



JIM RYAN

ATTORNEY GENERAL
STATE OF ILLINOIS



March 4, 1996

FILE NO. 96 -017

COUNTIES:
Courthouse Security Personnel

Honorable David R. Akemann
State's Attorney, Kane County
37W777 Route 38, Suite 300
St. Charles, Illinois 60175-7535

Dear Mr. Akemann:

I have your letter wherein you inquire: 1) whether a sheriff can employ non-Merit Commission certified employees to provide armed courthouse security; 2) whether the chief judge of the circuit court can employ and assign courthouse security personnel; 3) whether county corrections officers can be assigned to courthouse security duties; and 4) to what extent the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq. (West 1994)) is applicable to any courthouse security personnel who are not deputy sheriffs. For the reasons hereinafter stated, it is my opinion that only deputy sheriffs can be employed as courthouse security personnel if such personnel will be authorized to carry weapons and have the

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authority to make arrests. This conclusion necessarily resolves your other questions.

Under a plan which is being considered in Kane County, individuals would be employed by the sheriff to serve as courthouse security personnel. They would wear badges identifying them as court security deputies, would carry stun guns and firearms while on duty, and would be required from time to time to make arrests, and to search or detain individuals. They would be responsible for providing security for the entire courthouse building, 24 hours a day. They would not be subject to the jurisdiction of the Merit Commission or undergo the training required by State law for law enforcement officers, other than 40 hours of training in the use of firearms. (50 ILCS 705/0.01 et seq. (West 1994).)

The sheriff is the custodian of the courthouse and jail. (55 ILCS 5/3-6017 (West 1994).) As such, he has the authority to employ personnel to assist him in that responsibility. (People ex rel. Walsh v. Board of Commissioners (1947), 397 Ill. 293.) No other officer or entity has the power to do so. Further, section 3-6023 of the Counties Code specifically provides that court services customarily performed by sheriffs shall be provided by the sheriff or his deputies. Provision for payment of deputies so assigned is made in section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 1994)).

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The language of section 3-6023 of the Counties Code (55 ILCS 5/3-6023 (West 1994)) suggests that employees of the court may attend to the needs of the court if no deputies are available, perhaps in recognition of the inherent power of court to appoint attendants when necessary to carry out the functions of the courts on a temporary or emergency basis. (21 C.J.S. Courts § 108.) That provision, however, does not purport to empower courts to provide security for an entire building, including county offices not connected with court functions, on a regular basis and at times when the court is not in session. The provision of such security services as are needed is the duty of the sheriff, both as an attendant to the court and as custodian of the courthouse.

The sheriff has been granted no authority to maintain a special police force for the purpose of providing courthouse security. The sheriff is authorized to appoint personnel to various positions. He can appoint the number of deputies which is authorized by the county board (55 ILCS 5/3-6008 (West 1994)), and those deputies may perform any and all of the duties of the sheriff. (55 ILCS 5/3-6015 (West 1994).) He may appoint special deputies to serve process. (55 ILCS 5/3-6011 (West 1994).) He may appoint auxiliary deputies, whose duties consist primarily of directing traffic and aiding in cases of emergencies. (55 ILCS 5/3-6012, 3-6013 (West 1994).) As supervisor of safety, he may appoint assistants whose duties also relate primarily to traffic

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safety. (55 ILCS 5/3-6036 (West 1994).) As warden of the county jail, he is authorized to employ jail personnel. (730 ILCS 125/3 (West 1994).) It has been held that, as custodian of the courthouse, the sheriff can employ building maintenance personnel. (People ex rel. Walsh v. Board of Commissioners (1947), 397 Ill. 293.) In an emergency, the sheriff can call any person to assist him. (55 ILCS 5/3-6022 (West 1994).)

A review of these statutory provisions clearly shows that deputies are the only personnel appointed by the sheriff who are authorized to exercise police powers without strict limits as to place or circumstances. The sheriff's power to summon a posse comitatus has never authorized the establishment of a permanent police force. (1976 Ill. Att'y Gen. Op. 166.) Except in times of emergency, the duties of auxiliary deputies are strictly limited, as are the duties of assistant supervisors of safety. Special deputies for service of process have no police powers. County corrections officers are primarily responsible for the control and custody of offenders, detainees or inmates (50 ILCS 705/2 (West 1994)), are authorized to carry weapons only while so engaged (720 ILCS 5/24-2 (West 1994)) and do not have full police powers.

The county board determines the number of deputies which the sheriff can appoint. (55 ILCS 5/3-6008 (West 1994).) As discussed in opinion No. S-1079, issued April 23, 1976 (1976 Ill. Att'y Gen. Op. 166), such a limitation would be meaningless

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if the authority given to the sheriff under other provisions permitted him to create a permanent force with a broad range of police functions. Rather, the provisions authorizing the sheriff to employ personnel other than deputies should be construed as a recognition that some limited functions can be performed by personnel with less training than deputies, and that in emergency circumstances additional personnel must be given authority to exercise police powers for short periods of time.

It is my opinion, therefore, that the courthouse security services described in your letter may only be provided by the sheriff and his deputies, and not by an alternative security force. Consequently, issues regarding the appointment and training of such personnel are answered definitively by reference to the provisions of the Sheriff's Merit System Law (55 ILCS 5/3-8001 et seq. (West 1994)) and the Illinois Police Training Act (50 ILCS 705/1 et seq. (West 1994)). Section 3-8007 of the Sheriff's Merit System Law (55 ILCS 5/3-8007 (West 1994)) provides that all full-time deputy sheriffs are under the jurisdiction of the Merit Commission, and that the county board may also provide that other positions be included within its jurisdiction. Therefore, if courthouse security personnel are full-time deputies, they must be appointed pursuant to Merit Commission certification.

With respect to training requirements, section 8.1 of the Illinois Police Training Act (50 ILCS 705/8.1 (West 1994)), as

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amended by Public Act 89-170, effective January 1, 1996), provides, in part:

"After January 1, 1976, no person shall receive a permanent appointment as a law enforcement officer as defined in this Act nor shall any person receive, after the effective date of this amendatory Act of 1984, a permanent appointment as a county corrections officer unless that person has been awarded, within six months of his or her initial full-time employment, a certificate attesting to his or her successful completion of the Minimum Standards Basic Law Enforcement and County Correctional Training Course as prescribed by the Board; or has been awarded a certificate attesting to his satisfactory completion of a training program of similar content and number of hours and which course has been found acceptable by the Board under the provisions of this Act; or by reason of extensive prior law enforcement or county corrections experience the basic training requirement is determined by the Board to be illogical and unreasonable.

If such training is required and not completed within the applicable six months, then the officer must forfeit his position, or the employing agency must obtain a waiver from the Board extending the period for compliance. Such waiver shall be issued only for good and justifiable reasons, and in no case shall extend more than 90 days beyond the initial six months.

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Section 2 of the Illinois Police Training Act (50 ILCS 705/2 (West 1994), as amended by Public Act 89-170, effective January 1, 1996)) provides, in part:

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* * *

'Law enforcement officer' means any police officer of a local governmental agency

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who is primarily responsible for prevention or detection of crime and the enforcement of the criminal code, traffic, or highway laws of this State or any political subdivision thereof.

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Public Act 89-170, effective January 1, 1996, amended the Illinois Police Training Act to include provisions for the training of part-time law enforcement and county corrections officers. The Act makes mandatory training for part-time as well as full-time officers, whether hired before or after its effective date, allowing 24 months for the training of previously hired part-time officers and 18 months for the training of newly hired part-time officers.

Nothing in the Counties Code or the Police Training Act prohibits the use of part-time deputies for courthouse security duty. In fact, Public Act 89-170 provides a stronger legal basis for the employment of part-time deputies than had formerly existed. Further, because section 3-8007 of the Sheriff's Merit System Law requires only that full-time deputy sheriffs be under the jurisdiction of the merit commission, part-time deputies may be hired without merit system approval, unless the county board otherwise provides.

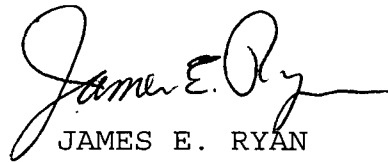
Nothing in the Illinois Police Training Act, or recent amendments thereto, exempts any law enforcement officer from the mandatory training requirements of the Act based upon the title of the position that he or she holds. A law enforcement officer

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does not cease to be within the jurisdiction of the Act merely because his or her title is "courthouse security deputy". The duties of the position, not the title, determine the training requirements.

Because it is my opinion that only deputy sheriffs may be employed to perform the courthouse security services which are contemplated, your second and third questions must be answered in the negative. Your final inquiry, regarding the applicability of the Local Governmental and Governmental Employees Tort Immunity Act to employees who are not deputy sheriffs but who are assigned to courthouse security duty, is also rendered moot by my response to your first question.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Ryan".

JAMES E. RYAN
ATTORNEY GENERAL