

The Office of Sheriff
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Article XVII, Section 4 of the Michigan Constitution provides that each organized county shall elect a Sheriff, who shall serve for a four (4) year term and whose duties and powers shall be provided by Law. A Constitutional office such as Sheriff has a known legal character; the Legislature may vary the duties of a Constitutional office, but may not change the duties so as to destroy the power of the Sheriff to discharge the duties of his office at common law.

The Sheriff is first and foremost, a peace officer under Michigan Law. By Constitution and Statute, the Sheriff is charged with enforcing the laws enacted by the Legislature under the police power of the state, and with discharging the executive law enforcement power for the preservation of public peace within the county. A Sheriff has law enforcement authority throughout his county, including cities, villages, chartered townships and townships. Case law and Statute recognize as one of the Sheriff's primary responsibilities, the maintenance of law and order in those areas of his county not adequately policed by local authorities.

A Sheriff also has the responsibility to respond to and provide for the law and order needs of citizens within incorporated or chartered local government jurisdictions in those rare instances where local law enforcement officials are either unable or unwilling to respond to such needs. It is this overall constitutional mandate to provide for and ensure law and order within the county which gives rise to the recognition of the Office of Sheriff as the Chief Law Enforcement Officer for his county, although he does not exercise supervisory power or control over law enforcement activities conducted by other units of government within his jurisdiction.

The responsibilities of the peace officer in Michigan are broad. In addition to the traditional functions, investigation and prosecution of criminal conduct, a Sheriff must take affirmative action to keep the peace, such as the detection of criminal conduct by patrol and other means, the apprehension of criminals, the intervention in crimes in progress such as domestic assault, robbery, rape, etc., the suppression of riot and other civil disturbance, and the control of vehicle and watercraft traffic.

In Michigan, the Office of Sheriff has been charged with a myriad of duties in addition to its peace keeping function. By way of example, the Sheriff is the principle officer for the Michigan Court System, having responsibility for Court security, the execution of the orders, judgments and civil process of the Courts to include the seizure and sale of property to enforce judgments. The Sheriff is responsible for the establishment, maintenance and operation of the County Jail and all ancillary services. Michigan Law provides that the Sheriff is the Officer primarily responsible for providing patrol and traffic services on county primary and local roads. He has executive duties on the County Concealed Weapons Board, in the recovery of drowned bodies, the enforcement of local

marine safety, the enforcement of county and local ordinances, and maintaining local criminal records.

The peace keeping and the jail functions of the Office of Sheriff is funded through local property tax and other revenues received by the County and administered by the County Board of Commissioners. Although the Sheriff has exclusive authority in the administration of his duties, he depends upon funds appropriated by the County Board of Commissioners in order to successfully discharge his obligations. To that end, a Sheriff must function as part of the County Government "team"; he must establish the necessity and priority of law enforcement services within his jurisdiction, and the credibility and effectiveness of the programs he administers. He must function in coordination with and support of the law enforcement officials of local governmental units within his jurisdiction as well as with the County Prosecuting Attorney.

As an elected official, the Sheriff is directly responsible to the citizens of his county for the provision of effective and acceptable law enforcement services, as well as the safe and effective operation of the jail. In the discharge of his Office, a Michigan Sheriff currently faces a number of dilemmas and challenges peculiar to the Office, as well as those universally facing local government such as the rapid increase in demand for services compounded by static or decreasing levels of funding. Some of the current critical issues faced by Sheriffs in the discharge of their duties are synopsized below.

Issues Relating To Law Enforcement Services

Sheriffs throughout the State of Michigan have for several years found themselves facing moderate to severe funding problems in the area of law enforcement services. The Courts have affirmed the Statutory duty of the Sheriff to perform "all reasonable services within the jurisdiction of their offices" including the common law peacekeeping duties of the Sheriff, but they have generally refused to interfere with the budget processes of the counties, citing the separation of powers doctrine. The Courts have further refused to recognize a "duty" on the Sheriff to provide fulltime road patrol of county roads and highways.

Funding pressures and service priorities have brought some County Boards of Commissioners to seek to curtail or eliminate their Sheriff's peacekeeping activities, noting fulltime road patrol to be a "non-mandatory" function. In some cases they have sought to do so by attempting to direct the Sheriff to layoff specific officers and curtail specific functions, a clearly unconstitutional approach; in all cases they have, at least for some time, been successful in impacting on the Sheriffs ability to perform his duties by reducing funding for his operations.

In such cases a Sheriff is in a true dilemma. The argument that road patrol is not mandatory, and is thus subject to reduction or elimination as a funding priority by local government begs the critical question of the necessity for law enforcement services. Very few Michigan Sheriffs enjoy the luxury of time for non-directed patrol and detection activities. Deputy Sheriffs assigned to peace keeping functions spend the majority of their time responding to requests for assistance from citizens and businesses. The Law clearly

requires the Sheriff to accept and respond to all reports of criminal conduct. In the final analysis, a Sheriff's effectiveness is in large measure judged by the manner in which he responds to requests for assistance from citizens and his efforts in the area of detection and apprehension of criminals.

The State Legislature has recognized the essential nature of traffic services provided by Sheriffs on county primary and local roads and has provided specific state funding to support a portion of these activities. Some Sheriffs, either in conjunction with other law enforcement officials or independently, have obtained public approval for special mileage assessments to support law enforcement activities. Time and again in polls throughout the state, citizens have identified law enforcement as their first priority of local government services. In doing so, they send a clear message to local funding authorities that must be effectively received and acted upon if the quality of life is to be maintained in Michigan counties.

Issues Relating To the Administration of Jails

It is clear under Michigan Law that the funding of county jail operations is mandatory, and subject only to limited control by the County Boards of Commissioners. Instead of serving to help ensure that the Sheriff is funded in an adequate fashion for overall responsibility, the mandatory nature of jail expenses works as a detriment to most Sheriffs. That is, many County Boards have refused to increase the total funds allocated to the Sheriff at the same time that crowded conditions in the jail force jail operating expenses upward; the net effect is to reduce funds available for law enforcement. This only serves to make crime "easier", more common and the jails more overcrowded. This dilemma is further compounded by the fact that as much as forty (40) percent of the local jail cell space in this state is occupied by sentenced felons; criminals who would ordinarily be sent to the State Prison System were space available. The inadequacy of the State Penal System has thus insidiously forced a state function onto local government without state funding support. This problem has been repeatedly recognized in the State Legislature, and numerous Bills introduced to provide funding support for local jail operation; to date none have been successfully enacted.

The operation of the State's jails is further complicated by the fact that many are old and in serious need of rehabilitation or replacement; the vast majority, new and old, are overcrowded. New jail construction is discretionary, and no matter how undertaken, places a serious strain on county finances and serves to compound the problems discussed above.

Summary

A Sheriff is an elected Constitutional officer with broad authority and responsibility. To be successful, a Sheriff must have a thorough knowledge of criminal law and procedure, civil law and procedure, constitutional and statutory provisions relating to the care and custody of inmates, civil rights, business administration and police management. It is an administrative position with complex fiscal responsibility. It requires skill and knowledge in employee and labor relations and personnel administration. Sheriffs face extreme difficulty in reconciling increasing demand for service with shrinking resources.

The legislature has also seen fit by statute to impose additional duties on the county sheriff, some of which are as follows:

1. Operation of County Jail, twenty-four hours per day, seven days per week. (MCLA Sec. 801.1, 51.75)
2. Care of prisoners, including separation, (MCLA Sec. 801.6 And 801.103, and 801.104), conversations with counsel (MCLA Sec. 801.7, Michigan Constitution Article I, Sec. 20), feeding (MCLA Sec. 801.8), record-keeping (MCLA Sec. 801.4, 801.12, 801.229 801.252) punishment (MCLA Sec.801.25), maintain order (MCLA 801.27), keeping of federal prisoners (MCLA 801.101), medical care (Op. Atty. Gen. 1977 Op. No. 4957), visitation (O'Bryan v Saginaw County, Mich, 437 F. Supp. 582), examination of prisoners for diseases (Op. Atty. Gen. 1055-56 No. 2324), prescribed jail rules (MCLA 51.281), keep records of infractions (MCLA 51.282).
3. Liability for safekeeping of prisoners (MCLA Sec. 801.102) including sheriff's liability for treble civil damages, misdemeanor criminal penalties and forfeiture of office (MCLA 801.105, 801.108, 801.109).
4. Removal of prisoners in case of fire (MCLA 801.115) exclusion of alcoholic beverages from jail (801.116, 801.117).
5. Transportation of prisoners to court appearances, to prisons within 48 hours of sentence, and to physical and mental examinations (MCLA 801.1199800.48).
6. Day parole of prisoners and garnishment of wages (801.251, 801.252, 801.2531, 801.254) and reports to the Court (801.258).
7. Preventing escape (MCLA 750.188) and misdemeanor criminal penalties for negligence in allowing escape (MCLA 750.189.).
8. Arrest, serve process, apprehend and confine persons on file lawful process, and misdemeanor criminal penalties for willful failure to perform these duties (MCLA 750.191).
9. Attend the Circuit Court, District Court and Probate Court sessions when required by the respective judges and liability for fines for failure to attend (MCLA 600.581).
10. Execute all lawful orders and process of the courts of the state and liability for punishment for disobedience (MCLA 600.581).
11. Execute writs of attachment 2 summonses, precept to summon a jury, warrants, and any other process authorized by a Judge and liability for fine for willful neglect to execute (MCLA 600.587).
12. Attend the jury and liability for willful neglect or for misconduct (MCLA 600.588).
13. Liability for loss of bond in amount of at least \$10,000 for failure to well and faithfully perform and execute the duties of his office (MCLA 51.68, 51.69).
14. Appointment of deputies and Undersheriff (MCLA 51.70, 51.71).

15. Keep statutory office hours (MCLA 51.83) and acceptance of service (MCLA 51.84).
16. Service of civil and criminal process (MCLA 51.221).
17. Recovery of drowned bodies (MCLA 51.301).
18. Acceptance of bail and release of prisoners (MCLA 780, 68).
19. Enforcement of local marine safety act ordinances (MCLA 281.1017).
20. Serve on the concealed weapons licensing board, including licensing, fingerprinting, and monthly meeting (MCLA 28.426).
21. Record keeping for state records (MCLA 791.208), and for the Bureau of Criminal Identification (MCLA 28.243).
22. Investigation, arrest and prosecuting of cruelty to animals charges of which the sheriff has knowledge or reasonable notice and misdemeanor criminal penalties for neglect of this duty (MCLA 750.52, 750.28).
23. Obligation of the sheriff to enforce County ordinances and state laws throughout the County (Op. Atty. Gen. 1976 No. 4966).
24. Liability for civil damages for refusal to perform or neglect of any services required by law (MCLA 600.2558).
25. Removal of persons infected with contagious diseases (MCLA 327.18).

26. Enforcement of quarantine and destruction of animals (MCLA 287.6).
27. Institute criminal proceedings for any violation of election laws of which the sheriff has knowledge (MCLA 168.941) and investigation of fraudulent voter registration (MCLA 168.520).
28. Enforcement of the laws of the State of Michigan and misdemeanor criminal penalties for willful or knowing failure to enforce the law (MCLA 752.11, i52.12).
29. Performance of all reasonable services within the jurisdiction of the sheriff's office for which the County may be liable, to serve and execute all civil writs and processes (MCLA 45.407) and misdemeanor criminal penalties for failure to comply with this Act (MCLA 45.408).
30. Exercise reasonable diligence to keep abreast of County areas inadequately policed, including limited vigilance, monitoring criminal activity or unusual conditions in the County (Brownstown Township v Wayne County, 68 Mich App 244, 1976).
31. Respond professionally to calls for assistance from the citizenry (Brownstown Township v Wayne County, Supra.).
32. Perform duties recognized by the Common Law as well as statutory duties (Brownstown Township v Wayne County, Supra.).
33. Fingerprinting citizens upon request (MCLA 28.271).
34. Monitoring fumigated buildings (MCLA 600.2916).
35. Inspection of all boat liveries (MCLA 281.564).
36. Examination, report and investigation of intentionally injured children (MCLA 722.625).
37. Liability for malfeasance, misconduct or misfeasance (MCLA 51.799 600.17019 168.207).
38. Monitoring, reporting and disposition of stolen and abandoned motor vehicles (MCLA 257.2529 257.253).
39. Serve the Probate Court by enforcement of warrants, process, decrees or orders and transportation of persons for mental examination or commitment (MCLA 701.20).

40. Co-operate with probation officers and report information concerning probationers (MCLA 771.20).

41. Maintain a list of amateur radio licenses (MCLA 257.217a).

42. Provide information to the Subversive Activities Investigation Division (MCLA 28.53).

43. Assist the Michigan State Police and liability for misfeasance and removal from office for failure to assist (MCLA 28.6).

44. Record keeping, including state reimbursement for care of prisoners (MCLA 800.405), management and reports regarding the jail (MCLA 791.262), uniform crime reporting system (MCLA 28.251), sexually motivated crime reporting (MCLA 28.247), and narcotic drug use reporting (MCLA 335.205).

45. Pistol safety inspection (MCLA 28.429).

46. Execute search warrants, inventory and safekeeping of property (MCLA 780.655).

47. Petition for and appoint deputies during times of emergency (MCLA 45.406).

48. Recovery of stolen property, safekeeping of evidence and sale of unclaimed recovered stolen property (MCLA 434.171, 434.172S 434.173).

49. Make arrests pursuant to the controlled substances act (MCLA 335.351).

50. Investigation and recovery of stolen watercraft (MCLA 281.1217).

A review of these statutory duties would show that the statutes provide that "the sheriff shall" carry out these duties. The use of the term "shall" means that the duty is mandatory. Indeed, several statutes provide for civil and criminal penalties for the failure of the sheriff to perform the statutory duties (MCLA 801.1029, 801.1059 801.108, 801.109, 750.191, 600.851, 600.852, 600.587, 600.588).

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