



STATE OF KANSAS

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January 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 45

F. T. "Jim" Chaffee
Sheriff, Shawnee County
200 East Seventh
Topeka, Kansas 66603

RE: Sheriffs - Deputies - Powers and Appointment

SYNOPSIS: The appointment of any deputy sheriff expires upon the expiration of the term of the appointing sheriff or sooner at the pleasure of the sheriff. The sheriff may suspend a deputy from his or her duties, pending a decision to revoke the appointment entirely. The sheriff may limit the authority of an appointment to do and perform specific acts or classes of acts. The undersheriff may appoint deputies only in writing and to do specific acts, except when a vacancy exists in the office of sheriff. All sheriffs of the state have the power to appoint special deputy sheriffs, and particularize the limits of the special deputies so appointed. Whether a special deputy sheriff is a "law enforcement officer" as that term is defined by K.S.A. 21-3110 depends upon the terms of the appointment, and the powers granted thereby. Unless the appointment specifically so provides, it is unlikely that a special deputy sheriff will be held to have general law enforcement powers unless on direct assignment by and for the sheriff or his authorized designee. A special deputy who holds an appointment which specifically provides that such person is "not authorized to make arrest or enforce law" is not a "law enforcement officer" as defined by K.S.A. 21-3110.

* * *

Dear Sheriff Chaffee:

You pose several questions concerning the appointment of deputy sheriffs. First, you inquire as to the duration of such

appointments. 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"

Article 15, § 2 of the Kansas Constitution provides in pertinent part thus:

"The tenure of any office not herein provided for may be declared by law; when not so declared, such office shall be held during the pleasure of the authority making appointment. . . ."

See *Haney v. Cofran*, 94 Kan. 332 (1915). Thus, the term of any deputy appointment expires upon the expiration of your term of office, if not sooner terminated.

Secondly, you ask whether you may prescribe an expiration date for such appointments. Because the appointments are revocable at your pleasure, it is within your authority to prescribe expiration dates therefor.

Third, you ask whether the appointing sheriff may suspend a deputy appointment temporarily, as distinguished from revocation. Suspensions are authorized in the instance of any appointment which is subject to K.S.A. 19-4303. See K.S.A. 19-4327. In counties not subject to the act, a sheriff may relieve any deputy of any or all of his or her responsibilities, as the sheriff determines to be appropriate, pending a decision whether to revoke the appointment.

Fourth, you ask whether the appointing sheriff may limit the authority of a deputy to perform fewer than all of the powers which would otherwise be vested in the deputy by virtue of an appointment without such limitations. K.S.A. 19-805 speaks to this point 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" [Emphasis supplied.]

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In addition, K.S.A. 19-805a authorizes the appointment of special deputies in counties having a population in excess of one hundred thousand. K.S.A. 19-805b provides that "[s]uch special deputies may be limited in their authority to perform the acts of a peace officer in or about certain specified premises or relating thereto" Thus, there exists specific statutory authority for appointments of deputies whose authority is limited by the terms of the appointing document.

Next, you ask whether the undersheriff may appoint deputy sheriffs. K.S.A. 19-805 authorizes the undersheriff to deputize persons in writing to do particular acts. Otherwise, the undersheriff may appoint deputies vested with the general powers of that position only under K.S.A. 19-804, while a vacancy exists in the office of sheriff.

Next, you ask whether deputies are constituted "law enforcement officers" under the laws of this state. K.S.A. 21-3110(10) defines law enforcement officer as meaning: "Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes whether that duty extends to all crimes or is limited to specific crimes." [Emphasis supplied.] K.S.A. 74-5602 defines police officer or law enforcement officer as meaning: "A full-time salaried officer or employee of the state, a county or a city whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or any municipality thereof. Such term shall include, but not be limited to the sheriff, undersheriff, and full-time salaried deputies in the sheriff's office in each county" [Emphasis supplied.] This definition although used for purposes of the Law Enforcement Training Academy gives guidance as to the authority of the full-time salaried deputies. Other deputies not salaried or full-time would be limited to the authority specifically granted by the sheriff and in some instances by the undersheriff when that authority is granted to the deputy for a specific act and is in writing.

Seventh, you ask whether all sheriffs of this state have authority to appoint special deputies. For reasons not entirely clear, K.S.A. 19-805a, part of a 1941 enactment, specifies expressly that only sheriffs in counties with a population in excess of one hundred thousand shall have the authority to appoint "special deputies." However, there is no statutory distinction between such "special deputies" and those persons who are deputed to perform particular acts under K.S.A. 19-805. Indeed, K.S.A. 19-805c of the 1941 enactment, further specified that that act "shall not be construed as in limitation of any existing powers for the appointment of deputies by sheriffs . . . but as an extension thereof." Persons appointed and deputized to perform parti-

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cular acts under K.S.A. 19-805 appear to be equally "special deputies" as those appointed under K.S.A. 19-805a, although those appointed under the latter statute may not receive any payment for services rendered from public funds. The authority of all such specially appointed deputies may be limited and particularized as described above.

You ask whether special deputy sheriffs have general law enforcement powers. Much depends upon the specific terms of appointments. For example, K.S.A. 21-3110, of the Kansas Criminal Code defines the term "law enforcement officer" as

"any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes."

A special deputy who is vested with the power to make arrests for specific kinds of crimes, for example, becomes a law enforcement officer under the criminal code with the limited arrest authority granted by the terms of the appointment. If the specific grant of authority includes the power to direct or regulate traffic or to make arrests for traffic violations, such special deputies become "police officers" as defined by the Uniform Act Regulating Traffic on Highways, at K.S.A. 8-1450. An appointment of a special deputy "to do and perform any and all lawful acts pertaining to this appointment" affords little basis for a conclusion as a matter of law as to the powers which are granted thereby. The designation of the deputy as "special" implies some limitation on the powers granted. However, as a purely statutory matter, there is little basis from which to determine and identify the powers which are granted by such an appointment. Depending upon the context in which the question is raised, it may be answered only by reference to custom and usage. In *City of Kansas City, Kansas v. Dawkins*, no. 10075 MCA, in the District Court of Wyandotte County, Kansas, the court defined the powers granted to a "special deputy sheriff" thus:

"'Law enforcement work' as far as a special deputy sheriff is concerned includes:
(1) any time the special deputy is pressed into active duty by the sheriff in connection with riot control, traffic or crowd control, or other special occasions when he is actually called upon to assist the sheriff and his regular duties;

- (2) conveying money to and from banks or other depositories or providing protection from some other person so employed;
- (3) conveying other valuables in the course of his employment, or providing protection for some other person so employed;
- (4) protection of his or his employer's place of business;
- (5) the performance of duties as a security officer or guard for an employer;
- (6) when travelling from his home to his employment in one of the foregoing capacities and while travelling home from such employment."

Again, as a merely statutory matter, article 8, chapter 19, K.S.A. provides no satisfactory basis from which to identify the law enforcement powers granted special deputies in any particular jurisdiction. In the cited case, the court, drawing perhaps on evidence in the case, appears to have defined those powers in terms of the custom and usage of that jurisdiction. The appointing authority might well, given the uncertain basis for decision afforded by resort to such disputable referents, wish to define in writing the precise powers granted by such appointments, perhaps in terms of those powers described by the district court.

You ask, further, whether special deputies enjoy general law enforcement powers when not on direct assignment by and for the sheriff or his authorized designee. It is unlikely that they do. K.S.A. 19-805a, which provides for the appointment of special deputies, states that they shall be unpaid, and K.S.A. 19-805b contemplates that the duties of such persons shall be particularized to some extent by the sheriff. Very often, such persons have been appointed for the purposes outlined in the jury instructions quoted above, for purposes associated with their personal business or employment, or the protection of valuables. While it is obviously difficult to generalize purely as a matter of law, on the face of K.S.A. 19-805a, and from the terms of an appointment of a "special deputy" to "do and perform any and all lawful acts pertaining to this appointment," I think that neither the statute nor the terms of an appointment cast in such language appointing a "special deputy" confers general law enforcement powers. In *State v. Dawkins, supra*, the court took the view that a holder of a special deputy appointment was engaged in "law enforcement work" only when engaged in the activities recited above, taken from the instructions given the jury by the court. In my judgment, a special deputy appointed

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under K.S.A. 19-805a does not enjoy general law enforcement powers at all times unless the terms of the appointment expressly so provide. If the appointment is in the form enclosed with your letter, i.e., "to do and perform any and all lawful acts pertaining to this appointment," the officer enjoys no law enforcement powers, in my judgment, other than those articulated by the Wyandotte County District Court.

Lastly, you inquire concerning the appointment forms and procedures used by your department. A uniform certificate of appointment form is used for all appointments for both regular and special deputies, which are filed with the county clerk when executed. The department uses four color-coded commission cards, which are in effect miniature certificates of appointment, which are carried on the officer's person. The white card is furnished to regular departmental employees and as a courtesy to other law enforcement officers whose jurisdiction is otherwise not county-wide. After an appointment is made, the certificate and card are executed and filed with the county clerk. The appointee is empowered by the language of the appointment certificate to "do and perform any and all lawful acts pertaining to this appointment." The red card, bearing the same language is furnished to all citizens volunteering to assist the department on a regular basis in the department's reserve division. The appointment is as a "special deputy," which is typed on the face of the card. A third class of card, blue card, is furnished only to persons engaged in providing security for publicly-owned property in Shawnee County pursuant to contracts with the county itself. The card grants general law enforcement powers subject to a geographical jurisdictional limitation as follows: "does not authorize bearer to make arrests or enforce law off of premises under contract." A fourth card is issued to certain citizens to provide them with authority to carry a weapon, off of his or her business premises, residence or other real property without offending K.S.A. 21-4201 and similar city ordinances, and is commonly referred to as a "gun permit." Although the form, once again, grants the holder the authority "to perform any and all lawful acts pertaining to this appointment," the card specifically "does not authorize the bearer to make arrest or enforce law." The intent of this appointment, you advise, is to constitute the appointee a "law enforcement officer," and at the same time strictly limit his or her authority to act except in defense of self or property. As you point out, under K.S.A. 21-3110(10), a "law enforcement officer" is "any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes." The terms of the appointment represented by the yellow card appear to remove from the appointee any such powers. It is suggested that nonetheless,

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special deputies under K.S.A. 19-805b have inherent statutory law enforcement powers. The Wyandotte County District Court rejected that argument, as I read its jury instructions. Moreover, the express terms of the appointment represented by the yellow card negative any inference that the holder possesses any statutory or other law enforcement powers whatever. Thus, such persons are not "law enforcement officers" within the meaning of K.S.A. 21-3110(1), and hence, within K.S.A. 21-4201(2). Thus, the "yellow cards" as presently issued do not constitute the holders "law enforcement officers" who are entitled to carry concealed weapons in violation of K.S.A. 21-4201.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en