

Date Issued: May 5, 1982 (AGO 82-38)

Requested by: Jay V. Brovold, Billings County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a board of county commissioners has the power to refuse promotions and accompanying salary raises in a sheriff's department once those positions and salaries have been provided for in a departmental budget approved by the board of county commissioners.

II.

Whether a sheriff has the authority to hire or discharge a deputy, for just cause, without the approval of the board of county commissioners.

III.

Whether there is any formal procedure to be followed by a sheriff in suspending and/or terminating the employment of a deputy.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a board of county commissioners does not have the power to refuse promotions and accompanying salary raises in the sheriff's department once those positions and salaries have been provided for in a departmental budget approved by the board of county commissioners.

II.

It is my further opinion that the county sheriff does have the authority to hire or discharge a deputy, for just cause, without the approval of the board of county commissioners.

III.

It is my further opinion that there is no formal procedure under state law to be followed by a sheriff in suspending or terminating the employment of a deputy. There is however, federal case law that would apply.

- ANALYSIS -

I.

Section 11-10-11 of the North Dakota Century Code reads as follows:

11-10-11. APPOINTMENT AND SALARY OF DEPUTIES AND CLERKS. The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney. (Emphasis supplied).

From the provisions of this section it appears that the board of county commissioners by resolution determines the number of deputies of each office and the salary. The actual appointment would appear to be within the powers of the officer concerned.

A deputy normally is a person who may act on behalf of the principal. The principal is responsible for the acts of the deputy. Generally, responsibility and authority are commensurate with each other. If the officer is to be responsible for his deputy it would be only proper that he also have authority to appoint his deputy. It would be somewhat unfair to hold the officer responsible for his deputy where he has no choice in selecting him.

While the board of county commissioners by statute (section 44-02-04, N.D.C.C.) are authorized to fill vacancies in county offices, this authority does not extend to deputies. Because of the relationship between principal and deputy it would require specific language to establish in some person other than the principal the authority to appoint deputies. None exists here. The provisions pertaining to the authority of the board of county commissioners with reference to deputies is only as to the number and salary but not to the specific appointment. The same rationale should be applied to promotions. As long as the sheriff is filling positions, by promotion, which were provided for by resolution of the board of county commissioners, and the salary for said position set by the board of county commissioners, the board of county commissioners has no authority to determine who will fill these positions.

II.

Since the sheriff has the authority to hire or appoint a deputy without the approval of the board of county commissioners, as long as the appointment is within the salary set by the county commissioners and is within the number of employees approved by them, it would also follow that the sheriff has the authority to dismiss such deputy.

III.

The sheriff has the authority to hire and fire deputies, within the number and salary set by the county commissioners. There is no statutory procedure under state law which the sheriff must follow in firing a person appointed by him.

Federal case decisions pertaining to the procedure to be used in terminating employees would have to be followed. Sheriffs should be aware, before any employee is terminated, of the due process requirements under federal case law.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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