



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

March 14, 1977

ATTORNEY GENERAL OPINION NO. 77-92

Mr. J. Byron Meeks  
Edwards County Attorney  
Post Office Box 228  
Kinsley, Kansas 67547

Re: Cities--Marshals--Appointments

Synopsis: A marshal of a city of the third class has no authority to appoint deputy marshals of such city.

Re: Counties--Sheriffs--Deputies

Synopsis: K.S.A. 19-805a authorizes the appointment of special deputies only in counties with a population in excess of 100,000, and persons appointed under the authority of this section may receive no payment for services rendered from public funds.

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Dear Mr. Meeks:

You inquire concerning the appointment of deputy marshals in cities of the third class. You advise that a marshal of a city of the third class has appointed two deputies, who carry firearms and act in that capacity. The question is raised whether the marshal is authorized by law to make such appointments, or whether such appointments may just be made by the mayor. K.S.A. 15-204 provides in pertinent part thus:

"The mayor, with the consent of the council, may appoint, at the first regular meeting of the governing body in May of each

Mr. J. Byron Meeks  
Page Two  
March 14, 1977

year, the following city officers, to wit:  
. . . a marshal-chief of police, policemen  
. . . and such other officers as deemed necessary . . . ."

A deputy marshal is an officer of the city, and no person may be appointed to that office unless and until the appointing power vested in the mayor is exercised, with the consent of the city council. The marshal has no appointive power under the cited statute to appoint deputies, and in my judgment, any person who claims the office of deputy marshal or police officer of a city of the third class has no lawful title thereto, and no right to exercise any of the powers and duties of a police officer under Kansas law unless and until such person is appointed to the position by the mayor, with the consent of the council.

Secondly, you inquire concerning the appointment of special deputies. Specifically, you advise that the sheriff of Edwards County would like to appoint deputies specifically for the purpose of dispatching, booking prisoners and jail watch, and thus avoid the expense of their attendance at the Law Enforcement Training Center. As you point out, while K.S.A. 19-805 authorizes the sheriff to appoint as many deputies as he may think proper, and to deputize persons in writing to do particular acts, K.S.A. 1976 Supp. 19-805a provides in pertinent part thus:

"In all counties having a population in excess of one hundred thousand (100,000), the sheriff shall have authority to appoint so many special deputies as he or she may think proper and for whose official acts such person shall be responsible . . . Said officer shall not receive any payment, for services rendered, from public funds."

Appointments of special deputies contemplated by this section may be made only by sheriffs in counties with a population in excess of 100,000, and the persons appointed under the authority of this section may not receive any payment from public funds. K.S.A. 1976 Supp. 74-5606(e) defines those police officers and law enforcement officers who are required to attend the academy to include each

"full-time, salaried officer or employee of the state, a county or city, whose duties include the prevention or detection of crime

Mr. J. Byron Meeks  
Page Three  
March 14, 1977

and the enforcement of the criminal or traffic laws of this state or any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time salaried deputies in the sheriff's office of each county. . . ."

Under this provision, every person who serves as a deputy in a full-time, salaried position is subject to the requirements of K.S.A. 1976 Supp. 74-5601 et seq.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj