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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 83-024

COUNTIES:

Power of Sheriff's Merit  
Commission and Sheriff to  
Abolish Ranks within  
Sheriff's Office

Honorable John A. Barra  
State's Attorney, Peoria County  
Peoria County Court House  
Peoria, Illinois 61602

Dear Mr. Barra:

I have your letter wherein you inquire whether the Peoria County Sheriff's Merit Commission may reorganize the sheriff's office by abolishing the rank of lieutenant and by reassigning those deputies currently holding the rank of lieutenant to the rank of sergeant. For the reasons hereinafter stated, it is my opinion that the proposed elimination of the rank of lieutenant does not violate recognized merit principles of public employment so as to be inconsistent with the

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provisions and purpose of the Sheriff's Merit System Act (Ill. Rev. Stat. 1981, ch. 125, par. 151 et seq.). It is, however, my opinion that only the sheriff is empowered to create or abolish a rank within his office, and therefore, that the proposed reorganization is not within the power of the merit commission.

You state that Peoria County has adopted and implemented a merit system for sheriff's personnel in accordance with the Sheriff's Merit System Act. At present, there are three ranks of deputy sheriffs established within the jurisdiction of the merit system of Peoria County: deputy, sergeant and lieutenant. The sheriff has advised you that the duties and responsibilities of those currently holding the rank of lieutenant and those holding the rank of sergeant are the same. The proposed reorganization would abolish the rank of lieutenant, and those deputies formerly holding that rank would then be assigned to the rank of sergeant. The former lieutenants would continue to receive the salary and benefits previously attached to the rank of lieutenant, even though these exceed the salary and benefits generally prescribed for the rank of sergeant.

Sheriff's office merit commissions organized under the Sheriff's Merit System Act:

"\* \* \* shall have the duties, pursuant to recognized merit principles of public employment,

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of certification for employment and promotion, and, upon complaint of the sheriff or states attorney as limited in this Act, to discipline or discharge as the circumstances may warrant.  
\* \* \* (Emphasis added.) (Ill. Rev. Stat. 1981, ch. 125, par. 157.)

Section 9 of the Sheriff's Merit System Act (Ill. Rev. Stat. 1981, ch. 125, par. 159) provides:

"Rules and regulations. Pursuant to recognized merit principles of public employment, the Commission shall formulate, adopt and put into effect, rules, regulations and procedures for its operation and the transaction of its business.

The Commission shall set standards and qualifications for each class."

Section 11 of the Sheriff's Merit System Act (Ill. Rev. Stat. 1981, ch. 125, par. 161) provides, with certain exceptions not germane to your question, that all vacancies in ranks of deputies above the lowest shall be filled by promotion from among those persons certified by the commission as eligible for consideration. Section 14 of the Act (Ill. Rev. Stat. 1982 Supp., ch. 125, par. 164) prohibits, with certain exceptions, the removal, demotion or suspension of certified persons under the jurisdiction of the merit commission, except for cause upon written charges filed with the commission. These provisions of the Sheriff's Merit System Act ensure that appointments, promotions and tenure of certified personnel within a sheriff's office are dependent solely upon the ascertained merit of the individual.

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In Fahey v. Cook County Police Department Merit Board (1974), 21 Ill. App. 3d 579, 583-84, the court summarized the scope of powers exercised by merit boards and commissions:

" \* \* \*

In Illinois, the boards and commissions regulating merit employment systems exercise purely statutory powers and must find within the governing statutes warrant for the exercise of any claimed authority. [Citations.] Administrative agencies possess only such authority as is legally conferred by express provision of law or such as, by fair implication and intendment, is incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objectives for which those agencies were created. [Citations.] Thus, it has been said that such bodies cannot extend the substantive provisions of a legislative enactment nor create substantive rights through exercise of their rulemaking powers. [Citations.] The restraint should apply with special force to rules enacted by civil service boards and commissions, since civil service statutes are deemed a necessary part of the contract of employment of each employee covered by them. [Citations.]

\* \* \* "

A sheriff's office merit commission is granted no express power to create ranks within the certified personnel of a sheriff's office, nor is such power necessarily implied in order to accomplish the purposes of the merit system. (See generally People v. Coffin (1918), 282 Ill. 599, 609-10; City of Chicago v. People (1904), 114 Ill. App. 145, 149.) Rather, the only powers of a merit commission with respect to rank

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appear to be the power to set standards and qualifications for each class of certified personnel (Ill. Rev. Stat. 1981, ch. 125, par. 159), and the power to certify personnel as eligible for promotion (Ill. Rev. Stat. 1981, ch. 125, par. 161). Under statute (Ill. Rev. Stat. 1981, ch. 125, par. 7), as well as at common law, only the sheriff is entitled to appoint deputy sheriffs. (McWilliams v. Richland (1885), 16 Ill. App. 333, 335.) The power to create ranks within his deputies would appear to be one of the implied powers of a sheriff which he alone may exercise. (See 1972 Ill. Att'y Gen. Op. 11; see also People v. Coffin (1918), 282 Ill. 599, 609; City of Chicago v. People (1904), 114 Ill. App. 145, 149; McCarty v. Mayor and City Council of Baltimore (App. Ct. Md. 1972), 290 A.2d 521, citing Ball v. Board of Trustees of State Colleges (S.Ct. Md. 1968), 248 A.2d 650, 654.) Thus, it is my opinion that the Peoria County Sheriff's Merit Commission does not have the power to abolish the rank of lieutenant in the sheriff's office. For the following reasons, I believe that any such reorganization may be done only by order of the sheriff.

As was stated above, the sheriff possesses implied power to create ranks for the deputy sheriffs he appoints. Ordinarily, one who is empowered to create a position or office within a merit system may likewise abolish the position or office. (See State v. McIntyre (Ct. App. Ohio 1951), 114 N.E.2d

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870, 871-72.) It is generally recognized that merit employment systems are intended to protect efficient public employees from partisan control, not to prevent the good faith reorganization of an office or department in order to promote effectiveness or economy. (People ex rel. Kenny v. Fornof (1951), 343 Ill. App. 73, 91; see generally, Annot., 87 A.L.R. 3d 1165 (1978); 172 A.L.R. 1366 (1948); 4 A.L.R. 205 (1919).) A public employer may in good faith abolish positions for economy or to secure greater efficiency, even though persons protected by merit employment principles are thereby removed or demoted without a hearing. People v. Niewinski (1957), 13 Ill. App. 2d 307, 315; see Fitzsimmons v. O'Neill (1905), 214 Ill. 494, 505; State v. City of Milwaukee (S.Ct. Wis. 1938), 281 N.W. 653, 656; Switzer v. Sanitary District No. 7, etc. (App. Ct. N.Y.1977), 399 N.Y.S.2d 43, 44-5; McCarty v. Mayor and City Council of Baltimore (App. Ct. Md. 1972), 290 A.2d 521, 523.

According to information which you have supplied, lieutenants and sergeants in the Peoria County sheriff's office have the same duties and responsibilities. Apparently it has been determined that the efficiency of the sheriff's office would be enhanced by abolishing the rank of lieutenant and combining the current lieutenants and sergeants in a single rank of "sergeant". There is no indication that the proposed reorganization is intended to circumvent the protection of the

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merit system, or as a subterfuge to demote or dismiss a merit employee without a hearing. To the contrary, you have advised that those deputies formerly holding the rank of lieutenant will continue to receive salary and benefits at the level currently attached to that rank. Therefore, it is my opinion that the sheriff of Peoria County may reorganize his office in the manner described above.

You have also asked whether the salaries of the current sergeants can be raised to the level of the current lieutenants if the rank of lieutenant is abolished. I am aware of no reason why salaries could not be equalized within the proposed rank of sergeant. The increase of salaries for any personnel, including the sergeants in question, however, is subject to the amount of appropriated moneys available to the sheriff for compensation, as well as his determination of the manner in which such moneys should be expended. (See Ill. Rev. Stat. 1981, ch. 125, par. 14a.)

Very truly yours,

  
A T T O R N E Y G E N E R A L