

FILE

Subject

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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

March 29, 1974

Opinion No. 74- 110

Bruce H. Wingerd
Clay County Attorney
Clay County Courthouse
Clay Center, Kansas 67432

Dear Mr. Wingerd:

We have your request concerning the necessity for certification of the sheriff under the Law Enforcement Training Center law.

K.S.A. 1973 Supp. 74-5608(b) provides:

"On and after July 1, 1969, every person who does not hold such a certificate, and is elected or appointed as a law enforcement officer, shall be elected or appointed to his position on a temporary basis and, within one (1) year of this temporary election or appointment, must become certified, as provided in the preceding subsection, or forfeit his office or position."

You will note, differing from K.S.A. 1973 Supp. 19-801 et seq., there is no language referring to "newly elected" or "elected for the first time." The language above is "is elected or appointed." Since the determinative date is specific, the intent appears to be that anyone appointed after July 1, 1969, or elected in the general election of 1970 or any subsequent election is to be certified within one year or bear the consequences.

K.S.A. 1973 Supp. 19-801c deals with eligibility of sheriffs holding office as of July 1, 1972:

"Any person serving as sheriff on the effective date of this act shall be and remain eligible to nomination and election to succeed himself in office."

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This appears to be a "grandfather clause" which would exempt the incumbents from the qualifications set forth in the statute, including attendance at the law enforcement training academy as established by K.S.A. (then) 1970 Supp. 74-5601. The effective date of the above quoted statute was July 1, 1972.

Therein the problem lies. The effective date of K.S.A. 1973 Supp. 74-5608 was July 1, 1973. Following the well-known tenet of statutory construction that the more recently enacted legislation takes precedence over the earlier statute, we cannot but conclude that the most recent expression of legislative intent is to be found in the language of K.S.A. 1973 Supp. 74-5608(b) wherein "any person" uncertified and who is "elected" must become certified within one year or forfeit his office.

The 1972 Legislature dealt specifically with the "grandfather" issue in K.S.A. 19-801c. The 1973 Legislature dealt with equal specificity and clarity with the question, denying any "grandfather" privileges to any person elected on or after July 1, 1969, as a law enforcement officer. The 1973 Legislature amended K.S.A. 74-5608 to make it specifically applicable to "elected" law enforcement officers, in addition to appointed officers. Sheriffs are, of course, the only persons elected as salaried, full-time law enforcement personnel, as defined in K.S.A. 74-5602. Thus, the 1973 amendment must be deemed, to the extent that it conflicts with the 1973 act defining qualifications for the office of sheriff to overrule the exemptions by "grandfathering" incorporated in the earlier statute.

Yours very truly,



VERN MILLER
Attorney General

VM:DMH:jsm