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ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

March 13, 1972

FILE NO. S-422

**COUNTY OFFICERS:**  
**Sheriff's Office - Merit Commission**

Honorable Bernard L. Oltman  
State's Attorney  
Tazewell County  
Pekin, Illinois 61554

Dear Mr. Oltman:

I have your recent letter wherein you state:

"The following is a fact situation which has arisen in this county and on which this office would request your written opinion.

Pursuant to Chapter 34, Section 859.1 of the Illinois Revised Statutes (1969 Illinois State Bar Association Edition) the Tazewell County Board of Supervisors passed an ordinance providing for the appointment of a Merit Commission to set standards for the employment of Deputy Sheriffs. The Commission has published and promulgated rules and regulations, a copy of which is enclosed. Section C of the Merit Commission Rules, Regulations, and Procedures concerns itself with the issue of Appointment Procedure. The second paragraph of this section reads as follows:

' . . . upon receiving notice from the Sheriff of the existence of a vacancy or vacancies, the Commission shall certify to the Sheriff the required number of applicants in the order of their rank on the eligibility list.'

A dispute has arisen in this county concerning the above wordage. The members of the Merit Commission are of the opinion that, according to its Rules, the Sheriff must choose the applicant whose name appears at the top of its certified eligibility list whenever a position of Deputy Sheriff needs to be filled. The Sheriff is of the belief that if the certified eligibility list contains more than one applicant's name, he has the discretion to choose any person whose name appears on the list and he is not required to choose the person whose name heads the list.

I request that the Attorney General provide this office with a written opinion in this matter."

You have indicated that your county board has passed an ordinance providing for the appointment of the Merit Commission pursuant to Section 58.1 of "An Act to revise the law in relation to counties", 1970 Supplement to Ill. Rev. Stat., 1969, Ch. 34, Par. 859.1. You have asked if the Sheriff must choose the applicant for deputy whose name appears at the top of the certified eligibility list of the Merit Commission.

Section 58.1 of "An Act to revise the law in relation to counties", 1970 Supplement to Ill. Rev. Stat., 1969, Ch. 34, Par. 859.1, reads as follows:

"The county board in any county having a population of less than 1,000,000 may, by ordinance, provide for all deputies other than special deputies, employed on a full time basis in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a standard pay plan approved by the board.

Such ordinance shall provide for the appointment of a Merit Commission consisting of 3 or 5 members appointed by the county sheriff and approved by the county board. Of the initial appointments to a 3 member Commission, one shall be for a term of 2 years, one for a term of 4 years and one for a term of 6 years. Of the initial appointments to a 5 man Commission, one shall serve for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, and one for a term of 6 years. If a 3 man Commission is increased to a 5 man Commission, the additional members shall be appointed to serve for terms of 3 and 5 years, respectively. Thereafter, all appointments shall be for terms of 6 years. In a 3 man Commission, no more than 2 of the members appointed may be from the same political party. In a 5 man Commission, no more than 3 members may be affiliated with the same political party. Such Commission shall promulgate rules, regulations and procedures for the operation of the merit system and administer the merit system. The County Board may establish per diem compensation for members of the Merit Commission and may allow reimbursement for reasonable and necessary expenses. However, in no event may the amount of per diem compensation established for members of the Merit Commission exceed the per diem received by the members of the county board.

If a petition signed by not fewer than 5% of the registered electors in the county is filed with the county clerk, requesting that the question of adopting a merit system for deputies in the office of the Sheriff, the county board shall, by appropriate ordinance, cause the question to be submitted to the electors of the county, at a special or general election specified in such ordinance, in accordance with the provisions of Section 28-3 of 'The Election Code', approved May 11, 1943, as now or hereafter amended. Notice of the election shall be given as provided in Article 12 of such code.

If a majority of those voting on the proposition at such election vote in favor thereof, the county board shall adopt an ordinance providing for a merit system as provided in this Section."

Article III, Section C of your Commission Rules,

Regulations and Procedures reads as follows:

"After the physical, mental and screening examinations and the background investigation have been completed, those applicants who have been found to possess the prescribed requisites for appointment shall be so informed by the Commission and shall be placed on an eligibility list of all qualified candidates, which list shall be prominently posted in the Commission's office.

Thereafter, upon receiving notice from the Sheriff of the existence of a vacancy or vacancies, the Commission shall certify to the Sheriff the required number of applicants in the order of their rank on the eligibility list.

An applicant certified for appointment who declines in writing to accept appointment, or who fails to accept appointment within 30 days after it is offered to him, shall be deemed to have withdrawn his application, and his name shall be stricken forthwith from the eligibility list.

The eligibility list shall be maintained for one year or until the list is exhausted, whichever is shorter. Tests shall be held each year, and a qualified candidate may retain his status on said list by advising the Commission of his intent to do so."

Section 7 of "An Act to revise the law in relation to Sheriffs", Ill. Rev. Stat., 1969, Ch. 125, Par. 7, reads as follows:

"Each sheriff may appoint one or more deputies, not exceeding the number allowed by rule of the circuit court of his county, \*\*\*\*"

The foregoing statute indicates clearly that the Sheriff is the

person who appoints deputies. If the Sheriff were required to appoint the person whose name appears first on the eligibility list, then the Merit Commission would actually do the appointing. Such a result would clearly be contrary to the statute and the case law of Illinois.

In People ex rel Laist v. Lower, 251 Ill. 527, it was held that the Civil Service Commission of the City of Chicago has no power to appoint to any office or position and that the power to appoint resided in the head of the department or office in which the classified position is to be filled.

I call your attention to 15 Am. Jur. 2d, Sec. 23, Page 485 (Civil Service), which reads as follows:

"Ordinarily, the civil service commission has no power to appoint to any office or position, the power to appoint being in the head of the department or office in which a position is listed under the civil service act. But the legislature may restrict the discretion of the official having the power of appointment, to a selection among appointees found to possess the requisite qualifications ascertained by tests and civil service examinations. Such a restriction is generally imposed by a limitation on the number of names which are certified as eligible by the civil service commission to an appointing officer in reference to the making of a particular appointment. The officer then selects his appointee from among those certified. The commission generally certifies those standing highest on the eligible list.

\*\*\*\*"

In conclusion, I am of the opinion that the statute provides that the Sheriff is the person who appoints deputies. If the county has provided for a Merit Commission, then the Sheriff may choose any person who is named on the eligibility list. He is not required to choose the person whose name heads the list. Requiring the Sheriff to appoint from a previously approved list of persons does not limit the Sheriff's discretion in selecting his appointees. Such a procedure does not constitute a prior approval of the appointment by the Merit Commission. It merely constitutes a method of determining qualifications in advance. This opinion is in response to one specific question which you asked and should not be interpreted as inconsistent with my Opinion No. S-327 which was issued by this office on July 27, 1971.

Very truly yours,

A T T O R N E Y   G E N E R A L