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SPRINGFIELD

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FILE NO. S-1065

COUNTIES:
Power to Set Salaries
For Deputy Sheriffs

Honorable Edwin R. Parkinson
State's Attorney
Morgan County
Courthouse
Jacksonville, Illinois 62650

Dear Mr. Parkinson:

This is in response to your letter concerning authority to set salaries of deputy sheriffs. The county board takes the position that it has the authority to set the yearly budget for each department of county government including the sheriff's department, as well as the authority to designate salaries for all employees within the sheriff's department. On the other hand, the sheriff contends that because he is a constitutional officer, he alone has authority to set

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the salaries of his deputies as long as he stays within his total budget. A merit commission has been adopted by Morgan County, but it was not given the function of recommending deputy salary schedules to the county board for its approval.

Section 1 of "AN ACT in relation to the compensation of sheriffs, coroners, county treasurers, county clerks, clerks of the circuit court, recorders and auditors with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than 1,000,000 inhabitants" (Ill. Rev. Stat. 1975, ch. 53, par. 37a) authorizes the county board to determine the sheriff's amount of necessary clerk hire. It provides in pertinent part:

"§ 1. The County Board, in all counties of less than 1,000,000 inhabitants, shall fix the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors, with the amount of their necessary clerk hire, stationery, fuel and other expenses. * * *"

The clause "with the amount of their necessary clerk hire" was adopted in the initial enactment of this statute in 1953 pursuant to a 1952 amendment to section 10 of article X of the Illinois Constitution of 1870. This constitutional provision contained this particular clause, which had been previously construed in the case of McFarlane v. Hotz, 401

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Ill. 506. Although the Illinois Constitution of 1970 repealed section 10 of article X of the Illinois Constitution of 1870 as amended, it in no way affects the validity of said section 1 of the Act, nor the prior construction of the clause in question. (1972 Ill. Att'y. Gen. Op. 53.) In McFarlane v. Hotz, 401 Ill. 506, at 516, the court stated:

"Although little support has been advanced for the proposition, appellants also contend that by the terms of section 10, the county board alone is authorized to fix the salaries and compensation for the employees of the county officers governed by that section. This contention is based on the language of the section which states that the county board shall fix the compensation of all county officers 'with the amount of their necessary clerk hire.' This court has held that under such provision the county board may fix the compensation of the county officers governed by the section, together with their necessary clerk and office expense and clerk hire, in a lump sum rather than in separate amounts for each item. (Kilgore v. People, 76 Ill. 548; Briggenden v. County of Clay, 161 Ill. 216; People ex rel. McWard v. Wabash Railroad Co., 395 Ill. 243.) The authority of the county board over the salaries of county fee officers is merely an authority to fix the amount such officer may expend for the purpose, and the making of such an allowance pursuant to the provisions of section 10 for deputy and clerk hire does not have the effect of requiring the officer to hire such employees or expend the full amount so allowed, but is merely an allowance which he may use for such purposes which he may not exceed. To that effect is Jennings v. Fayette County, 97 Ill. 419. Whether the allowance be made to a fee officer or other county officer, it does not have the effect of giving the employee a vested right in any

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particular rate of salary, but merely authorizes the officer to use the allowance for salary purposes. * * * " (McFarlane v. Hotz, 401 Ill. 506, 515.)

In view of this construction regarding the county board's power to set the amount of a county officer's amount of clerk hire and the General Assembly's adoption of this provision after it had been judicially construed, it is clear that the county board at least maintains the authority to designate a maximum amount of county funds in a lump sum which may be used to compensate deputy sheriffs.

The county board, however, is not limited to designating a lump sum which may be apportioned in the sheriff's uncontrolled discretion among his deputies as their compensation. Section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) provides in part:

"No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance."

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There is no specific statutory provision which grants power to the sheriff to determine a deputy sheriff's salary. Section 7 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 7) grants the sheriff only the power to appoint deputies. Therefore, in the exercise of its power to manage county funds (Ill. Rev. Stat. 1975, ch. 34, par. 403) and to budget county funds (Ill. Rev. Stat. 1975, ch. 34, pars. 2101 et seq.), it is within the county board's authority under section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) to limit the sheriff's power to appoint deputies by setting the amount of salary payable to each individual deputy. In other words, although the sheriff is expressly vested with the power to appoint deputies, the county board may set the salary which an individual deputy sheriff may be paid.

For the foregoing reasons, I therefore conclude that the county board has the authority to itemize the sheriff's budget to the degree it chooses. The sheriff's status as a constitutional officer does not exempt him from budgetary constraints which may be imposed by the county board.

Very truly yours,

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