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FILE NO. S-1013

OFFICERS:

Duty of State's Attorney
to Represent County Sheriff

Honorable James R. Burgess, Jr.
State's Attorney of Champaign County
Courthouse
Urbana, Illinois 61801

Dear Mr. Burgess:

This is in response to your letter in which you
state in pertinent part:

"Recently certain Deputy Sheriffs of the County
of Champaign made allegations against the Sheriff
and certain other Deputies which, if true, would
have constituted official misconduct, theft and other
offenses. Upon its ensuing investigation, the Grand
Jury unanimously concluded that there was no evidence
to support any of these allegations.

* * *

Your opinion is requested as to whether the State's
Attorney has a duty to represent the Sheriff before
the merit board in an effort to terminate the employ-
ment of the deputies who made unfounded allegations."

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Section 5 of "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1973, ch. 14, par. 5) provides that one of the duties of a state's attorney is:

"(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity."

Your question is answered by determining whether the sheriff's action as described in your letter is a "proceeding brought by a county officer within his official capacity".

A sheriff is a county officer. (Ill. Const., art. VII, sec. 4.) As you indicate, Champaign County has created a county police department merit board in pursuance of the County Police Department Act. (Ill. Rev. Stat. 1973, ch. 125, pars. 101 et seq.) Pursuant to section 13 of this Act (Ill. Rev. Stat. 1973, ch. 125, par. 113), the county sheriff is authorized to institute proceedings for the removal of a deputy sheriff:

"* * * No deputy sheriff in the county police department shall be removed, demoted or suspended except for cause upon written charges filed with the Board by the sheriff, and a hearing before the board thereon. * * *"

Action taken by an officer in his official capacity certainly consists of action taken by virtue of his office.

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(Greenberg v. People, 225 Ill. 174; People ex rel. Woll v. Graber, 394 Ill. 362.) It follows that the filing of charges with the merit board in pursuance of the authority granted under section 13 of this Act, supra, would constitute action taken in the official capacity of sheriff of Champaign County.

For the foregoing reasons, the sheriff's institution of proceedings before the merit board, for the purpose of removing a deputy sheriff, would constitute "proceedings brought by a county officer in his official capacity." Pursuant to section 5(3) of "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1973, ch. 14, par. 5(3)), the state's attorney has the duty to commence and prosecute such proceedings.

Of course, the foregoing presumes that the sheriff institutes removal proceedings upon a meritorious claim; for pursuant to section 13 of the County Police Department Act (Ill. Rev. Stat. 1973, ch. 125, par. 113) a deputy may be removed only for "cause". Pursuant to the adoption of this policy, the people of Champaign County have an interest that deputies be removed only for "cause" and not out of whim or caprice of the

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sheriff. As the legal representative of the people, the state's attorney has the duty to uphold this interest. It has been held that when a state's attorney finds himself in a conflict between the people's interest and a county officer's exercise of power, he must determine which position is correct and represent that party. (People ex rel. Courtney v. Ashton, 358 Ill. 146; 1956 Ill. Att'y. Gen. Op. 165; Ill. Att'y. Gen. Op. No. S-921.) It follows therefore that in preparing charges to be brought on behalf of the sheriff before the merit board, the state's attorney should exercise discretion and determine that there is "cause" to remove a deputy.

Therefore, it is my opinion that upon determining that there is cause for removal of a deputy, as state's attorney of Champaign County you have the duty to represent the sheriff before the merit board in proceedings to terminate the employment of deputy sheriffs who made the allegations you refer to in your letter.

Very truly yours,

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