



STATE OF KANSAS

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September 12, 1983

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ATTORNEY GENERAL OPINION NO. 83- 136

William L. Thompson  
Sheriff of Rice County  
120 East Main  
Lyons, Kansas 67554

Re: Counties and County Officers -- Sheriffs -- Deputies

Synopsis: A sheriff of a county having a population of less than one hundred thousand may not appoint special deputies under the authority of K.S.A. 19-805a. Such sheriffs may, however, under the general appointment power granted by K.S.A. 19-805, as amended, appoint deputy sheriffs and limit, in writing, the extent of said appointment to the performance of particular acts. Cited herein: K.S.A. 19-805, as amended by L. 1983, ch. 91, 19-805a, 19-805c, K.S.A. 1982 Supp. 22-2401.

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Dear Sheriff Thompson:

You have requested our opinion as to whether you may issue "Special Deputy" commissions to law enforcement officers of municipalities within Rice County. You indicate that the purpose of such appointments is to permit such officers to effect arrests and assist sheriff's officers outside the territorial jurisdiction of their municipality.

Initially, we would note that law enforcement officers may exercise their powers as law enforcement officers outside their normal jurisdiction when in fresh pursuit or when requested by law enforcement officers

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of another jurisdiction. This expansion of normal jurisdiction is established in K.S.A. 1982 Supp. 22-2401a which provides, in part:

"(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city. Such officers also may exercise such powers in any other place when in fresh pursuit of a person.

. . . .

"(4) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (1) or subsection (2), law enforcement officers may exercise their powers as law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which assistance is requested."

Thus, it is our opinion that any law enforcement officer of a municipality in Rice County could lawfully exercise his powers as a law enforcement officer outside his municipality when assistance is requested by law enforcement officers of another area, e.g., deputy sheriffs of Rice County. This authority is not dependent upon any type of commission issued by a county sheriff.

With the foregoing in mind we address your specific inquiry as to whether you may appoint "special" deputy sheriffs pursuant to K.S.A. 19-805a. That statute provides in relevant part:

"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. Before an appointment shall be made the sheriff or marshal of the district court shall have the right to demand an indemnity bond before any commission as special deputy shall be issued. The appointments may be revoked at the pleasure of the appointing officer. Said officer shall not receive any payment, for services rendered, from public funds."

In light of the clear and unambiguous language of the foregoing statute, it is our conclusion that a sheriff of a county having a population of less than one hundred thousand may not appoint special deputies under the authority of K.S.A. 19-805a. We note, however, that K.S.A. 19-805a is an extension of appointment powers rather than a limitation, as indicated by K.S.A. 19-805c which states:

"This act shall not be construed as in [sic] limitation of any existing powers for the appointment of deputies by sheriffs or marshals of the district court, but as an extension thereof."

While K.S.A. 19-805a expands the appointment power of sheriffs in counties having a population in excess of one hundred thousand, it in no way limits the existing appointive powers of sheriffs in other counties.

The authority for appointment of deputy sheriffs is set forth in K.S.A. 19-805, as amended by L. 1983, ch. 91 §6, which provides in relevant part:

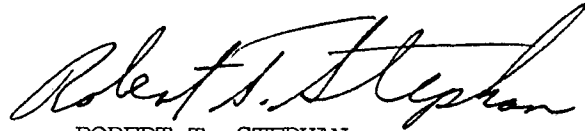
"(a) In addition to the undersheriff, the sheriff also may appoint, promote, demote and dismiss additional deputies and assistants necessary to carry out the duties of the office, for whose official acts the sheriff is responsible. Persons may also be deputized by such sheriff or undersheriff, in writing, to do particular acts. The sheriff and sureties of the sheriff shall be responsible, on the official bond of the sheriff, for the default or misconduct of the undersheriff and deputies."

Although the foregoing statute does not provide for appointment of "special deputies," it does provide for limited appointments. Therefore, it is our opinion that a sheriff may properly appoint a deputy sheriff to perform particular acts that the sheriff deems appropriate. Such appointments must be in writing. Unlike the special deputies appointed pursuant to K.S.A. 19-805a, however, deputies appointed in accordance with K.S.A. 19-805, as amended, including limited or special appointments, are the responsibility of the sheriff and his sureties in the event of default or misconduct by such deputy. Thus, the sheriff could not require an indemnity bond from such appointees which a sheriff, making appointments under K.S.A. 19-805a, may properly require.

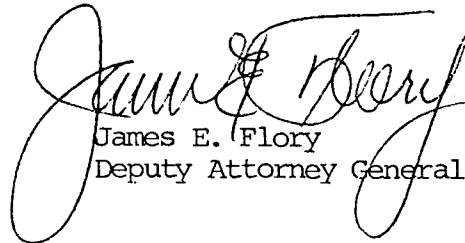
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In conclusion, it is our opinion that a sheriff of a county having a population of less than one hundred thousand may not appoint special deputies under the authority of K.S.A. 19-805a. Such sheriffs may, however, under the general appointment power granted by K.S.A. 19-805, appoint deputy sheriffs and limit, in writing, the extent of said appointment to the performance of particular acts.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General



James E. Flory  
Deputy Attorney General

RTS:JEF:may