



NEIL F. HARTIGAN

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

October 7, 1983

FILE NO. 83-016

COUNTIES:
Sheriff's Custody of
Courthouse

Honorable Basil G. Greanias
State's Attorney, Macon County
307 County Building
253 East Wood Street
Decatur, Illinois 62523

Dear Mr. Greanias:

I have your letter wherein you inquire whether the sheriff of Macon County is authorized to control access to the Macon County Building on holidays, weekends, and during evening hours when the building is closed to the public. For the reasons hereinafter stated, it is my opinion that the sheriff, as custodian of the courthouse, may employ reasonable security measures designed to control ingress and egress to the building during non-public hours.

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You state that the Macon County Building is a multi-purpose facility which houses eight courtrooms of the circuit court, the offices of numerous elected and appointed county officials, as well as the county jail and the county's juvenile detention quarters. Access to the building during non-public hours is limited by the sheriff to a single entryway which is monitored by sheriff's personnel. All persons admitted to the building during non-public hours are required to sign a register when entering and leaving the building. Apparently, certain judges and county officials have objected to being required to pass through the sheriff's security system in order to gain admittance to their offices during non-public hours and have requested that they be given keys to the building. There is no indication, however, that any official has been denied entry to the building by the sheriff.

At common law, the sheriff was responsible for the care and custody of the courthouse. (Dahnke v. People (1897), 168 Ill. 102, 111; see People v. Board of Commissioners of Cook County (1947), 397 Ill. 293; County of McDonough v. Thomas (1899), 84 Ill. App. 408; Hardin v. County of Sangamon (1897), 71 Ill. App. 103; 1977 Ill. Att'y Gen. Op. 136, 137.) Although the courthouse as real estate belongs to the county,

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[t]he custody and control which the county board is entitled to exercise under the authority

of the constitution and statutes, is such as attaches to and flows from the ownership of the court house by the county; that of the sheriff is such as attaches to and flows from the inherent powers and duties of his office at common law, and as recognized by the constitution and declared by the statutes, as the attendant upon the court, and as the court's executive officer.

* * *

(Dahnke v. People (1895), 57 Ill. App. 619, 626, aff'd 168 Ill. 102 (1897).)

The common law duty of the sheriff to act as custodian of the courthouse is codified in section 14 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1981, ch. 125, par. 14), which provides:

"He or she shall have the custody and care of the court house and jail of his or her county, except as is otherwise provided."

The phrase "except as is otherwise provided" in section 14 means except as is otherwise provided by statute and not as is otherwise provided by county ordinance. (1977 Ill. Att'y Gen. Op. 136, 137; 1919-20 Ill. Att'y Gen. Op. 189, 190.) Thus, a county board may not deprive the sheriff of the custody and control of the courthouse, which he is granted by statute. 1977 Ill. Att'y Gen. Op. 136, 138.

The term "custody" in section 14 of "AN ACT to revise the law in relation to sheriffs" means the assumption of the responsibility for the safety of that entrusted, the courthouse. (1912 Ill. Att'y Gen. Op. 254, 255.) As its custodian,

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it is the duty of the sheriff to care for and guard the court-house. (Dahnke v. People (1897), 168 Ill. 102, 114.) Because the responsibility for the safety and security of the court-house is vested in the sheriff by statute, as well as at common law, it is my opinion that the sheriff is authorized to impose reasonable measures to control access to that building on week-ends, holidays, and during evening hours when it is closed to the public, including requiring that judges and county officials request admittance from the sheriff's personnel and sign a ledger when entering and leaving the premises.

Very truly yours,


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