

FILE

Subject

*Captives-Officers
Sheriff*

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

January 14, 1974

Opinion No. 74- 10

Honorable C. M. Cooper
Representative, 40th District
House of Representatives
Topeka, Kansas 66612

Dear Representative Cooper:

We have your letter of January 3, 1974, questioning the qualifications of Mr. Bert Cantwell, Wyandotte County Sheriff, for continued service in that position.

After appointment by Governor Docking, Sheriff Cantwell took the oath of office on October 31, 1973. You question whether he has forfeited his office for failure to comply with K.S.A. 19-801b(e), which states thus:

"Any person appointed to the office of sheriff shall be appointed on a provisional basis and such person must attend and satisfactorily complete the next training program at the law enforcement training academy beginning not less than sixty (60) days after the appointment, or shall forfeit his office."

This provision was enacted as ch. 75, § 2, L. 1972.

In 1968, there was enacted the Kansas law enforcement training center and advisory commission act, ch. 81, L. 1968. Section 8(b) thereof, now found at K.S.A. 74-5608, stated in pertinent part thus:

"(b) On and after July 1, 1969, every person who does not hold such a certificate, and is appointed as a law enforcement officer, shall be appointed to his position on a temporary basis and

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must, within one year of this temporary appointment, become certified, as provided in the preceding paragraph, or forfeit his position."

It was amended by ch. 331, § 5, L. 1973, to include elected as well as appointed officials.

The 1972 Legislature took no steps to amend the 1968 one-year requirement to conform to the 60-day provision enacted for sheriffs that year. It is necessary, thus, to reconcile this apparent conflict, and to determine the legislative purpose and intent.

In 1972, when the act prescribing qualifications for sheriffs was enacted, there was already in force the statutory requirement of K.S.A. 74-5601 that any person appointed as a law enforcement officer, including one appointed as sheriff, complete the required training course within one year. Apparently, the 1972 Legislature preferred to provide a more rigorous requirement applicable specifically to sheriffs alone, by imposing the 60-day requirement of K.S.A. 1973 Supp. 19-801b(e). To the extent, thus, that the later 60-day requirement applicable specifically to sheriffs conflicts with the earlier, general one-year requirement applicable generally to law enforcement officers, the later provision must control. Thus, we cannot but conclude that the 1972 Legislature intended to, and did in fact, require that any person appointed to the office of sheriff complete the required training course within 60 days after appointment, leaving those appointed to other law enforcement officers subject to the 1968 requirement that a course be completed within one year after appointment.

We are advised, however, that no training course for sheriffs has been conducted, or indeed even commenced, during the 60 days since the appointment of Mr. Cantwell. Thus, it has been impossible for either Mr. Cantwell or any other person appointed to the office of sheriff during a similar time period to satisfy the requirement of K.S.A. 19-801b(e). Necessarily, then, the question is presented whether a sheriff so appointed has forfeited his office for failure to complete a course which is not offered during the sixty-day period in question.

Clearly, any sheriff who fails to complete the required course within sixty days after appointment, when the course is offered, is subject to the statutory forfeiture provision. However, in our view, the requirement of K.S.A. 19-801b(e) is subject to the necessary condition that a course in fact be offered during the sixty-day period after appointment. If no course is offered during that period, in our view, the forfeiture provision remains inoperative until a course has been offered, and a person

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appointed to the office of sheriff fails to complete the first training period commencing after sixty days after his appointment.

If, however, the forfeiture provision was deemed inoperative, Sheriff Cantwell would remain subject to reappointment so long as he satisfied the qualifications for appointment set forth at K.S.A. 1973 Supp. 19-801b(a).

Yours very truly,



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Attorney General

VM:JRM:jsm

cc: Sheriff Bert Cantwell
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