



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

April 23, 1976

FILE NO. S-1079

COUNTIES:

**Authority of Sheriff to Create a
Permanent Auxiliary Police Force.**

Honorable Robert H. Rennick, Sr.
State's Attorney
Stark County
Toulon, Illinois 61483

Dear Mr. Rennick:

I have your letter wherein you ask the following
three questions:

"Can the sheriff, pursuant to the authority of
Section 18 of Chapter 125, establish, by his
executive order, an auxiliary police department,
consisting of members who serve without compensa-
tion, who are persons of good character and repute
and who otherwise meet qualifications and examina-
tions as the sheriff decides, to assist the sheriff
in a broad range of police functions and duties, as
the sheriff from time to time requests of the
auxiliary force, which he would create?

If the sheriff has the power, under the statute,
to create a permanent auxiliary police force, then
what would be the procedural steps for implementing
his authority?

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Can the sheriff confer upon a posse comitatus all of the powers of a conservator of the peace, as are conferred upon him by Section 17 of Chapter 125?"

Section 18 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 18) authorizes a sheriff to summon a posse comitatus. Section 18 provides as follows:

"To keep the peace, prevent crime, or to execute any writ, warrant, process, order or decree, he may call to his aid, when necessary, any person or the power of the county."

It has long been the holding of this office that a sheriff's power to summon a posse comitatus does not authorize the sheriff to establish a permanent auxiliary police force. (1958 Ill. Att'y. Gen. Op. 338; 1927 Ill. Att'y. Gen. Op. 167; 1913 Ill. Att'y. Gen. Op. 278.) The sheriff may call persons to assist him pursuant to section 18 only when an emergency of a temporary nature exists in the county. The authority to maintain the posse comitatus called pursuant to section 18 ends when the emergency ends.

That this is the proper construction of section 18 is substantiated by the fact that if the sheriff could appoint persons to assist him at his will, the county board's limitation on the number of deputy sheriffs would be a nullity.

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The sheriff may appoint deputies to assist him in the performance of his duties. (Ill. Rev. Stat. 1973, ch. 125, par. 12.) Section 7 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 7) authorizes the county board to limit the number of regular deputy sheriffs that the sheriff may appoint. Section 7 reads as follows:

"Each sheriff may appoint one or more deputies, not exceeding the number allowed by the county board of his county, and take bond or security from the same for his indemnity. No person who is presently classified by his local selective service draft board as a conscientious objector, or who has ever been so classified, may be appointed as a deputy sheriff."

The legislature is not presumed to have enacted a meaningless law. (Pinkstaff v. Pennsylvania R. Co., 31 Ill. 2d 518.)

The county board's limitation on the number of deputies would be meaningless if the authority given to the sheriff in section 18 permitted him to create a permanent auxiliary force charged with a broad range of police functions. Section 7 clearly evidences a legislative intent that the county board should set the number of regular deputy sheriffs. Persons summoned by the sheriff pursuant to section 18 act as

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deputies only so long as the emergency requires supplementing the regular force of deputies.

Therefore, my answer to your first question is that the sheriff's power to summon a posse comitatus does not authorize the establishment of a permanent auxiliary police force.

Since the sheriff has no authority to create the type of permanent auxiliary force described in your letter, an answer to your second question is not required.

It should be noted that although the sheriff lacks the authority to create a permanent auxiliary police force, he may appoint assistant supervisors of safety subject to the approval of the county board (Ill. Rev. Stat. 1975, ch. 125, par. 31). In Opinion No. S-984, issued October 23, 1975, I explained that the law enforcement function of assistant supervisors of safety is limited to enforcing laws and ordinances which relate to traffic and highway safety. The sheriff may also maintain a county police department in those counties where such a department has been created. Ill. Rev. Stat. 1975, ch. 125, pars. 51 et seq. and 101 et seq.

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Your third question asks what powers a posse comitatus may exercise. Members of a posse exercise the same authority as the officer who calls the posse. (Main v. McCarty, 15 Ill. 442.) A sheriff has the authority to act as conservator of the peace in his county. (Ill. Rev. Stat. 1975, ch. 125, par. 17.) Members of a posse comitatus summoned by the sheriff pursuant to section 18 may thus during an emergency exercise all the powers that the sheriff exercises as the conservator of the peace.

Very truly yours,

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