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FILE NO. S-393

COUNTY OFFICERS:
Sheriff

Honorable Paul R. Welch
State's Attorney
McLean County
220 Unity Building
Bloomington, Illinois 61701

Dear Mr. Welch:

I have your recent letter wherein you state:

"In December of 1970 the McLean County Board of Supervisors passed a Resolution establishing a merit policy, pursuant to the provisions of Chapter 34, Par. 859.1. Attached hereto is a copy of that Resolution. Subsequently, the members of the Merit Commission were appointed, certain rules and regulations were formulated by the Merit Commission. A copy of the rules and regulations are attached hereto as Addendum #2.

"The Sheriff of McLean County now seeks to appoint an Administrative Assistant who would be outside the Merit System and could either be a

person unrelated to the Sheriff's Department, or could be a person from within the present staff of deputies who would take a leave of absence from the Merit System during the time of his appointment. The duties envisioned for the Administrative Assistant, as indicated by the Sheriff, would be as follows:

"1. He would assist in making departmental policy decision.

"2. He would be responsible to see that policy is carried out within the department.

"3. He would assist the Sheriff in the day to day decisions in running the office.

"4. In the absence of the Sheriff from the County, the Administrative Assistant would be in charge of the Sheriff's Department.

"5. The Administrative Assistant would serve at the pleasure of the Sheriff.

"This letter is to request an opinion from your office concerning the following questions with regard to the herein contained indications:

"1. Within the framework of the Merit Commission Statutes, the Resolution of the McLean County Board of Supervisors, and the Merit Board Rules and Regulations, is such a position compatible therewith.

"2. Assuming some authority is found for the appointment, are the duties and responsibilities permissible for such an Administrative Assistant in a department which has a Merit System."

Many of the duties and responsibilities of the sheriff are set forth in Sections 1 through 26a of "An Act to revise the

law in relation to sheriffs". (Ill. Rev. Stats. 1969, ch. 125, pars. 1-26a.) I find no express statutory authorization for an administrative assistant. It is my opinion, however, that the appointment of an administrative assistant would be one of the implied powers of a sheriff. Your attention is called to Section 102(b), Officers, page 368 of Volume 67, C.J.S. which reads as follows:

"An officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom.

* * * *

Such an administrative assistant could assist the sheriff in making any necessary departmental policy and see that such policy is carried out. He could assist the sheriff in the day to day decisions in running the office. The final decisions in each of these instances are, in effect, acts of the sheriff. The administrative assistant could serve at the pleasure of the sheriff. I believe that such an administrative assistant could be appointed even though the McLean county board has adopted a merit system for deputy sheriffs pursuant to Section 58.1 of "An Act to revise the law in relation to counties". (1970 Supplement to Ill. Rev. Stats. 1969, ch. 34, par. 859.1.) This statutory provision states as follows:

"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. Of the initial appointments to a 3 member Commission, one shall be for a term of 2 years, one for a term of 4 years and one for a term of 6 years. Of the initial appointments to a 5 man Commission, one shall serve for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, and one for a term of 6 years. If a 3 man Commission is increased to a 5 man Commission, the additional members shall be appointed to serve for terms of 3 and 5 years, respectively. Thereafter, all appointments shall be for terms of 6 years. In a 3 man Commission, no more than 2 of the members appointed may be from the same political party. In a 5 man Commission, no more than 3 members may be affiliated with the same political party. 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 may 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 this Section.

"Amended by P.A. 76-2060, §1, eff. July 1, 1970."

The foregoing statute clearly applies only to deputies other than special deputies. It does not preclude the sheriff from hiring other necessary personnel. I do not believe, however, that such an administrative assistant (who is not a deputy within the framework of your merit system) could be given charge of the sheriff's department in the absence of the sheriff from the county. In my opinion, this would be an encroachment upon the authority of the sheriff by a person who is not even a deputy. I find no statutory authorization for such a procedure. The duties of the sheriff, for the most part, are set forth in Sections 1-26a of "An Act to revise the law in relation to sheriffs". (Ill. Rev. Stats. 1969, ch. 125, pars. 1-26a.) A deputy sheriff, however, is authorized by Section 12 of the aforesaid Act to perform any and all duties of the sheriff, in the name of the sheriff. Said section reads as follows:

"Deputy sheriffs, duly appointed and qualified, may perform any and all the duties of the sheriff, in the name of the sheriff, and the acts of such deputies shall be held to be acts of the sheriff."

Because of the foregoing, therefore, I am of the opinion that a deputy sheriff could be such an administrative assistant to the sheriff and could be given charge of the sheriff's department in the absence of the sheriff from the county. I find no statutory authority for a deputy to take a leave of absence from the merit system, however. In other words, a deputy who is within the framework of the merit system could be given charge of the sheriff's department in the absence of the sheriff from the county and certainly could be given the other duties enumerated in your letter.

Very truly yours,

A T T O R N E Y G E N E R A L