



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
March 15, 1978

FILE NO. S-1347

OFFICERS:
Political Candidacy by
Deputy Sheriff

Honorable Edward F. Petka
State's Attorney
Will County Courthouse
Joliet, Illinois 60431

Honorable Frank X. Yackley
State's Attorney
LaSalle County Courthouse
Ottawa, Illinois 61350

Gentlemen:

I am responding to your questions about political
candidacy by persons serving as deputy sheriffs. Both of your
counties have established merit commissions for deputies under
section 58.1 of "AN ACT to revise the law in relation to counties."

(Ill. Rev. St. t. 1975, ch. 34, par. 859.1.) You have asked:

- (1) Whether the statutes prohibit a deputy sheriff
in your counties from running for office; and,

Honorable Edward F. Petka - 2.
Honorable Frank X. Yackley

- (2) If not, whether the merit commission may, by rule, prohibit deputies from so running.

For reasons to be stated, I conclude that such candidacy in your counties is not prohibited by statute, but may be prohibited by the merit commission.

The statute cited above provides in relevant part 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, and all jail officers * * * 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 Commission shall promulgate rules, regulations and procedures for the operation of the merit system and administer the merit system.* * *

* * *

Neither the provisions just quoted nor any others in the same enactment prohibit political activity by deputy sheriffs. I have been cited to section 14 of the County Police Department Act (Ill. Rev. Stat. 1975, ch. 125, par. 114) which does prohibit deputy sheriffs from engaging in stated political activities. However, section 3 of that Act (Ill. Rev. Stat. 1975, ch. 125, par. 103) provides as follows:

Honorable Edward F. Petka - 3.
Honorable Frank X. Yackley

"In any county having less than 1,000,000 inhabitants, the county board may provide, by resolution, for creation of a county police department merit board, referred to in this Act as the Board. The remainder of this Section and all of Sections 4 through 14 of this Act apply only in those counties in which such a merit board is so created.

* * *

* * *

(Emphasis added.)

Thus, the prohibitions in the County Police Department Act are inapplicable to counties that have not created a county police department merit board under provision of the County Police Department Act. I am aware of no other legal authority prohibiting deputy sheriffs from running for political office. In the absence of such a prohibition, they have a right to do so to the same extent as other citizens.

The second question summarized above is whether a merit commission such as has been established in your counties may prohibit persons serving as deputies from running for office. As noted above, section 14 of the County Police Department Act (Ill. Rev. Stat. 1975, ch. 125, par. 114) appears already to do that in counties which have created boards under that Act:

Honorable Edward F. Petka - 4.
Honorable Frank X. Yackley

"No deputy sheriff in the county police department shall participate in any manner in the activities or interests of any political party or of any candidate for public office or for the nomination therefor, nor participate in any manner in any political campaign for the nomination or election of candidates for public office. Violation of any provision hereof by a deputy sheriff is cause for removal. * * *"

As to deputies in counties that instead have created boards under section 58.1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 859.1), that section provides that they are to be "appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment."

Although the phrase "recognized merit principles of public employment" is not there defined, it is given considerable content by sections 1 and 2 of "AN ACT to define and regulate political activity by merit employees"

1975, ch. 24 1/2

State
recogn

Section 2 prohib
several politica
mention running
activities:

"
(b)
political pr

*May photostat
during office
hours*

Honorable Edward F. Petka - 5.
Honorable Frank X. Yackley

* * *

(f) Initiating or circulating any petitions on behalf of a candidate or in support of a political issue.

(g) Making contributions of money in behalf of any candidate for office or of any public or political issue.

(h) Distributing campaign literature or material in behalf of any candidate.

* * *

Since such actions are closely connected with, if not essential to, a campaign for public office, it is apparent that the General Assembly thought a prohibition on campaigning to be a permissible part of "recognized merit principles of public employment."

This leaves only the question of whether such a prohibition is constitutional. In United Public Workers v. Mitchell (1947), 330 U.S. 75, 94-104, the Supreme Court upheld a prohibition on political activity by Federal employees, against the contention that such a prohibition violated the First Amendment. The Court's reasoning was that such restrictions might prevent department heads from requiring political service of employees and decreasing the efficiency of Federal service. The statute known as the Hatch Act involved in that case did not specifically prohibit running for office. However, in U. S. Civil Service Commission v. National Association of Letter Carriers (1973), 413 U.S. 548, 556, the Court stated:

Honorable Edward F. Petka - 6.
Honorable Frank X. Yackley

"We unhesitatingly reaffirm the Mitchell holding that Congress had, and has, the power to prevent Mr. Poole and others like him from holding a party office, working at the polls, and acting as party paymaster for other party workers. An Act of Congress going no farther would in our view unquestionably be valid. So would it be if, in plain and understandable language, the statute forbade activities such as organizing a political party or club; actively participating in fund-raising activities for a partisan candidate or political party; becoming a partisan candidate for, or campaigning for, an elective public office; * * * (Emphasis added.)

The court also noted (413 U. S. at 563) that all 50 states have such restrictions in some form.

The Illinois Constitution has no provision not contained in the Federal Constitution that might make a prohibition on political candidacy by deputies invalid.

Therefore, I conclude that county merit commissions may prohibit persons currently serving as sheriff's deputies from running for political office. I am unable to express an opinion at this time on the validity of a similar restriction on deputies who are on leave of absence, because it is unclear whether such a prohibition would be sufficiently related to the objectives of efficiency in government service that support the prohibitions upheld by the Supreme Court.

Very truly yours,

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