



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92-160

Craig E. Cole
Anderson County Attorney
Courthouse, 2nd Floor
P.O. Box 367
Garnett, Kansas 66032

Re: Counties and County Officers -- Sheriff -- Deputies
and Undersheriffs; Limitation of Personnel Action

Synopsis: The sheriff may terminate the employment of the
current undersheriff without following the county's
existing personnel policies and procedures.
However, any termination of a deputy must be in
compliance with whatever policies and procedures
the county has established. Cited herein: K.S.A.
19-803; 19-805.

* * *

Dear Mr. Cole:

As Anderson county attorney, you question whether the newly
elected sheriff may, upon taking office, fire the current
undersheriff and/or any current deputies.

K.S.A. 19-803 authorizes the sheriff to appoint an
undersheriff upon taking office.

"The sheriff of each county shall, as
soon as may be after entering upon the
duties of his office, appoint some proper
person undersheriff of said county, who

shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such undersheriff, or he become incapable of executing the same, another shall, in like manner, be appointed in his place." (Emphasis added).

With regard to actions to be taken with deputies and assistants, K.S.A. 19-805 outlines the sheriff's scope of authority:

"(A) [T]he 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.

. . . .

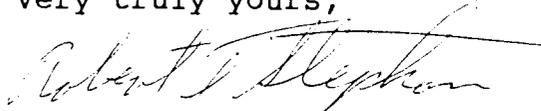
"(d) Any personnel action taken by the sheriff under this section shall be subject to the following: (1) Personnel policies and procedures established by the board of county commissioners for all county employees other than elected officials; (2) any pay plan established by the board of county commissioners for all county employees other than elected officials; (3) any applicable collective bargaining agreements or civil service system; and (4) the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners."

As discussed in Attorney General Opinion No. 84-30, "the appointment of an undersheriff and the sheriff's authority regarding an undersheriff's continued employment in that capacity do not appear to be controlled by the provisions of K.S.A. [1983 Supp.] 19-805 discussed above [Conversely,] although the sheriff has the power to appoint, promote, demote and dismiss deputies and assistants, any such act may be subject to personnel policies and plans promulgated by the board of county commissioners for all county employees."

We concur with the conclusions reached in opinion no. 84-30. Therefore, in conclusion, the sheriff may fire the current

undersheriff without following the county's existing personnel policies and procedures. However, any termination of a deputy must be in compliance with whatever policies and procedures the county has established pursuant to K.S.A. 19-805.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas