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ATTORNEY GENERAL OPINION NO. 81-205

Sheriff David C. Myers
Kiowa County Sheriff's Dept.
200 East Wisconsin
Greensburg, Kansas 67054

Re: Cities and Municipalities -- Interlocal Cooperation -- Imposition of City Police Duties Upon a Sheriff

Synopsis: A county may not require a sheriff to enforce city ordinances pursuant to an interlocal agreement. Attorney General Opinion No. 78-50 is withdrawn. Cited herein: K.S.A. 12-2901, K.S.A. 1980 Supp. 12-2904, K.S.A. 12-3901, 19-805, 19-813, 19-4401, 74-5610.

* * *

Dear Sheriff Myers:

You have inquired regarding your obligations under an interlocal agreement between Kiowa County and the City of Greensburg entered into pursuant to K.S.A. 12-2901 et seq., which agreement requires inter alia the sheriff's department to enforce the city's ordinances.

Interlocal agreements are authorized and governed by K.S.A. 12-2901 et seq., the Interlocal Cooperation Act. K.S.A. 12-2901 states:

"It is the purpose of this act to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord

best with geographic, economic, population and other factors influencing the needs and development of local communities."

K.S.A. 1980 Supp. 12-2904(a) provides:

"Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state relating to . . . police protection . . . may be exercised and enjoyed jointly with any other public agency of this state." (Emphasis added.)

"Public agency" is defined in K.S.A. 12-2903(a) as

"any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of this state or of any other state and any agency or instrumentality of this state or any other state or the United States"

Thus, the Interlocal Cooperation Act provides for agreements between local governmental units or agencies. The definition of "public agency" does not include individual county agencies, but rather includes the county as a whole. K.S.A. 1980 Supp. 12-2904(b) requires:

"Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force."

The board of county commissioners must act by resolution to enter into such agreements and is the proper party to such a contract. As the governing body of the county, the board may enter into an interlocal agreement without the consent of any county officer. Because the sheriff does not fit the definition of "public agency," such officer would not be a proper party to an interlocal agreement, and his consent would not be required before the county could enter into such an agreement, either initially or to subsequently continue its terms. However, the agreement between Kiowa County and the City of Greensburg is unenforceable if the sheriff does not consent or cooperate.

K.S.A. 19-813 provides:

"It shall be the duty of the sheriff and undersheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their aid such person or persons of their county as they deem necessary."

By virtue of this statute, the sheriff of the county is given the power and duty to keep the peace in the county. He has the authority and discretion to determine how to best fulfill this duty, as further evidenced by K.S.A. 19-805 which states in pertinent part:

"Each sheriff may appoint such and as 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" (Emphasis added.)

The sheriff must determine how many deputies and undersheriffs are needed to keep the peace, where they are to patrol and how frequently. The board of county commissioners may not interfere with these statutorily imposed duties nor usurp the sheriff's authority by entering into a contract which attempts to dictate where the sheriff's personnel are to be placed. Therefore, even if the law enforcement agreement requires the sheriff to station a deputy in the city, the sheriff may refuse to do so if he determines that the deputy is needed elsewhere.

There is an additional problem in attempting to force the sheriff to provide law enforcement to the city without his consent. The sheriff and his deputies have jurisdiction to enforce state laws throughout the county, both within the corporate limits of cities within the county, as well as in the county's unincorporated areas. See Attorney General Opinion No. 73-287. However, their jurisdiction does not extend to enforcing city ordinances. Before authority to enforce these ordinances can exist, the sheriff and his deputies must be appointed and commissioned as city police officers. As this office has previously determined in Attorney General Opinion 81-156, the county commission does not have the power to force anyone to accept such an appointment because of the Thirteenth Amendment to the United States Constitution. That amendment forbids involuntary servitude, except

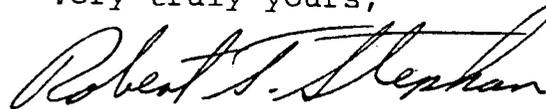
David C. Myers
Page Four

as punishment for a crime. Thus, the sheriff and sheriff's department personnel may refuse to be commissioned as city police officers.

Although the above discussion answers your inquiry, we are constrained to express our belief that an interlocal agreement is not the proper method to be used to provide consolidated law enforcement in a city and county. The legislature has passed specific statutes for the purpose of combining law enforcement functions under a single entity. For example, K.S.A. 19-4401 et seq. permit certain counties to create a law enforcement agency; K.S.A. 74-5610 permits law enforcement personnel of one governmental entity to be temporarily assigned to another governmental entity; and K.S.A. 12-3901 et seq. permit consolidation of governmental agencies. These statutes may be utilized to establish a means of providing enforcement of city ordinances as part of a joint law enforcement effort. The Interlocal Cooperation Act is more properly used when two entities wish to share equipment, facilities or manpower to jointly exercise a power each already possesses. See 8th Biennial Report of Kansas Commission on Interstate Cooperation (1957) at 117.

Therefore, it is our opinion that a county may not require the sheriff to enforce city ordinances pursuant to an interlocal agreement. Attorney General Opinions No. 81-156 and 73-287 are enclosed for your information. Insofar as Attorney General Opinion No. 78-50 is contrary to this opinion, it is hereby withdrawn.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle

Enc.