. Sonnemann, 318 Ill. 600 at 606, (1925)

it is said:

"The term 'deputy' is defined by standard lexicographers as one who is appointed to substitute for another and empowered to act for him in his name or in his behalf. A special deputy is one appointed to exercise some special function or power of the official or person for whom he is appointed. An 'assistant' is one who assists; a helper."

A deputy sheriff is a constitutional officer, and as noted by the Supreme Court in the Winnebago case quoted above, his appointment, powers and duties are specifically fixed by a statute originally passed in 1874. The use by the General Assembly of the words "all deputies" in the Merit Commission Act of 1965 shows a clear intention that the act applied only to the "officials" known as deputies as that term had been understood for over ninety years. The 1969 amendment further restricted its application by removing even "special deputies" from the act.

In the Winnebago case quoted above, the Supreme Court referring to the Merit Commission Act of 1965 said:



"The appellees argue, however, that the Merit System for Deputy Sheriffs Act, approved June 22, 1965, (Ill. Rev. Stat. 1967, chap. 34, par. 859.1), indicates that deputy sheriffs are employees within the meaning of the Workmen's Compensation Act. We cannot agree . . . Also, an examination of the Act discloses that while the legislature has authorized a plan for determining the qualification of deputies for appointment and promotion, as well as for their tenure of office, the legislature did nothing to manifest an intent to alter a deputy's status as an officer or employee within the meaning of the Workmen's Compensation Act ---

"Based on the authority we have herein considered we deem that the deputy sheriff must have been regarded as an official and not an employee of the county of Winnebago within the meaning of the Workmen's Compensation Act." (Emphasis added.)

The Merit Commission Act clearly applies only to the specific "officials" appointed as "deputy sheriff", and has no application whatever to any other type of employees of the Sheriff's Office. It is a settled rule of statutory construction that a particular enactment is operative as against the general provisions upon the same subject either in the same act or in the general laws relating thereto. (People v. Pennsylvania R. R. Co., 19 Ill. 2d 122, 129.) It is therefore my opinion that the act providing a merit system for deputy sheriffs is a particular act which is operative against the provisions of the general law. Accordingly, deputy sheriffs under a valid

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merit system established under this Act are entitled to be retrained and can be removed only in accord with the rules of the system.

Our Supreme Court in Blakeslee's Warehouses v. City of Chicago, 369 Ill. 480 at page 483 said:

"It is a cardinal rule of statutory construction that the expression of one thing or mode of action in a statute excludes other things or modes though not expressly prohibited . . ."

Since "deputies" are the only classification of employees mentioned in the Merit Commission Act, all other types of employees are excluded. Accordingly the Merit Commission has no authority over anyone not a "deputy sheriff".

As stated by the Supreme Court in the first quotation above from the Winnebago case, Chapter 125, Section 7 provides "a sheriff may appoint one or more deputies not exceeding the number allowed by rule of court." Chapter 125 does not require him to get approval from anyone for such an appointment, Chapter 34, Section 859.1, the Merit Commission Act, does not require the Sheriff to get prior approval from anyone to make an appointment--it merely requires that full time deputies shall be "appointed, promoted, disciplined and discharged pursuant to recognized merit

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principles of public employment." The sheriff alone can make an appointment, but his appointee must meet the recognized merit principle requirements.

Accordingly, in answer to your first question, even though the ordinance had said "all Personnel" the Commission's jurisdiction is limited to full time deputy sheriffs alone.

In answer to your second and third questions, regardless of the use in the ordinance of the words "officers and deputies", the sheriff does not need prior approval from the Commission to hire personnel whether on a temporary or permanent basis, and the Commission has no authority whatever over stenographers, secretaries and bookkeepers.

In answer to your fourth question, the 1969 Act expressly excludes "special deputies". "Jailers" are covered by Chapter 75, Illinois Revised Statutes, 1963. Paragraphs 2, 3, and 3a, which were not amended by the Seventy-fourth General Assembly, are as follows:

"2. The sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in such jail.

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"3. He may appoint a superintendent of the jail, and remove him at pleasure, for whose conduct he shall be responsible.

"3a. Employees who are charged with the care and custody of prisoners shall be known as jail officers"

From the above statutory provisions, it is clear that sheriff's employees charged with the care and custody of prisoners are jail officers and not deputy sheriffs.

In answer to your fifth question, the sheriff is not required to seek approval of the Merit Commission to hire anyone.

In specific answer to your sixth question; a deputy sheriff who has not completed his training since the effective date of the ordinance and has not completed basic training at the end of his probationary period is nevertheless a deputy sheriff. However, he does not become a regular member of the force and entitled to the benefits afforded therein until and unless he, or she, has completed the probationary period. See Article 2, Section 2 of the Rules and Regulations of the Lake County Sheriff's Merit Commission.

Chapter 124, Section 13, answers your seventh

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question--the sheriff is responsible for the actions of  
his deputies.

Yours very truly,

ATTORNEY GENERAL