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FILE NO. S-1282

COUNTIES:
Sheriff as Custodian
of County Courthouse

Honorable Thomas J. Fahey
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Courthouse
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Dear Mr. Fahey:

This opinion is in response to your letter concerning the power of the county board to take the custody and care of the courthouse away from the sheriff and vest it in a committee of the board by appropriate resolution of the board. After reviewing the Illinois Constitution of 1970, the relevant statutes, court decisions and past opinions of the Attorney General, I conclude that the custody and care of the courthouse must remain in the office of sheriff and

Honorable Thomas J. Fahey - 2.

cannot be taken away by a county ordinance.

Illinois courts have long held that the care and custody of the courthouse come within the common law powers and duties of the sheriff and that the employment of a necessary janitor to assist him is a right incident to his office. (County of Edgar v. Middleton (1900), 86 Ill. App. 502; County of McDonough v. Thomas (1899), 84 Ill. App. 408.) In People ex rel. Walsh v. Board of Commissioners of Cook County (1947), 397 Ill. 293, the Supreme Court of Illinois affirmed its previous holdings that the care and custody of the courthouse are within the common law powers and duties of the sheriff as the chief executive officer of the court. The court held that the sheriff may hire such persons as are necessary for the care and maintenance of the courthouse and jail, including the right to engage janitors to assist him in the performance of that duty. The court also cited as examples the sheriff's right to hire an engineer and to appoint the superintendent of the jail. Courts have also held that the county board has no right to dismiss or hire a janitor. County of McDonough v. Thomas (1899), 84 Ill. App. 408; County of Edgar v. Sanders (1899), 86 Ill. App. 505.

Honorable Thomas J. Fahey - 3.

The common law duty of the sheriff to be custodian of the courthouse has been codified into Illinois law by section 14 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 14) which reads as follows:

"He [sheriff] shall have the custody and care of the courthouse and jail of his 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. (1919-1920 Ill. Att'y. Gen. Op. 190.) Normally, where a statute grants power to an officer, the use of the phrase "except as is otherwise provided" cannot be construed to grant power to a county board to vary or overrule the terms of the statute. Thus, the sheriff's right to have the custody and care of the courthouse continues with him today in this State unless it has been taken from him by some constitutional or statutory provision.

A relatively recent provision which bears directly on this issue is section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) which reads as follows:

Honorable Thomas J. Fahey - 4.

"No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers, and functions upon county officers. In the event of a conflict State law prevails over county ordinance."

Since the custody and care of the courthouse is specifically imposed upon the sheriff by law, the county board cannot alter such duties. If there were to be any conflict between the statute and any ordinance passed by the county board with regard to the custody and care of the courthouse, the statute would clearly govern.

Other statutory language which may complicate the question of who has custody and care of the courthouse is section 25.01 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 402), which provides that the county board shall have the duty:

"To take and have the care and custody of all the real and personal estate owned by the county."

The court in County of McDonough v. Thomas (1899), 84 Ill. App. 408) held that such language does not curtail the common law powers of the sheriff as custodian of the courthouse and jail. The court invoked the familiar rule of construc-

Honorable Thomas J. Fahey - 5.

tion that when there are two statutory provisions in apparent conflict, one general and applying to general subjects, and the other particular and applying to only one subject, the particular provision must prevail. It does not seem difficult to discover the legislative intention in the matter. The power of the county board as contained in section 25.01 (Ill. Rev. Stat. 1975, ch. 34, par. 402) relates to all the real and personal estate of the county generally, while the other provision contained in section 14 (Ill. Rev. Stat. 1975, ch. 125, par. 14) relates to the jail and courthouse specifically.

The section of the Illinois Constitution of 1970 which bears on this issue is section 4(d) of article VII which reads as follows:

"(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance."

Although this constitutional provision generally allows a county ordinance to alter the powers and duties of county officers, in a case such as here where a State statute

Honorable Thomas J. Fahey - 6.

specifically enacts the common law duty of the sheriff, the statute must prevail over any attempt to alter that duty by ordinance. The county board has no authority to deprive the sheriff of any power conferred upon him by statute.

Therefore, since the sheriff exercises possession of the courthouse as a building in a custodial capacity, it follows that any jobs normally recognized to be custodial in character would be within the power of the sheriff to fill. In answer to your specific inquiries, I conclude that the sheriff, having the custody and control of the courthouse, has the authority to hire janitors as well as a courthouse switchboard operator and courthouse elevator operators, and to prescribe their duties and responsibilities.

As to your inquiry concerning whether appropriations for janitorial supplies and salaries be included in the sheriff's budget in the annual Combined Budget and Appropriation Ordinance, or be made a part of a separate budget entitled "courthouse maintenance", it would seem that either way of accounting for these particular expenditures in the budget is acceptable as long as the expenditures are specifically itemized.

Honorable Thomas J. Fahey - 7.

There is nothing in "AN ACT in relation to the budgets of counties, etc." (Ill. Rev. Stat. 1975, ch. 34, par. 2101 et seq.) which specifies the detail in which county boards must make appropriations or defines the terms used by a county board in making appropriations. (See Attorney General Opinion No. S-1044, issued February 4, 1976.) Item (e) of section 2 (Ill. Rev. Stat. 1975, ch. 34, par. 2102) does provide that the annual appropriation ordinance contain "a schedule of proposed appropriations itemized as provided for proposed expenditures * * * ". It has been held that the requirement to itemize appropriations is mandatory and that the failure to comply with such a statute makes the appropriation invalid. People ex rel. Brenza v. Gilbert (1951), 409 Ill. 29 at 39.

The only statutory directive upon the county board in setting the sheriff's budget is contained in section 1 of "AN ACT in relation to the compensation of sheriffs, etc." (Ill. Rev. Stat. 1975, ch. 53, par. 37a) which provides that the compensation of the sheriff "shall be fixed separately from his necessary clerk hire, stationery, fuel and other expenses * * * ".

Honorable Thomas J. Fahey - 8.

Therefore, I conclude that appropriations for janitorial supplies and salaries can be included either in the sheriff's budget in the annual budget ordinance, or in a separate budget entitled "courthouse maintenance" as long as the county board has made an explicit itemization of its appropriations and kept the sheriff's compensation distinct from his necessary expenses in the custody and care of the courthouse.

Very truly yours,

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