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FILE NO. S-982

COUNTIES:
Deputy Sheriffs
Merit Commission

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

Dear Mr. Dondanville:

This responds to your request for an opinion as to whether the sheriff has the authority to pay additional compensation to a deputy sheriff above that set for such deputy by the merit commission as approved by the county board. Your question arises from the fact that there are two new administrative positions in the sheriff's office of your county, the director of operations and the director of administration, which, since their creation, have been occupied by deputies under the merit system who receive their set salary under the

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approved pay plan. In addition to this, they also receive additional compensation by a separate check for their administrative post. This additional compensation comes from funds budgeted for civilian personnel. The approved pay plan does not have a special classification for these positions.

In opinion No. S-393 I advised that the sheriff had the implied power to appoint an administrative assistant and that such person could be a deputy sheriff within the framework of the merit system but that such person would not have to be. However, if such administrative assistant were not a deputy sheriff he could not be given charge of the sheriff's office in the absence of the sheriff. I did not advise on the compensation of an administrative assistant. For the reasons to be discussed, I am of the opinion that a deputy sheriff under a merit commission may not receive additional compensation for performing duties germane to the sheriff's office.

It is a general rule of law that a public official is not entitled to additional compensation for the performance of additional duties which are germane to the office. (See State ex rel. Mikus v. Roberts, 239 N.E. 2d 660 (Ohio 1968); State v. Janing, 158 N.W. 2d 213 (Neb. 1968); and State v. Cowan, 284 S.W. 2d 478 (Mo. 1955).) While this rule of law

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has no application to two distinct offices, positions or employments (I.L.P. Officers, sec. 56), I assume that all the duties assigned to the director of operations and the director of administration are germane to the office of the sheriff and do not constitute distinct offices.

Specifically in Illinois, a deputy sheriff is an officer (Winnebago County v. Ind. Comm., 39 Ill. 2d 260), and compensation of public officers is wholly a statutory matter. In Sprinkle v. County of Cass, 340 Ill. 382, the Supreme Court stated as follows:

" * * *

Compensation for official services rendered in behalf of the State or any public corporation rests wholly upon statutory provision or authority. [cites omitted.] Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law. (City of Decatur v. Vermillion, supra). In the absence of a provision for compensation, the law deems such services to have been performed gratuitously.

* * *

Section 58.1 of "AN ACT in relation to counties"

(Ill. Rev. Stat. 1973, ch. 34, par. 859.1) provides for a merit commission and states that employees under the merit system are to be compensated according to a standard pay plan approved

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by the county board. It provides in relevant part as follows:

"§ 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. * * * "

The purpose of a merit system is to pay and promote people according to their ability and not according to political affiliation or other considerations. If a sheriff is allowed to provide additional compensation to deputy sheriffs under the merit system by creating classifications outside such merit system, he will be able to frustrate the purpose of a merit system. It was stated by the Appellate Court in Anderson v. City of Rockford, 324 Ill. App. 648 at 650 "that to allow changes in the duties properly belonging or attached to an office, in order to lay the foundation for extra compensation would introduce intolerable mischief, and might lead to great abuse".

If it is desirable that persons appointed directors of operations and administration receive more compensation, I suggest that two possible solutions would be for the merit commission to create classifications for these positions at a higher salary or that the post be filled by persons who are

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not under the merit system and be paid entirely out of the budget for civilian personnel. In the latter solution the persons could not be deputy sheriffs. A deputy sheriff could resign his office as deputy sheriff, however, in order to be a director.

Very truly yours,

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