



STATE OF KANSAS

*Office of the Attorney General*

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

April 22, 1975

Opinion No. 75- 168

Sheriff Bert Cantwell  
Sheriff of Wyandotte County  
Wyandotte County Courthouse  
Kansas City, Kansas 66101

Dear Sheriff Cantwell:

K.S.A. 19-805 provides thus:

"Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his undersheriffs he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by such sheriff or undersheriff in writing, to do particular acts; and the sheriff and his sureties shall be responsible, on his official bond, for the default or misconduct of his undersheriff and deputies."

You inquire concerning the propriety and legality of a proposal to systematize the handling of special deputy commissions, and to provide adequate training for such deputies.

Specifically, you propose to establish a nonprofit corporation, known as the Wyandotte County Sheriff's Association, governed by a board of directors appointed by yourself as sheriff. This organization would handle the duties now performed by office personnel, including the clearing of approval for a commission through the Justice Department, fingerprinting, photographing the applicant for preparation of a commission card, and conducting monthly law enforcement education seminars for the approved applicants. It would also be required that each applicant be

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certified for the use of a firearm by a certified instructor. In addition, it is being considered to arrange that each applicant be covered by an indemnity bond. The cost of these services would be borne by the applicant. To implement the plan, it would be necessary, you indicate, to revoke approximately 2,600 presently outstanding commissions.

You ask whether it would be improper to require all those applying for special deputy commissions to meet the same requirements applicable to regular law enforcement personnel, and secondly, whether the payment of a required fee by the applicant to the proposed nonprofit corporation could be construed as an illegal charge or exaction for a commission. In response to the first question, it is clearly within the discretion of the sheriff to make such requirements as are applicable to his regular personnel applicable to special deputies.

K.S.A. 19-821 states thus:

"No sheriff shall, directly or indirectly, ask, demand, or receive, for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiting treble damages to the party aggrieved, and in being fined in a sum not less than twenty-five dollars nor more than two thousand dollars."

Clearly, the sheriff may not charge and collect for his personal use a fee for issuing a commission as a deputy sheriff. Moreover, any commission of a deputy sheriff must be issued under the authority of the sheriff personally, and issuance may not be delegated to a party, including the proposed corporation. However, these requirements do not, in our judgment, prohibit the sheriff from establishing qualifications which applicants must satisfy, and delegating the determination and maintenance of those qualifications to a separate entity, such as a nonprofit organization under his control, which might charge and collect, consistent with its nonprofit purpose and charter, fees sufficient to defray the costs of performing those tasks of verifying applicants' credentials, the taking of photographs, and like administrative tasks. Obviously, the sheriff would be entitled to receive no

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portion of the funds so collected, which must be devoted exclusively to the lawful purposes delegated to it by the sheriff.

Within these guidelines, it is our view that Kansas law does not prohibit implementation of the proposal you have outlined as above.

Yours very truly,

CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj