



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

September 6, 1973

No. S-617

**CIVIL SERVICE:**  
Deputy Sheriff  
Disciplinary Suspension

Honorable Gerry L. Dondanville  
State's Attorney of Kane County  
404 Kane County Courthouse  
Geneva, Illinois 60134

Dear Mr. Dondanville:

I have your letter of recent date wherein you state  
in part:

"I have been requested by the Sheriff of Kane County to ask your office for an opinion on the interpretation of Chapter 125, Section 112, Illinois Revised Statutes. The opinion centers about an interpretation not only of this Section, but also its relation to Article 7, Section 1, Subsections A and B of the Administrative Procedures, Rules and Regulations adopted by the Kane County Sheriff's Office Merit Commission. A copy of these rules are enclosed for the information of your office.

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Section 3 of the County Police Department Act (Ill. Rev. Stat. 1971, ch. 125, par. 103) provides for the creation of a County Police Department Merit Board by resolution of the county board in any county having less than 1,000,000 inhabitants.

Section 7 of the County Police Department Act, supra, reads in pertinent part:

"Pursuant to recognized merit principles of public employment, the Board shall formulate, adopt and put into effect rules, regulations and procedures for its operation and the transaction of its business. \* \* \* "

Section 12 of the County Police Department Act (Ill. Rev. Stat. 1971, ch. 125, par. 122) reads as follows:

"Disciplinary measures prescribed by the Board may be taken by the Sheriff for the punishment of infractions of the rules and regulations promulgated by the Board. Such disciplinary measures may include suspension of any deputy sheriff in the county police department for a reasonable period, not exceeding 30 days, without complying with the provisions of Section 13 hereof." (Emphasis supplied)

Pursuant to the above delegation of authority, the Kane county sheriff's office merit commission established the following rule in relation to disciplinary measures:

"ARTICLE VII  
DISCIPLINARY MEASURES

SECTION 1. By the Sheriff:

A. The Sheriff, without filing charges with the Commission, may suspend,

without pay, for any reasonable period not to exceed a total of fourteen days within a twelve month period; any member of the Kane County Sheriff's Department for infractions of the Rules and Regulations, and a written report shall be sent to the Commission.

- B. The Sheriff may suspend any member of the Kane County Sheriff's Department for more than fourteen days only after charges against that member have been filed with the Commission, and pending the decision of the Commission on those charges.

\* \* \* "

In regard to the delegation of authority contained in section 12, supra, I note that the statutory language used therein is phrased in permissive terms. Section 12, supra, employs the word "may" in delegating authority to the board to establish disciplinary measures that could be taken by the sheriff. The word "may" is usually employed as implying permissive or discretionary, as opposed to mandatory, action or conduct. Rankin v. Rankin, 322 Ill. App. 90 at 92.

Thus, discretion has been vested with the board as to whether or not to include suspension within its adopted disciplinary measures. However, if suspension is included, it cannot exceed 30 days.

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It is well established that the rules or regulations promulgated by an administrative agency must be in accordance with the statutory authority vested within the agency. (People ex rel. Polen v. Hoehler, 405 Ill. 322.) In comparing the disciplinary measures adopted by the Kane county sheriff's office merit commission with the provisions of section 12, supra, it is obvious that the rules adopted are comparably lenient. Thus, the question arises as to whether section 12, supra, imposes the requirement on the merit commission to authorize a 30 day suspension.

I note that section 13 of "AN ACT in relation to the State police" (Ill. Rev. Stat. 1971, ch. 121, par. 307.13) contains similar language to section 12, supra. Disciplinary measures that can be taken by the superintendent of the State police may include suspension of any State policeman for a reasonable period, not exceeding 30 days.

In Clark v. Morris, 99 Ill. App. 2d, 24, the court in commenting upon section 13 stated at page 29:

"It is apparent that the Legislature intended, through §307.14, to provide for notice and hearing prior to discharge, demotion, or suspension for more than thirty days, but recognized in §307.13 that there are occasions for discipline by administrative suspension for thirty days or less.

\* \* \*

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Thus, the implication is that suspension may be provided for a period of less than 30 days.

In Brockelhurst v. State, 111 S.W. 2d, 527, the lower court therein issued an order directing the sheriff to commit a defendant to the Superintendent of the State hospital for Nervous Diseases to conduct observations and investigations of the mental condition of the defendant. The order further provided that the defendant be kept under observation "for a period of not to exceed 15 days". The commitment action was authorized under a statute which provided the procedure to be taken for the commitment of an individual; said statute further provided that the defendant shall remain under observation for such time as the court directs, not exceeding one month. It was contended by the defendant that the commitment procedure was erroneous as the court had no authority to commit the defendant for a period of 15 days as the statute required that he remain there for the full period of one month. The Supreme Court of Arkansas in commenting upon the above argument stated:

"We cannot agree with this argument, as the words 'not exceeding' \* \* \* were words of limitation, beyond which time the court could not go \* \* \* "

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In Saxhaug v. County of Jackson, 10 N.W. 3d, 722, the court construed a Minnesota statute which authorized the county board to levy an annual assessment for ditch repairs at a rate "not exceeding 30 mills". In construing this phrase, the court stated:

"The words 'not exceeding 30 mills' are in the nature of a ceiling on the amount of assessments beyond which the county board cannot go. As used in the statute, the words 'not exceeding' are words of limitation. (City of Kingsville, Tex. v. Meredith, 5 Cir. 103 F. 2d 279.) \* \* \* Such language imposes no duty to adopt the maximum rather than some lesser amount authorized. See Union Liquors, Inc. v. Finkel & Lasarow, Inc., 44 Cal. App. 2d 706, 113 P. 2d 19.

In People ex rel. Lassar v. Ramsey, 23 Ill. App. 2d 100, the court commented upon the provision of the Civil Service Act which governed the removal and suspension of employees in the classified civil service of cities. Among other things, said Act provided "nothing in this Act shall limit the power of any officer to suspend a subordinate for a reasonable period, not exceeding 30 days." The defendant claimed that the above language gave a department head the power to make repeated suspensions for the same offense as long as no one suspension exceeded 30 days. In response to this claim the court stated at page 103:

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"\* \* \* We think that such an interpretation of the act is untenable. It would give department heads a virtual power of removal, a power which by the same section is vested exclusively in a civil service commission and surrounded with all the safeguards of a full hearing. This interpretation would render the thirty day limitation completely meaningless. \* \* \* "

Thus, the Lasser case, supra, also considers the phrase "not exceeding 30 days" to be words of limitation.

Therefore, the phrase "not exceeding 30 days" is, in my opinion, a limitation and does not impose a mandatory suspension period of 30 days.

Since the Kane county sheriff's office merit commission had discretionary authority to impose disciplinary measures that may include suspension of a deputy sheriff for a period not exceeding 30 days, the rules adopted by the commission in article VII of the Commission's Rules and Regulations, are not violative of section 12 of the County Police Department Act, supra. Said rules in providing for a suspension not to exceed a total of 14 days within a 12 month period are obviously within the 30 day limitation.

Very truly yours,

A T T O R N E Y   G E N E R A L