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SHERIFFS: Enforcement of laws

A sheriff is obligated to enforce county ordinances and state laws throughout the county, including those areas designated as villages.

Opinion No. 4966

April 6, 1976.

Honorable Dale E. Kildee
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion on the following question:

Is a county sheriff required to provide police protection services to a village absent a specific contractual obligation?

80 CJS, Sheriffs and Constables, § 42, p 211 outlines the duties of the sheriff as a county officer as follows:

“ . . . The duties of a sheriff are in a large measure the same as are imposed on police officers; he necessarily exercises police powers and must enforce the laws enacted for the protection of the lives, persons, property, health, and morals of the people. . . .

“While the sheriff may, in the absence of information to the contrary, assume that a local police department will do its duty in enforcing the law, the primary duty of such enforcement is his and cannot be altered by custom. . . .”

The specific question was considered by the Supreme Court of Missouri in *State, on Inf of McKittrick v Williams*, 144 SW2d 90, 104; 146 Mo 1003 (1940). That case involved a claim that the county sheriff willfully neglected to enforce vice and gambling laws in Kansas City. The Court said:

“ . . . it cannot be successfully asserted that a local police force has supplanted the sheriff in his duties as a peace officer. . . .

“His authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance the cities and towns have their police departments or their town marshals. . . . Still the authority of the sheriff with his correlative duty remains. . . . There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace, possessing such power as the statutes authorize. . . .

“ . . . The derelictions of other officials cannot excuse his failure to perform his statutory duties. . . .”

In Michigan, these same requirements and duties imposed upon the sheriff are equally applicable. Const 1963, art 7, § 4, provides that each organized county within the state shall elect a sheriff for a four-year term, and that the power and duties of such sheriff shall be prescribed by law. 1919 PA 237, § 7; MCLA 45.407; MSA 5.917, provides that the duties of the sheriff shall be as follows:

“It is hereby provided that this act shall be so construed as to require the sheriff, under-sheriff and deputy sheriffs to perform all reasonable

services within the jurisdiction of their offices for which the county may be liable and to serve and execute all civil writs and processes that may be reasonably served and executed by said officers under salary."

This statutory construction was interpreted by the Court in *White v East Saginaw*, 43 Mich 567, 570 (1880). The Court defined the statutory duties of the county sheriff as follows:

"[T]he duties of sheriff . . . relate to the execution of the orders, judgments, and process of the courts; *the preservation of the peace; the arrest and detention of persons charged with the commission of a public offense; the service of papers in actions, . . . they are . . . connected with the administration of justice; . . .*" [Emphasis added]

In *People v Bissonette*, 327 Mich 349; 41 NW2d 343 (1950) and *Scougale v Sweet*, 124 Mich 311; 82 NW 1061 (1900), the Court held that it is the duty, not only of constables and police officers to enforce the public peace, but the sheriff as well. In the former case "peace officer" is defined to include sheriffs and their deputies, constables, marshalls, members of the police force of cities and other agencies whose duty it is to enforce and preserve the public peace, i.e., the good order and repose of the people composing a state or municipality. It follows that the sheriff, as a peace officer, is required to enforce the public peace of his county which includes separate local communities within the county.

Scougale v Sweet, supra, p 322, quoting from *South v Maryland*, 18 How 396, stated:

"The power and duties of conservator of the peace exercised by the sheriff are not strictly judicial, but he may be said to act as the chief magistrate of his county, wielding the executive power for the preservation of the public peace. . . ." [Emphasis added]

Finally, 1931 PA 328, § 52; MCLA 750.52; MSA 24.248 states:

"It shall also be the *duty* of all *sheriffs*, deputy sheriffs, constables, policemen and public officers, to arrest and prosecute all persons of whose violation of the provisions of the preceding sections of this chapter they may have knowledge or reasonable notice, and for each neglect of such duty, the officer so offending shall be deemed guilty of a misdemeanor." [Emphasis added]

It follows that for purposes of law enforcement and police protection, a sheriff is obligated to enforce county ordinances and state laws throughout the county, including those areas designated as villages. This obligation embraces police protection services supplied by the county sheriff and is limited only to the sheriff's duties to "matters for which the county may be liable."

However, the distribution of deputy sheriffs throughout the county remains an administrative function within the discretion of the sheriff. A village, which desires additional police protection, has the option of entering into a contract with the county whereby the sheriff would be obligated to provide additional manpower to the village, 1967 PA 236; MCLA 123.811; MSA 5.3323(1), or by the establishment of a village police force, 1895 PA 3; MCLA 67.44; MSA 5.1328.

Furthermore, absent a contractual agreement, the substance of village ordinances and regulations would not relate to matters for which the county would be liable, and as a consequence the responsibility for the enforcement of the same would lie with the village president, 1895 PA 3; MCLA 67.2; MSA 5.1244; the village marshal, 1895 PA 3; MCLA 67.13; MSA 5.1255; or the village police force, 1895 PA 3; MCLA 67.44; MSA 5.1328.

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ADOPTION OF CHILDREN: Notice to putative father

When the mother of an expected child executes a release of her rights to her child in anticipation of placing the child for adoption upon its birth, the putative father is entitled to notice. If, however, the putative father's identity is not known or his whereabouts cannot be determined, it is not necessary to publish notice of the adoption as such publication is unlikely to reach the father and would not be in the best interest of the child or the mother.

Opinion No. 4942

April 7, 1976.

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As civil counsel for the County of Kent, and upon inquiry from the judges of the probate court of that county, you have asked me whether the Michigan Adoption Code, 1974 PA 296, MCLA 710.21 *et seq*; MSA 27.3178(555.21) *et seq*, requires notice by publication when the mother of an expected child executes a release of her rights to the child in anticipation of placing the child for adoption upon its birth and when personal service of notice of such release cannot be made on the putative father.

The statute requires notice to be given the putative father before his rights may be terminated when his identity is known, or, if his identity is unknown, when his whereabouts can be determined. 1974 PA 296, § 34, 36; MCLA 710.34, 710.36; MSA 27.3178(555.24), 27.3178 (555.36). In such cases notice is to be served under existing state statutes, and nothing short of personal service, or in appropriate cases service by mail, will suffice. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306; 70 S Ct 652; 94 L Ed 865 (1950).

The problem is in giving notice to a putative father when his identity is not known, or when his identity is known but his whereabouts cannot be determined. In such cases 1974 PA 296, § 37, MCLA 710.37; MSA 27.3178(555.37), provides that his rights may be terminated as follows:

"(2) If the identity of the father cannot be determined, or if the identity of the father is known but his whereabouts cannot be determined, the court shall take evidence to determine the facts in the