

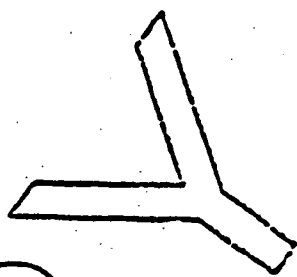


TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

October 27, 1981

FILE NO. 81-032

COUNTIES:
Merit Commission - Authority of a
State's Attorney to Initiate
Disciplinary and Discharge
Proceedings



Honorable Fred L. Foreman
State's Attorney, Lake County
County Building
Waukegan, Illinois 60085



Dear Mr. Foreman:

I have your letter wherein you inquire regarding the statutory authority of a State's Attorney to initiate disciplinary or discharge proceedings against certified sheriff's personnel in counties adopting the provisions of the Sheriff's Merit System Act (Ill. Rev. Stat. 1980 Supp., ch. 125, par. 151 et seq.). For the reasons hereinafter stated, I concur in your opinion that a State's Attorney is not authorized to initiate such proceedings before a Sheriff's Office Merit Commission.

Public Act 81-1475, effective January 1, 1981,
repealed section 58.1 of "AN ACT to revise the law in relation

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to counties" (Laws 1965, p. 1031) and The County Police Department Act (Laws 1967, p. 2685), and created the Sheriff's Merit System Act to supersede merit system provisions contained in the repealed statutes. Counties which established merit systems pursuant to the repealed statutes are required either to adopt and implement the provisions of the Sheriff's Merit System Act, or to abolish their merit systems in the same manner in which such systems were established. In counties adopting the provisions of the Sheriff's Merit System Act, a Sheriff's Office Merit Commission is required to be appointed to administer the merit system, with duties including the certification of personnel for employment and promotion, and the discipline and discharge of sheriff's personnel under its jurisdiction.

Section 7 of the Sheriff's Merit System Act (Ill. Rev. Stat. 1980 Supp., ch. 125, par. 157), which describes the duties of the Merit Commission, provides in pertinent part:

"Duties and jurisdiction. The Merit Commission shall have the duties, pursuant to recognized merit principles of public employment, 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.)

Interpreted alone, section 7 of the Sheriff's Merit System Act would appear to authorize either the sheriff or the State's Attorney of a county to bring complaints to discipline or discharge certified sheriff's personnel before the Merit Commission.

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However, it is a recognized canon of statutory construction that a statute must be construed as a whole, and the legislative intent in enacting its provisions gathered from the entire statute. (Illinois Bell Telephone Co. v. Ames (1936), 364 Ill. 362, 365-66.) Section 7 of the Sheriff's Merit System Act must be construed together with section 14 of the same Act (Ill. Rev. Stat. 1930 Supp., ch. 125, par. 164), which provides in part:

"Removal, demotion or suspension. Except as is otherwise provided in this Act, no certified person shall be removed, demoted or suspended except for cause, upon written charges filed with the Merit Commission by the sheriff. * * *

* * *

(Emphasis added.)

Applying the aforementioned canon of statutory construction to the pertinent provisions of the Sheriff's Merit System Act, the intent of the General Assembly is clear: a Merit Commission is empowered to discipline or discharge certified sheriff's personnel only upon the filing of written charges by the sheriff. The apparent authority of a State's Attorney to initiate complaints before the Merit Commission is specifically subject by the language of section 7 of the Sheriff's Merit Commission Act to limitations contained in the provisions of the Act. The clear and unambiguous language of section 14 of the Sheriff's Merit Commission Act confers upon the Merit Commission the authority to remove, demote, or suspend certified sheriff's personnel only upon the filing of written charges by the sheriff. Therefore, by construing

sections 7 and 14 of the Sheriff's Merit System Act together to give effect to each, section 14 must be construed as a limitation on the authority of a Merit Commission to hear, and a State's Attorney to initiate, disciplinary and discharge proceedings against certified sheriff's personnel. To construe the provisions otherwise would render the clause "as limited by this Act" contained in section 7 meaningless.

This interpretation is supported by application of the canon of statutory construction "expressio unius est exclusius alterius". If a statute requires that an act be done by specified persons or in a specific manner, implied in the requirement is a prohibition against the act being done by other persons or in another manner. (Wood v. Stewart (1905), 120 Ill. App. 34, 36.) Section 7 of the Sheriff's Merit System Act conditions the jurisdiction of a Merit Commission to entertain suspension, discharge, and demotion proceedings upon the filing of written charges by the sheriff. If a statute specifically prescribes the means whereby jurisdiction is to be obtained, the means prescribed must be strictly followed. (Hoehamer v. Village of Elmwood Park (1935), 361 Ill. 422, 426.) A Merit Commission therefore is without jurisdiction to discipline or discharge certified personnel in the absence of written charges being filed, or if written charges are filed by one other than the sheriff.

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You have noted in your letter that the clause "[e]xcept as is otherwise provided in this Act" contained in section 14, if construed as relating to the provisions of section 7, can be interpreted as conferring authority upon a Merit Commission to hear disciplinary or discharge proceedings initiated upon complaint of a State's Attorney. Exceptions in a statute must be read and applied so as to accomplish the purpose of the law. (Winner v. Kadow (1940), 373 Ill. 192, 195.) In my opinion, the exception in section 14 of the Act is intended to relate to the authority of a sheriff to discipline or demote certified sheriff's personnel, not to the authority of the State's Attorney or sheriff to present complaints to the Merit Commission. The exception should be construed with specific reference to sections 11 and 13 of the Sheriff's Merit System Act (Ill. Rev. Stat. 1980 Supp., ch. 125, par. 161, 163), which pertain to promotions and disciplinary measures.

Section 11 of the Sheriff's Merit System Act provides in part:

"

* * *

Persons appointed to a higher rank shall be on probation in such higher rank for a period of 12 months. Such appointees may be demoted by the sheriff to their former rank at any time during the period of probation, if, in the opinion of the sheriff, they have failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service. (Emphasis added.)

Section 13 of the Sheriff's Merit System Act provides:

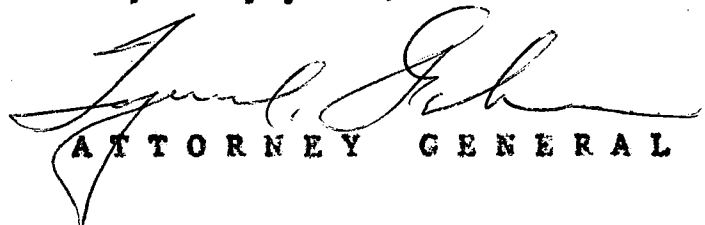
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"Disciplinary measures. Disciplinary measures for actions violating either the rules and regulations of the Commission or the internal procedures of the sheriff's office may be taken by the sheriff. Such disciplinary measures may include suspension of any certified person for reasonable periods, not exceeding a cumulative 30 days in any 12-month period." (Emphasis added.)

These provisions, which are exceptions to the general requirement that no certified person be suspended or demoted except for cause and after an opportunity for a hearing before the Merit Commission, are properly considered the subject of the exception clause contained in section 14 of the Act.

Therefore, it is my opinion that pursuant to the provisions of the Sheriff's Merit System Act, a State's Attorney is not authorized to initiate disciplinary or discharge proceedings against certified sheriff's personnel before a Sheriff's Office Merit Commission.

Very truly yours,


ATTORNEY GENERAL