



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

January 20, 1976

FILE NO. S-1036

**OFFICERS:**  
Duty of Sheriff  
to Execute Duly  
Authorized Writs

Honorable Gerry L. Dondanville  
State's Attorney of Kane County  
404 Kane County Courthouse  
Geneva, Illinois 60134

Dear Mr. Dondanville:

I have your letter requesting my opinion as to whether the sheriff of Kane County can refuse to execute certain writs duly issued by the clerk of the court. You indicate that the basis for the sheriff's refusal is his belief that such writs should contain more information as to the identity of the party to be served.

Section 15 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1973, ch. 125, par. 15) provides in relevant part:

Honorable Gerry L. Dondanville - 2.

"Sheriffs shall serve and execute, within their respective counties, and return all writs, warrants, process, orders and decrees of every description that may be legally directed and delivered to them.

\* \* \*

(emphasis added.)

The legislative command contained in this provision is clear and unequivocal. Sheriffs "shall" serve all writs "legally directed and delivered to them." Since the sheriff does not deny that the writs in question are legally directed and delivered, there appear to be no grounds upon which he can refuse to serve them. This position is supported by numerous cases in other States dealing with statutory provisions similar to section 15. See e.g. Hoppe v. Klapperich, 28 N.W. 2d 780 (Minn. 1947); Gilbertson v. Helle, 290 N.W. 269 (N. Dak. 1940); Schuster v. Merrill, 106 P. 2d 192 (Ariz. 1940).

The language of section 15 is, in my opinion, clearly mandatory rather than directory. As the court pointed out in People ex rel. Crowe v. Marshall, 262 Ill. App. 128, the legislature normally uses the word "shall" in the mandatory sense, thereby imposing an enforceable duty. This is particularly true where, as here, the public interest is involved. Furthermore, it is generally acknowledged that a statute should

Honorable Gerry L. Dondanville - 3.

be regarded as mandatory when penalties are provided for its violation. In this regard I point out section 16 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1973, ch. 125, par. 16) which states:

"The disobedience of any sheriff to perform the command of any writ, warrant, process, order or decree legally issued to him, shall be deemed a contempt of the court that issued the same, and may be punished accordingly; and he shall be liable to the party aggrieved for all damages occasioned thereby."

It is therefore my opinion that the sheriff of Kane County may not refuse to execute any writ "legally directed and delivered" to him. Such a refusal to obey the command of a lawful writ would, under section 16, constitute contempt of the court issuing that writ.

The refusal to obey the command of a lawful writ must, of course, be distinguished from the inability to perform such a command. A sheriff does not disobey the command of a writ simply because he is unable to locate the individual named therein. Thus, if a sheriff makes a "reasonably diligent" effort to carry out the directions of a lawful writ, he is not subject to the penalty provisions of section 16. See Sarelas v. Fagerburg, 316 Ill. App. 606; Demers v. Bisbee, 211 A. 2d 416 (N.H. 1965).

Very truly yours,

A T T O R N E Y   G E N E R A L