



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 12, 1975

ATTORNEY GENERAL OPINION NO. 75- 333

Mr. William A. Taylor III
Cowley County Counselor
Post Office Box 731
Winfield, Kansas 67156

Re: County Officers--Sheriff--Deputies

Synopsis: K.S.A. 19-805 authorizes the appointment of special or reserve deputies by the sheriff of any county.

* * *

Dear Mr. Taylor:

You inquire concerning what authority, if any, the Sheriff of Cowley County has to appoint special or reserve deputies, meaning persons appointed by the Sheriff to be assigned duties just as full-time deputies, but who may work on a reserve basis.

K.S.A. 19-805 provides general appointive authority 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."

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You point out, however, that a 1941 enactment, K.S.A. 19-805a through -805c, provides special authority to sheriffs in counties with population exceeding 100,000. Deputies appointed under this enactment may not receive any payment for services rendered from public funds, and may be required to furnish an indemnity bond, although by statute the sheriff remains responsible for their official acts.

It is by no means clear what legal distinction is to be drawn between deputies appointed under this 1941 enactment, and those appointed under the general authority of K.S.A. 19-805. Certainly, either statute appears to provide abundant authority for appointment of deputies with such authority as the sheriff chooses to vest in them. So far as we can determine, K.S.A. 19-805 provides sufficient authority for the appointment of special or reserve deputies. If, however, out of an abundance of precaution, additional authority were wanted, it could be furnished by adoption of an ordinary resolution by the board of county commissioners in the exercise of its home rule powers under K.S.A. 19-101a. K.S.A. 19-101a(b) states in pertinent part thus:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board is contrary to an act of the legislature which is applicable to a particular county, such legislation shall become effective by passage of a charter resolution. . . ."

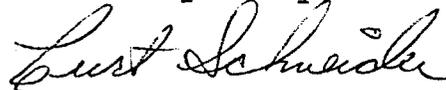
A charter resolution is required only when the proposed legislation is contrary to an act of the legislature applicable to

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a particular county or class thereof. If the proposed county legislation is designed not to conflict with existing legislation, but merely to provide additional or supplemental authority in addition to that which already exists, only an ordinary resolution is necessary.

However, in my judgment, no resolution, ordinary or charter, is necessary to enable the Sheriff of Cowley County to appoint special or reserve deputies under K.S.A. 19-805.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj